

ADDITIONAL MATERIAL

**Regular Meeting
DECEMBER 1, 2020**

**SUBMITTED AT THE REQUEST OF
COUNTY ADMINISTRATION**



BERTHA HENRY, County Administrator

115 S. Andrews Avenue, Room 409 • Fort Lauderdale, Florida 33301 • 954-357-7362 • FAX 954-357-7360

MEMORANDUM

Date: November 25, 2020

To: Broward County Board of County Commissioners

Thru: Bertha Henry, County Administrator

From: Lary Mahoney, Director of Real Estate Development

RE: **Agenda Item #45 for the December 1, 2020 Commission Meeting**

Please note that County Administration is proposing a revised Motion Statement as follows:

Currently Reads:

MOTION TO ADOPT Resolution authorizing a Locally Funded Agreement with the Florida Department of Transportation ("FDOT"), where Broward County ("County")...

Should read:

MOTON TO APPROVE Locally Funded Agreement between Florida Department of Transportation ("FDOT") and Board County ("County"), where County...

The Board's consideration of this item is based on the above Substitute Motion.

Also attached for your review, is the Locally Funded Agreement that the Board of County Commissioners are being asked to approve.

LOCALLY FUNDED AGREEMENT

This Locally Funded Agreement (“Agreement”) is entered into this _____ day of _____, 2020, by and between the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION (the “Department”) and BROWARD COUNTY, FLORIDA (the “County”) (the Department and the County may be referred to individually as a “Party” and collectively as the “Parties”).

RECITALS

A. The Department is authorized to enter into agreements with governmental entities that wish to aid in any Department project or project phase in the Department’s adopted work program in accordance with Section 339.12, Florida Statutes.

B. The Department’s adopted work program includes a project to widen and improve State Road 869, the Sawgrass Expressway, in Broward County, Florida, from south of Sunrise Boulevard to Atlantic Boulevard, as described in the Department’s Five-Year Adopted Work Program as Financial Project Number (FPN) 437155-1 (the “Project”).

C. A partial interchange currently exists within the Project limits at Pat Salerno Drive (an off-system arterial roadway under the jurisdiction of the City of Sunrise) and State Road 869, with ramps accommodating traffic movements to and from the south.

D. The County and City of Sunrise (the “City”) have asked the Department to consider design and construction of a fully directional interchange at Pat Salerno Drive and the Sawgrass Expressway, with ramps accommodating traffic movements both to and from the south and to and from the north (the “Full Interchange,” depicted for conceptual purposes only on Exhibit “A” attached hereto), as part of the overall Project. The current estimate of the design and construction costs for the Full Interchange is \$65,400,000. The Department has programed \$45,400,000 in funding, or approximately seventy percent (70%), of the estimated design and construction costs of the Full Interchange and has indicated its willingness to include the Full Interchange in the Project, contingent upon certain financial contributions by the County (which contributions may include a financial contribution by the City of Sunrise).

E. Contingent upon the County’s agreement to provide the local share of initial design work funding detailed below, the Department is willing to perform the initial design work required to advance the Full Interchange as part of the Project.

F. The County is willing to contribute funding for initial design for the Full Interchange as part of the Project in the amount of Three Million and 00/100 Dollars (\$3,000,000.00) (the “Local Share”).

G. On _____, 2020, the Broward County Board of County Commissioners authorized the County to enter into this Agreement.

AGREEMENT

In consideration of the mutual covenants and promises contained in this Agreement, the County and the Department agree that the Recitals are true and correct and further agree as follows:

SECTION 1 OBLIGATIONS OF THE DEPARTMENT

- 1.1 The Department shall perform the initial design work for the Full Interchange as part of its design of the Project, as programmed in the Department's Five-Year Adopted Work Program as FPN 437155-1. The initial design work for the Full Interchange will be performed by the Department's consultant under the existing contract for the widening Project. The exact scope of work performed will be determined by the Department, but will include development of advanced 15% line and grade plans, a pond siting study, meetings with permitting agencies to gain concurrence on possible mitigation strategies, utility coordination to evaluate implications of existing easements, and such other work as the Department determines necessary or advantageous to advance the Full Interchange as part of the Project. The Parties acknowledge and agree that the conceptual drawing included as Exhibit A does not represent a final depiction of the Full Interchange or a commitment by the Department to construct any portion thereof. The Parties' expectation is that the initial design work will provide sufficient basis to estimate the anticipated costs of right-of-way and environmental mitigation that may be required for the Full Interchange.
- 1.2 The Department will utilize the County's Local Share to pay its consultant as expenditures are incurred for initial design work of the Full Interchange as part of the Project. The Department will be responsible for the costs of the initial design of the Full Interchange that exceed the County's Local Share.
- 1.3 The Department will hold coordination meetings with representatives of the County and the City throughout the Full Interchange initial design process.
- 1.4 Neither the Department's execution of this Agreement, nor its undertaking or completion of the initial design work for the Full Interchange, shall require the Department to complete final design of the Full Interchange or incorporate construction of the Full Interchange into the Project. The Parties have separately agreed to cooperate toward negotiation of a mutually acceptable project agreement between the County and the Department, under the terms of which the Department will integrate the Full Interchange into final design and construction of the Sawgrass Expressway widening Project ("Project Agreement"). Any obligation of the Department to proceed with final design of the Full Interchange or incorporate construction of the Full Interchange into the Project will be contingent upon execution on or before December 31, 2021, of a mutually acceptable Project Agreement, and any additional agreements required to implement the terms thereof, including a second locally funded agreement to provide for payment of the local share of costs associated with final design and construction of the Full Interchange. Under the terms of such Project Agreement, the County will receive credit for the Local Share described in this Agreement against the total local share contribution amount required for the Full Interchange project,

including initial design, final design and construction.

SECTION 2 OBLIGATIONS OF THE COUNTY

- 2.1 On or before December 31, 2020, the County shall contribute the Local Share to the costs of initial design of the Full Interchange as part of the Project. The County's Local Share will not be subject to reduction at any time and will not be refundable. Although the Parties expect that initial design costs for the Full Interchange will exceed the Local Share, if the actual cost of the initial design is less than the Local Share funds provided, the excess will be applied to other phases on the Project.
- 2.2 The County shall not use any federal funds to provide the Local Share to the Department.

SECTION 3 FINANCIAL PROVISIONS

- 3.1 The requirements of Section 339.135(6)(a), Florida Statutes are incorporated in this Agreement:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

- 3.2 The County's contribution of the Local Share funds may be withdrawn, used and applied by the Department to pay actual costs of initial design of the Full Interchange as part of the Project. Timely contribution of the Local Share funds by the County is a condition precedent to the Department's obligations under this Agreement.
- 3.3 The payment by the County of the Local Share funds under this Agreement will be made directly to the Department. Funds can be wired to the Department using the account codes below:

Wells Fargo Bank, N.A.
Account # 4834783896
ABA # 121000248
Chief Financial Officer of Florida

Re: DOT – K 11-78, Financial Project: 437155-1-32-01

If the payment of Local Share funds is in the form of a check, the check must be forwarded to:

Florida Department of Transportation
OOC-GAO, LFA Section
605 Suwannee Street, MS 42B
Tallahassee, Florida 32399

Funds received from the County will be deposited into a master escrow account with the Florida Department of Financial Services, Division of Treasury, Bureau of Collateral Management. The County will not earn interest on the funds.

- 3.4 The Department intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred and sixty (360) days of final payment to its consultant. The Department considers the work complete when the final payment has been made to the consultant. All cost records and accounts shall be subject to audit by a representative of the County for a period of three (3) years after final closeout of the initial design work for the Full Interchange.

SECTION 4 COMMENCEMENT AND TERMINATION OF AGREEMENT

- 4.1 This Agreement shall be effective as of the date above first written and shall terminate upon the earlier of the mutual written consent of the Parties or three hundred sixty (360) days after final payment has been made to the Department's consultant for work on initial design of the Full Interchange. Notwithstanding any termination, terms which by express terms and context are intended to survive the performance, termination or expiration of this Agreement shall so survive.

SECTION 5 MISCELLANEOUS PROVISIONS

- 5.1 Any amendment to or modification of this Agreement or any alteration, extension, supplement, or change of time or scope of work shall be in writing and signed by both Parties.
- 5.2 Any notice or other document which either Party is required to give or deliver to the other under the terms of this Agreement shall be given in writing and delivered personally or sent to:

TO DEPARTMENT:
Executive Director
Florida's Turnpike Enterprise
Turnpike Headquarters -Bldg. 5315
P.O. Box 613069

TO COUNTY:
County Administrator
Broward County
115 S. Andrews Avenue, Room 203
Ft. Lauderdale, FL 33301-4800

Ocoee, FL 34761-3069

With a copy to:

Florida's Turnpike Chief Counsel
Turnpike Headquarters -Bldg. 5315
P.O. Box 613069
Ocoee, FL 34761-3069

County Attorney
Broward County
115 S. Andrews Avenue, Room 203
Ft. Lauderdale, FL 33301-4800

- 5.3 This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in the Circuit Court in and for Leon County, Florida.
- 5.4 Nothing herein shall be construed to create any third-party beneficiary rights in any person not a party to this Agreement or waive the Parties' respective sovereign immunity protections against claims by third parties.
- 5.5 This Agreement shall be binding upon the Parties, their successors and assigns.
- 5.6 This Agreement may be executed in two or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.
- 5.7 THE COUNTY AND THE DEPARTMENT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.
- 5.8 Nothing herein is intended to serve as a waiver of sovereign immunity by County or the Department, nor shall anything included herein be construed as consent by County or the Department to be sued by third parties in any matter arising out of this Agreement. The Department and County shall each be responsible for the negligent or wrongful acts or omissions of its own employees pursuant to Section 768.28, Florida Statutes.
- 5.9 If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

[SIGNATURE PAGE FOLLOWS ON THE NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Locally Funded Agreement.

STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION

BROWARD COUNTY, FLORIDA

By: _____

By: _____

Date: _____

Date_____

Legal Review

Legal Review

EXHIBIT “A”
CONCEPTUAL DEPICTION OF FULL INTERCHANGE

