

MEMORANDUM OF AGREEMENT

Between the

**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

And the

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION, DEPARTMENT OF
ENVIRONMENTAL PROTECTION, AND FISH AND WILDLIFE
CONSERVATION COMMISSION**

For A

**COLLABORATIVE STAKEHOLDER PROCESS CONCERNING
ENVIRONMENTAL AND TRANSPORTATION ISSUES IN THE GREATER
OCALA ECOSYSTEM INCLUDING IMPROVEMENTS TO SR 40**

In the

**OCALA NATIONAL FOREST
VOLUSIA, MARION, AND LAKE COUNTIES, FLORIDA**

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Agreement”) entered into by and between the State of Florida, Department of Transportation (“FDOT”), Florida Department of Environmental Protection (DEP), Florida Fish and Wildlife Conservation Commission (FWCC), and the United States Department of Agriculture, Forest Service, (USFS); collectively known as the "Parties," is for the purpose of establishing the roles, responsibilities, and procedures under which work shall be performed by the Parties relating to a collaborative stakeholder process concerning environmental and transportation issues in the Greater Ocala Ecosystem including improvements to SR 40 in the Ocala National Forest, in Volusia, Lake, and Marion Counties, Florida.

WHEREAS, FDOT has been evaluating improvements to SR 40 from the end of the four lanes in Silver Springs, Marion County, to US 17 in Volusia County, Florida since a Project Development and Environment (PD&E) study was launched in 1988, and

WHEREAS, a significant portion of the road sought to be improved passes through the Ocala National Forest, managed by USFS, and various state lands managed for greenways, parks, forests, and preserves.

WHEREAS, over the years, there has been significant study of environmental issues and transportation needs relating to the improvement of SR 40 including the PD&E Study in 1988, the addition of the highway to the Florida Intrastate Highway System in 1990, and the initiation of a scoping for an environmental impact statement in 1994, and

WHEREAS, potential impacts of transportation improvements involve issues related to wildlife and other protected species and FWCC is the lead agency in Florida relating to wildlife conservation, and

WHEREAS, the USFS, FDOT, and DEP executed a Memorandum of Understanding relating to the preparation of an Environmental Impact Statement for proposed multi-laning of SR 40 in 1999, and

WHEREAS, in 2001, FDOT initiated Phase I of an Environmental Feasibility Study for State Road 40, led by the Catanese Center for Urban & Environmental Solutions at Florida Atlantic University and the Florida Conflict Resolution Consortium which concluded in a report issued in 2003 that a broader discussion of the inter-relationships between transportation infrastructure and the environment throughout the Greater Ocala Ecosystem was needed to increase the chances of reaching agreement among stakeholders including regionally significant mitigation opportunities relating to improvements for SR 40, and

WHEREAS, FDOT desires to convene a stakeholder driven collaborative process to address issues related to improvements on SR 40 including a broader more ecosystem based approach to transportation and associated environmental needs, and

WHEREAS, the collaborative process is not a substitute for a PD&E Study or an Environmental Impact Statement and shall not be considered pre-decisional for either, but a means to focus interested agencies and interests on addressing issues which might, but not necessarily be later formally addressed in the appropriate regulatory venue, and

WHEREAS, FDOT would like to see a continuation of the SR 40 Environmental Feasibility Study and currently has a PD&E Study programmed for SR 40 for FY 2005-2006, and

WHEREAS, the parties hereto desire to collaborate in convening stakeholders to address environmental and transportation related issues in the Greater Ocala Ecosystem including, but not limited to, improvements needed for SR 40.

NOW, THEREFORE, the Parties in consideration of the mutual promises herein expressed, do hereby agree as follows:

ARTICLE I: SCOPE OF WORK (Obligations, Responsibilities, and Funding)

A. The FDOT agrees to:

1. Act as a cooperating agency with regard to the project management and environmental documentation and be responsible for guiding decisions associated with State property owned or controlled by FDOT or where State transportation interests are involved;
2. Engage consultants and sub-consultants including the Catanese Center for Urban & Environmental Solutions at Florida Atlantic University to convene, organize, manage, and document the collaborative process including stakeholders from public agencies plus business, civic, and conservation interests, and to issue a final report on the results of the process.
3. Issue invitations to appropriate federal, state, regional, and local agencies to participate in the process, such as US Army Corps of Engineers, US Coast Guard, US Environmental Protection Agency, Florida Department of Environmental Protection, Florida Fish and Wildlife Conservation Commission, Florida Department of Community Affairs, St. Johns River Water Management District, Volusia County, Lake County, and Marion County, Florida.

4. Provide documentary and technical information relating to transportation issues in the Greater Ocala Ecosystem that FDOT may have, such as maps, needs studies, mitigation plans, transportation plans, and budget information.

B. USFS agrees to:

1. Act as a cooperating agency in the planning and evaluation of issues where National Forest lands or Forest Service interests are involved;
2. Participate in the collaborative process, designate individuals to serve on committees or technical panels, and provide relevant information as requested.
3. Provide facilities, where available or appropriate, for meetings of committees and technical panels.

C. DEP agrees to:

1. Act as a cooperating agency with regard to the planning and evaluation of issues and be responsible for guiding decisions associated with State Lands including greenways, trails, state parks, state forests, and other State Lands which may be impacted by the proposed improvements.
2. Participate in the collaborative process, designate individuals to serve on committees or technical panels, and provide relevant information as requested.
3. Provide facilities, where available or appropriate, for meetings of committees and technical panels.

D. FWCC agrees to:

1. Act as a cooperating agency with regard to the planning and evaluation of issues and be responsible for guiding decisions associated with conservation of wildlife and other protected species as may be impacted by the proposed improvements.
2. Participate in the collaborative process, designate individuals to serve on committees or technical panels, and provide relevant information as requested.

ARTICLE II: TERM OF AGREEMENT

This Agreement shall be in force for a period of two (2) years from the date of the last approving signature, or until the work, including payment, has been completed to the mutual satisfaction (written acceptance) of all Parties, whichever is later.

The Agreement may be modified by written consent of all of the Parties to cover any questions that may arise subsequent to the date of this Agreement. The Agreement may be renewed for an additional two year term upon written consent of all parties.

Except as limited by law, all Parties to the Agreement will be afforded the opportunity to inspect, review and comment on, at any time, work in progress, the financial records, and any other supporting documentation; and to participate in all meetings and field reviews relating to the Project.

ARTICLE III: KEY CONTACTS

Notices relating to this agreement shall be shared with the following individuals:

USFS

Marsha Kearney
Forest Supervisor
National Forests in Florida
325 John Knox Road Suite F-100
Tallahassee, FL 32303

Mark Warren
MERL Staff Officer
National Forests in Florida
325 John Knox Road Suite F-100
Tallahassee, FL 32303

FDOT

Michael Snyder
District Secretary District V
Florida Department of Transportation
719 S. Woodland Boulevard
DeLand, Florida 32720-6834

Letitia Neal
Project Manager
Florida Department of Transportation
719 S. Woodland Boulevard
DeLand, Florida 32720-6834

DEP

Eva Armstrong
Director, Division of State Lands
Dept. of Environmental Protection
3900 Commonwealth Blvd.
Tallahassee, Florida 32399-3000

Greg Brock
Chief, Off. Environmental Services
Dept. of Environmental Protection
3900 Commonwealth Blvd.; M.S. 140
Tallahassee, Florida 32399-3000

FWCC

Ken Haddad
Executive Director
Fish and Wildlife Conservation Commission
620 S. Meridian Street
Tallahassee, Florida 32399-1600

Terry Gilbert
Office of Environmental Services
Fish and Wildlife Conservation Com.
620 S. Meridian Street
Tallahassee, Florida 32399-1600

ARTICLE IV: TERMINATION

This Agreement will terminate when its two-year term has expired or when all work associated with this Agreement has been completed and the final report has been approved by the parties, whichever is later.

In case of the failure on the part of any Party to observe any of the conditions of the Agreement, any affected Party may terminate this Agreement for default without any legal process whatsoever by giving thirty (30) days written notice of termination to all Parties, effective at the end of the thirty (30) day period. Termination shall be the sole remedy available to any party in the event of a breach of this agreement.

ARTICLE V: ASSIGNMENT

No transfer or assignment of this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by all Parties.

ARTICLE VII: LIABILITY

Each Party accepts full responsibility for any property damage, injury, or death caused by the acts or omissions of their respective employees, acting within the scope of their employment, and subject to the limitations to the fullest extent of the law. All claims shall be processed pursuant to applicable governing law.

TORT CLAIMS: Any claim filed under the Federal Tort Claims Act (28 U.S.C. '2671 et seq. (1994)), alleging an injury during the performance of this Agreement, which may be traced to a Party, shall be received and processed by the Party having responsibility for the particular injury-causing condition.

ARTICLE VIII: REQUIRED AND STANDARD CLAUSES

- A. Nothing in this Agreement shall be construed as limiting or affecting the legal authorities of the Parties, or as requiring the Parties to perform beyond their respective authorities. Nothing in this Agreement shall be deemed to bind any party to expend funds in excess of available appropriations.

- B. **NON-DISCRIMINATION:** The Parties shall not discriminate in the selection of employees or participants for any employment or other activities undertaken pursuant to this Agreement on the grounds of race, creed, color, sex, age, disability, or national origin, and shall observe all of the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000(d) et. seq.). The Parties shall take positive action to ensure that all applicants for employment or participation in any activities pursuant to this Agreement shall be employed or involved without regard to race, creed, color, sex, age, disability or national origin.

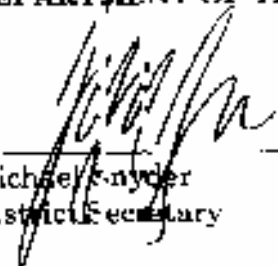
An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

- C. ANTI-DEFICIENCY ACT:** Pursuant to the Anti-Deficiency Act, 31 U.S.C. ? 1341(a)(1) (1994), nothing contained in this Agreement shall be construed as binding the United States or the District of Columbia to expend any sum in excess of appropriations made by Congress for the purposes of this Agreement, or as involving the United States or the District of Columbia in any contract or other obligation for the further expenditure of money in excess of such appropriations.
- D. INTEREST OF MEMBERS OF CONGRESS:** No member of, or Delegate to, or Resident Commissioner in Congress shall be admitted to any share or part of this Agreement, or to any benefits that may arise there from, unless the share or part or benefit is for the general benefit of a corporation or company.
- E. LOBBY PROHIBITION:** The Parties will abide by the provisions of Section 1913 (Lobbying with Appropriated Monies) of 18 U.S.C., which states: No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other devise, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or its departments or agencies from communicating to Members of Congress on the request of any Members of Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of public business.
- F.** This Agreement is subject to all laws governing Federal procurement and to all regulations and rules promulgated hereunder, whether now in force or hereafter enacted or promulgated, except as specified in this Agreement. Nothing in this Agreement shall be construed as in any way impairing the general powers of the Parties for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.

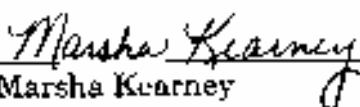
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives this 30th day of September, 2003.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
NATIONAL FORESTS OF FLORIDA



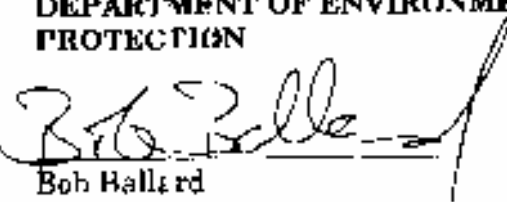
Michael Snyder
District Secretary



Marsha Kearney
Forest Supervisor

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

STATE OF FLORIDA
FISH AND WILDLIFE CONSERVATION
COMMISSION



Bob Hallard
Deputy Secretary



For Ken Haddad
Executive Director