Item # 22

SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM

SUBJECT: Resolution - Local Agency Program (LAP) Agreement with the Florida Department of Transportation for the design of the State Road 46 Gateway Sidewalks (FPN No. 4174841-38-01).

DEPARTMENT: PUBLIC WORKS **DIVISION:** ENGINEERING

AUTHORIZED BY: W. Gary Johnson, P.E., Director **CONTACT:** Jerry McCollum, P.E. **EXT.** 5651

Agenda Date 08/09/05 **Regular** ☐ **Consent** ☒ **Work Session** ☐ **Briefing** ☐
Public Hearing – 1:30 ☐ **Public Hearing – 7:00** ☐

MOTION/RECOMMENDATION:

Adopt Resolution and authorize the Chairman to execute a Local Agency Program (LAP) Agreement with the Florida Department of Transportation for the design of sidewalks along State Road 46 for the State Road 46 Gateway Sidewalk Project. (FPN No. 417484-1-38-01).

District 5 – Commissioner Carey (Jerry McCollum, P.E.)

BACKGROUND:

The State Road 46 Gateway Sidewalk Project entails the design of approximately 2.3 miles of sidewalk along State Road 46 from Towne Center Boulevard at Seminole Towne Center Mall to Airport Boulevard. The proposed design will include a 10-foot sidewalk along the north side of State Road 46 and a 5-foot sidewalk along the south side of State Road 46. The design will also consider any necessary drainage improvements, utility relocations and driveway modifications to ensure all State and County standards are met. This project has been budgeted for Fiscal Year 05/06 and funds will be available at that time. Following the completion of the design, the FDOT will enter into a second Local Agency Program Agreement to cover the construction of this project.

Reviewed by:
Co Atty:
DFS:
Other:
DCM:
CM:
File No. CPWE02

Attachments: Location Map
Resolution
Local Agency Program Agreement

RESOLUTION NO. 2005 - R _____ SEMINOLE COUNTY, FLORIDA

RESOLUTION

THE FOLLOWING RESOLUTION WAS ADOPTED AT THE REGULAR MEETING OF THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA, ON THE 9th DAY OF August, A.D., 2005.

WHEREAS, the State of Florida Department of Transportation and Seminole County desire to facilitate the design of sidewalks along State Road 46; and

WHEREAS, The State of Florida Department of Transportation has requested Seminole County to execute and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the State Road 46 Gateway Sidewalk Design Project, FPN No. 417484-1-38-01.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Seminole County, Florida, that the Chairman is hereby authorized to make, execute and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the aforementioned project, FPN No. 417484-1-38-01.

ADOPTED THIS 9th DAY OF August A. D., 2005.

ATTEST:

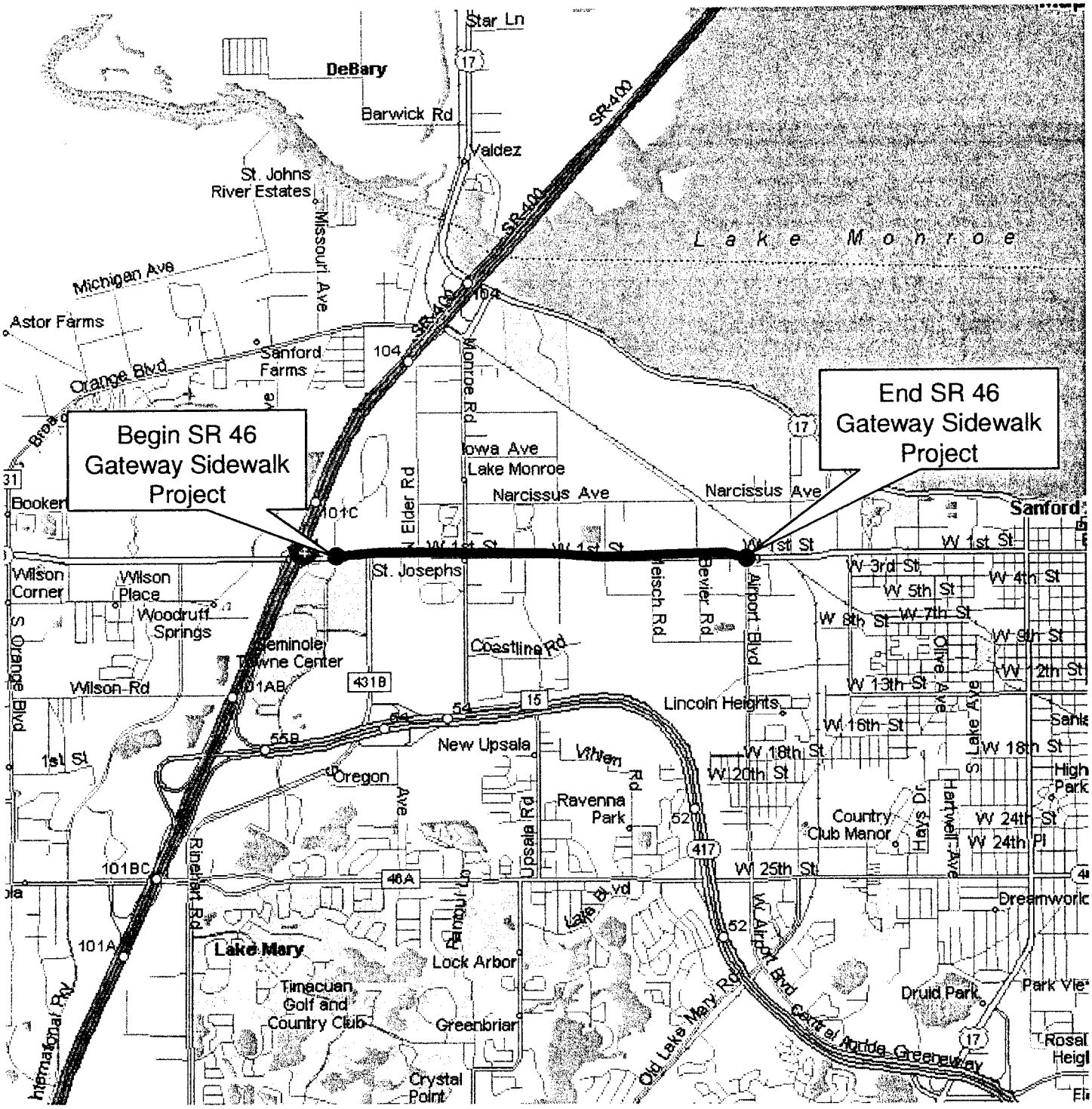
BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY

_____
MARYANNE MORSE, Clerk to the Board of County Commissioners in and for Seminole County, Florida.

_____
Carlton D. Henley, Chairman

S.R. 46 Gateway Sidewalk Project

PROJECT LOCATION MAP



State of Florida Department of Transportation

LOCAL AGENCY PROGRAM AGREEMENT

FPN: 417484-1-38-01	Fund: SE	FLAIR Approp: xxxxxx
Federal No: xxxx-xxx-x	Org Code: 5505xxxxxxx	FLAIR Obj: xxxxxx
FPN:	Fund:	FLAIR Approp:
Federal No:	Org Code:	FLAIR Obj:
County No: 77	Contract No:	Vendor No: F596-000-856-065

Catalog of Federal Domestic Assistance (CFDA): 20.205 Highway Planning and Construction

THIS AGREEMENT, made and entered into this _____ day of _____, _____ by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter called the Department, and SEMINOLE COUNTY, 520 West Lake Mary Boulevard, Suite 200, Sanford, Florida 32773 hereinafter called the Agency.

W I T N E S S E T H:

WHEREAS, the Agency has the authority to enter into said Agreement and to undertake the project hereinafter described, and the Department has been granted the authority to function adequately in all areas of appropriate jurisdiction including the implementation of an integrated and balanced transportation system and is authorized under Section 334.044, Florida Statutes, to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

1.00 Purpose of Agreement: The purpose of this Agreement is to provide for the Department's participation in the design of sidewalks along SR 46 and as further described in Exhibit "A" attached hereto and by this reference made a part hereof, hereinafter called the project, and to provide Departmental financial assistance to the Agency and state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the project will be undertaken and completed.

1.01 Modifications and Additions: Exhibit(s) "A" and "B" are attached hereto and by this reference made a part hereof.

2.00 Accomplishment of the Project:

2.01 General Requirements: The Agency shall commence and complete the project as described in Exhibit "A" with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The project will be performed in accordance with all applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Agency Program Manual, which by this reference is made a part hereof as if fully set forth herein.

A full time employee of the Agency, qualified to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of this Agreement shall be in charge of each project.

2.02 Expiration of Agreement: The Agency agrees to complete the project on or before June 30, 2006. If the Agency does not complete the project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. Expiration of this Agreement will be considered termination of the project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

2.03 Pursuant to Federal, State, and Local Law: In the event that any election, referendum, approval, permit, notice or other proceeding or authorization is requisite under applicable law to enable the Agency to enter into this Agreement or to undertake the project hereunder or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters so requisite.

2.04 Funds of the Agency: The Agency shall initiate and prosecute to completion all proceedings necessary, including Federal-aid requirements, to enable the Agency to provide the necessary funds for completion of the project.

2.05 Submission of Proceedings, Contracts and Other Documents: The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the project as the Department and the Federal Highway Administration may require.

3.00 Project Cost:

3.01 Total Cost: The estimated total cost of the project is $ 200,000.00 . This amount is based upon the schedule of funding in Exhibit "B" attached hereto and by this reference made a part hereof. The Agency agrees to bear all expenses in excess of the total cost of the project and any deficits involved. The schedule of funding may be modified by mutual agreement as provided for in 4.00.

3.02 Department Participation: The Department agrees to participate, including contingencies, in the project cost to the extent provided in Exhibit "B." This amount includes Federal-aid funds that are limited to the actual amount of Federal-aid participation.

3.03 Limits on Department Funds: Project costs eligible for Department participation will be allowed only from the date of this Agreement. It is understood that Department participation in eligible project costs is subject to:

a) Legislative approval of the Department's appropriation request in the work program year that the project is scheduled to be committed;

b) Availability of funds as stated in paragraphs 3.04 and 3.05 of this Agreement;

c) Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement;

d) Department approval of the project scope and budget at the time appropriation authority becomes available.

3.04 Appropriation of Funds: The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. See Exhibit "B" for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency in writing when funds are available.

3.05 Multi-Year Commitment: In the event this Agreement is in excess of $25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"(a) 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 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."

3.06 Notice to Proceed: No cost may be incurred under this contract until the Agency has received a Notice-to-Proceed from the Department.

3.07 Limits on Federal Participation: Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the project or part thereof involving such cost (23 CFR 1.9 (a)). If FHWA or the Department determines that any amount claimed is not eligible, Federal participation may be approved in the amount determined to be adequately supported; the Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for Federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, Federal funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA or the Department may deny participation in parcel or project costs in part or in total.

For any amounts determined to be ineligible for Federal reimbursement for which the Department has advanced payment, the Agency shall promptly reimburse the Department for all such amounts within 90 days of written notice.

4.00 Project Estimate and Disbursement Schedule: Prior to the execution of this Agreement, a project schedule of funding, shall be prepared by the Agency and approved by the Department. The Agency shall maintain said schedule of funding, carry out the project and shall incur obligations against and make disbursements of project funds only in conformity with the latest approved schedule of funding for the project. The schedule of funding may be revised by mutual written agreement between the Department and the Agency. If revised, a copy of the revision should be forwarded to the Department's Comptroller and to the Department's Federal-Aid Program Office. No increase or decrease shall be effective unless it complies with fund participation requirements established in Exhibit "B" of this Agreement and is approved by the Department's Comptroller.

5.00 Records:

5.01 Establishment and Maintenance of Accounting Records: Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for 5 years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred includes the Agency's general accounting records and the project records, together with supporting documents and records, of the Agency and all subcontractors performing work on the project and all other records of the Agency and subcontractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the 5-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

5.02 Costs Incurred for the Project: The Agency shall charge to the project account all eligible costs of the project. Costs in excess of the latest approved schedule of funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs.

5.03 Documentation of Project Costs: All costs charged to the project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.

5.04 Audit Reports: Recipients of Federal and State funds are to have audits done annually using the following criteria:

Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding Federal agency. State awards will be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the awarding State Agency.

In the event that a recipient expends $300,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the **United States Office of Management and Budget (OMB) Circular A-133.**

If a recipient expends less than $300,000 in Federal awards during its fiscal year, an audit conducted in accordance with the **OMB Circular A-133** is not required. If a recipient expends less than $300,000 in Federal awards during its fiscal year and elects to have an audit conducted in accordance with **OMB Circular A-133**, the cost of the audit must be paid from non-Federal funds.

Reporting packages and management letters generated from audits conducted in accordance with **OMB Circular A-133** shall be submitted to the awarding Department office by the recipient within 30 days of receiving it. The aforementioned items are to be received by the appropriate Department office no later than 9 months after the end of the recipient's fiscal year.

The recipient shall follow up and take corrective action on audit findings. Preparation of a Summary Schedule of Prior Year Audit Findings, including corrective action and current status of the audit finding is required. Current year audit findings require corrective action and status of finding.

Records related to unresolved audit findings, appeals or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and audit work papers shall be given to the Department, the Comptroller, and the Office of the Auditor General.

The recipient shall submit required audit documentation as follows:

A Reporting Package and Data Collection Form for each audit conducted in accordance with **OMB Circular A-133** shall be sent to:

Federal Audit Clearinghouse
Bureau of the Census
1201 East Tenth Street
Jefferson, IN 47132

5.05 Inspection: The Agency shall permit, and shall require its contractors to permit, the Department's authorized representatives and authorized agents of the FHWA to inspect all work, workmanship, materials, payrolls, records and to audit the books, records, and accounts pertaining to the financing and development of the project.

The Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency or any contractor, sub-contractor or materials vendor to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement (Section 287.058(1)(c), Florida Statutes).

5.06 Uniform Relocation Assistance and Real Property Statistical Report: For any project requiring additional right-of-way, the Agency must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project. Activities shall be reported on a Federal fiscal year basis, from October 1 through September 30. The report must be prepared using the format prescribed in 49 CFR 24, Appendix B, and be submitted to the Department no later than October 15 each year.

6.00 Requisitions and Payments: Requests for reimbursement for fees or other compensation for services or expenses incurred shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof (Section 287.058(1)(a), Florida Statutes).

All recipients of funds from this Agreement, including those contracted by the Agency, must submit bills for any travel expenses, when authorized by the terms of this agreement, in accordance with Section 112.061 Florida Statutes, and Chapter 3 –"Travel" of the Department's Disbursement Operations Manual, Topic 350-030-400 (Section 287.058(1)(b), Florida Statutes).

If after project completion any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of contract by the Department.

7.00 The Department's Obligations: Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment if:

7.01 Misrepresentation: The Agency shall have made misrepresentation of a material nature in its application or any supplement thereto or amendment thereof or in or with respect to any document or data furnished therewith or pursuant hereto;

7.02 Litigation: There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the project, the Agreement or payments to the project;

7.03 Approval by Department: The Agency shall have taken any action pertaining to the project which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

7.04 Conflict of Interests: There has been any violation of the conflict of interest provisions contained herein; or

7.05 Default: The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

7.06 Federal Participation: The Department may suspend or terminate payment for that portion of the project that the FHWA or the Department acting in lieu of the FHWA, may designate as ineligible for Federal-aid.

7.07 Disallowed Costs: In determining the amount of the payment, the Department will exclude all projects costs incurred by the Agency prior to the effective date of this Agreement or the date of authorization, costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding for the project, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

7.08 Final Invoices: The Agency must submit the final invoice on the project to the Department within 120 days after the completion of the project. Invoices submitted after the 120-day time period will not be paid.

8.00 Termination or Suspension of Project:

8.01 Termination or Suspension Generally: The Department may, by written notice to the Agency, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected or the Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.

If the Department determines that the performance of the Agency is not satisfactory, the Department shall have the option of (a) immediately terminating the Agreement or (b) suspending the Agreement and notifying the Agency of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time. Suspension of the contract will not affect the time period for completion of the Agreement.

If the Department requires termination of the Agreement for reasons other than unsatisfactory performance of the Agency, the Department shall notify the Agency of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is terminated.

If the Agreement is terminated before performance is completed, the Agency shall be paid for the work satisfactorily performed. Payment is to be on the basis of substantiated costs.

8.02 Action Subsequent to Notice of Termination or Suspension: Upon receipt of any final termination or suspension notice under this paragraph, the Agency shall proceed promptly to carry out the actions required therein which may include any or all of the following: (a) necessary action to terminate or suspend, as the case may be, project activities and contracts and such other action as may be required or desirable to keep to the minimum the costs upon the basis of which the financing is to be computed; (b) furnish a statement of the project activities and contracts and other undertakings the cost of which are otherwise includable as project costs. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and cost as approved by the Department or upon the basis of terms and conditions imposed by the Department upon the failure of the Agency to furnish the schedule, plan, and estimate within a reasonable time. The closing out of Federal financial participation in the project shall not constitute a waiver of any claim that the Department may otherwise have arising out of this Agreement.

9.00 Contracts of the Agency:

9.01 Third Party Agreements: Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same.

9.02 Compliance with Consultants' Competitive Negotiation Act: It is understood and agreed by the parties hereto that participation by the Department in a project with an Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. At the discretion of the Department, the Agency will involve the Department in the Consultant Selection Process for all projects. In all cases, the Agency's attorney shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.

10.00 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

10.01 DBE Policy: It is the policy of the Department that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable Federal and State regulations apply to this Agreement.

10.02 DBE Obligation: The Agency and its contractors agree to ensure that DBE's as defined in applicable Federal and State regulations, have the opportunity to participate in the performance of contracts and this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable Federal and State regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department-assisted contracts.

10.03 Disadvantaged Business Enterprise (DBE) Obligations: If Federal Transit Administration or FHWA Funding is a part of this project, the Agency must comply with applicable Federal and State regulations.

11.00 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (Applicable to All Federal-aid Contracts – 49 CFR 29):

By signing and submitting this Agreement, the Agency is providing the certification set out below:

The inability of the Agency to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such the Agency from participation in this transaction.

The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available, Department may terminate this transaction for cause of default.

The Agency shall provide immediate written notice to the Department if any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The terms "covered transaction," "debarred," "suspended," ineligible," "lower tier covered transaction," "participant," "person," primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. Contact the Department for assistance in obtaining a copy of those regulations.

The Agency further agrees by submitting this Agreement that it shall not knowingly enter into any contracts with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction unless authorized by the Department.

The Agency further agrees by submitting this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" provided by the Department, without modification, in all contracts and in all solicitations for contracts.

The Agency may rely upon a certification of a prospective sub-contractor that the person is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction unless it knows that the certification is erroneous. The Agency may decide the method and frequency by which it determines the eligibility of its sub-contractors. The Agency may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) that is compiled by the General Services Administration.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the Agency is not required to exceed that which is normally processed by a prudent person in the ordinary course of business dealings.

Unless authorized by the Department, if the Agency knowingly enters into a contract with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available, the Department may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:

The Agency certifies, by execution of this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the Agency is unable to certify to any of the statements in this certification, an explanation shall be attached to this proposal.

12.00 Restrictions, Prohibitions, Controls, and Labor Provisions:

12.01 Equal Employment Opportunity: In connection with the carrying out of any project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Agency shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development of operation of the project, except contracts for the standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves installation, construction, demolition, removal, site improvement or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

12.02 Title VI - Civil Rights Act of 1964: The Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Regulations of the Federal Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto.

The Agency shall include provisions in all contracts with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

12.03 Americans with Disabilities Act of 1990 (ADA): The Agency will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and assurance by the Agency pursuant thereto.

12.04 Public Entity Crime: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime 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 in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

12.05 Discrimination: In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide 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.

12.06 Prohibited Interests: Neither the Agency nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the project or any property included or planned to be included in the project in which any member, officer or employee of the Agency or the locality during his tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the Agency, the Agency with prior approval of the Department may waive the prohibition contained in this subsection, provided that any such present member, officer or employee shall not participate in any action by the Agency or the locality relating to such contract, subcontract or arrangement.

The Agency shall insert in all contracts entered into in connection with the project or any property included or planned to be included in any project, and shall require its contractors to insert in each of their subcontracts, the following provision:

> "No member, officer or employee of the Agency or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

The provisions of this subsection shall not be applicable to any agreement between the Agency and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a Governmental agency.

12.07 Interest of Members of, or Delegates to, Congress: No member or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

13.00 Miscellaneous Provisions:

13.01 Environmental Regulations: The Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department for any loss incurred in connection therewith. The Agency will be responsible for securing any applicable permits.

13.02 Department Not Obligated to Third Parties: The Department shall not be obligated or liable hereunder to any party other than the Agency.

13.03 When Rights and Remedies Not Waived: In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

13.04 How Agreement Is Affected by Provisions Being Held Invalid: If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.

13.05 Bonus or Commission: By execution of the Agreement, the Agency represents that it has not paid, and also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

13.06 State Law: Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable State law, provided that if any of the provisions of the Agreement violate any applicable State law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the project.

13.07 Contractual Indemnity: To the extent permitted by law, the Agency shall indemnify, defend, save, and hold harmless the Department and all its officers, agents, and employees from any claim, loss, damage, cost, charge or expense arising out of any act, error, omission or negligent act by the Agency, its officers, agents or employees during the performance of the Agreement except that neither the Agency, its officers, agents or its employees will be liable under this paragraph for any claim, loss damage, cost, charge or expense arising out of any act, error, omission or negligent act by the Department or any of its officers, agents or employees during the performance of the Agreement.

The parties agree that this clause shall not waive the benefits or provisions of Chapter 768.28, Florida Statutes, or any similar provision of law.

When the Department receives a notice of claim for damages that may have been caused by the Agency in the performance of services required under this Agreement, the Department will immediately forward the claim to the Agency. The Agency and the Department will evaluate the claim and report their findings to each other within 14 working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of the Agency in the defense of the claim or to require the Agency defend the Department in such claim as described in this section. The Department's failure to promptly notify the Agency of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by the Agency. The Department and the Agency will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all expenses at trial.

13.08 Plans and Specifications: In the event that this Agreement involves constructing and equipping of facilities on the State Highway System, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the project and comments or recommendations covering any remainder of the project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval with said remainder of the project. Failure to obtain this written approval shall be sufficient cause of nonpayment by the Department.

13.09 Right-of-Way Certification: Upon completion of right-of-way activities on the project, the Agency must certify compliance with all applicable Federal and State requirements. Certification is required prior to advertisement for or solicitation of bids for construction of the project, including those projects for which no right-of-way is required.

13.10 Agency Certification: The Agency will certify in writing, prior to project closeout, that the project was completed in accordance with applicable plans and specifications, is in place on the Agency facility, that adequate title is in the Agency, and that the project is accepted by the Agency as suitable for the intended purpose.

13.11 Agreement Format: All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

13.12 Execution of Agreement: This Agreement may be simultaneously executed in a minimum of two counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

13.13 Restrictions on Lobbying:

Federal: The Agency agrees that no Federally appropriated funds have been paid, or will be paid by or on behalf of the Agency, to any person for influencing or attempting to influence any officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federally appropriated funds have been paid by the Agency to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Agency shall require that the language of this section be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

State: No funds received pursuant to this contract may be expended for lobbying the Legislature or a State agency.

13.14 Maintenance: The Agency agrees to maintain any project not on the State system constructed under this Agreement. If the Agency constructs any improvement on Department right-of-way, the Agency (will) (~~will not~~) maintain the improvements made for their useful life.

13.15 Vendors Rights: Vendors (in this document identified as Agency) providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has 5 working days to inspect and approve the goods and services unless the bid specifications, purchase order or contract specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within 40 days after receipt of the invoice and receipt, inspection, and approval of goods and services, a separate interest penalty in accordance with Section 215.422(3)(b), Florida Statutes, will be due and payable, in addition to the invoice amount to the Agency. Interest penalties of less than $1 will not be enforced unless the Agency requests payment. Invoices which have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from the Department. The Vendor Ombudsman may be contacted at 850-410-9724 or by calling the State Comptroller's Hotline, 1-800-848-3792.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

AGENCY (Seminole County)

By: _____
Name:
Title:

Attest: _____
Title:

As to form:

_____
Attorney

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

By: _____
Name: Rise' K. Wall
Title: Director of Transportation Support, District 5

Attest: _____
Title: Administrative Assistant

As to form:

_____
District Attorney

See attached Encumbrance Form for date of funding approval by Comptroller.

ATTEST:

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

For the use and reliance
of Seminole County only.
Approved as to form and
legal sufficiency

County Attorney

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

By: CARLTON HENLEY, Chairman

Date: _____

As authorized for execution by
the Board of County
Commissioners at their regular
meeting of _____, 2005.

FPN: 417484-1-38-01

EXHIBIT "A"

PROJECT DESCRIPTION AND RESPONSIBILITIES

This exhibit forms an integral part of that certain Reimbursement Agreement between the State of Florida Department of Transportation and SEMINOLE COUNTY, 520 West Lake Mary Boulevard, Suite 200, Sanford, Florida 32773.

Dated _____

PROJECT LOCATION:

City of Sanford, Seminole County

The project **is not** on the National Highway System.
The project **is** on the State Highway System.

PROJECT DESCRIPTION:

Design of 10-foot sidewalks on north side of SR 46 and 5-foot sidewalks on south side of SR 46 from Towne Center Boulevard to Airport Boulevard. The project length is 2.198 miles.

SPECIAL CONSIDERATION BY AGENCY:

The audit report(s) required in the Agreement shall include a Schedule of Project Assistance that will reflect the Department's contract number, the FPN, the Federal identification number, where applicable, the amount of State funding action (receipt and disbursement of funds), any Federal or local funding action, and the funding action from any other source with respect to the project.

Invoices and Progress Reports shall be submitted on a monthly basis to:

Vince Vacchiano, LAP Project Manager
Florida Department of Transportation
719 South Woodland Boulevard, MS 3-506
DeLand, Florida 32720

SPECIAL CONSIDERATION BY DEPARTMENT:

N/A

AGENCY NAME & BILLING ADDRESS	STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION	FPN
SEMINOLE COUNTY 520 West Lake Mary Blvd., Suite 200 Sanford, Florida 32773	**EXHIBIT "B"** **SCHEDULE OF FUNDING** LOCAL AGENCY PROGRAM AGREEMENT	417484-1-38-01

PROJECT DESCRIPTION

Name SR 46 Gateway Sidewalks Length 2.198 miles

Termini from Towne Center Boulevard to Airport Boulevard

TYPE OF WORK By Fiscal Year		FUNDING (1) TOTAL PROJECT FUNDS	(2) AGENCY FUNDS	(3) STATE & FEDERAL FUNDS
P.E.	2003-2004			
	2004-2005			
	2005-2006	$ 200,000.00		$ 200,000.00
	Total PE Cost	$ 200,000.00		$ 200,000.00
Right-of-Way	2004-2005			
	2005-2006			
	2006-2007			
	Total Right-of-Way Cost			
Construction	2004-2005			
	2005-2006			
	2006-2007			
	2007-2008			
	Total Contract Costs			
Construction Engineering and Inspection				
	2004-2005			
	2005-2006			
	2006-2007			
	Total Construction Engineering			
	Total Construction Cost			
TOTAL COST OF THE PROJECT		**$ 200,000.00**		**$ 200,000.00**

The Department's fiscal year begins on July 1. For this project, funds are not projected to be available until after the 1st of July of each fiscal year. The Department will notify the Agency, in writing, when funds are available.