

COPY

LOCALLY FUNDED AGREEMENT

_____ Inded Agreement (“Agreement”) is made and entered into this _____, between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (“DEPARTMENT”) and LEE COUNTY, a political subdivision of the State of Florida, (“COUNTY”). The DEPARTMENT and the COUNTY may be referred to individually as a “Party” and collectively as the “Parties”.

RECITALS:

- A. WHEREAS, the DEPARTMENT is authorized to enter into agreements with governmental entities in accordance with Section 334.044, Florida Statutes; and
- B. WHEREAS, the 2023 General Appropriations Act, Chapter 2023-239, Laws of Florida, provides the COUNTY with funds in the amount of **\$64,101,050** (“State Financial Assistance”), appropriated to the DEPARTMENT by Specific Appropriation 2042A, out of which **\$51,670,049** was provided for the Sanibel Causeway Corridor Repairs (House Form 1719 and Senate Form 2870) hereinafter referred to as “Sanibel Project”, and **\$12,431,001** was provided for the Matlacha Corridor Repairs (House Form 1716 and Senate Form 2732) hereinafter referred to as “Matlacha Project”, collectively the “Projects”; and
- C. WHEREAS, as of the date of this agreement, the DEPARTMENT has committed federal Emergency Relief funding, estimated at \$149,508,563, which may fluctuate throughout the life of the project, to the Sanibel Project, Financial Project Numbers 451936-1-32-01, 451936-1-32-90, 451936-1-G2-01, 451936-1-G2-90, 451936-1-62-01, 451936-1-62-90, 451936-2-32-01, 451936-2-32-90, 451936-2-52-01, 451936-2-52-90, 451936-2-62-01, 451936-2-62-90, 451936-4-32-01, and 451936-4-32-90; and
- D. WHEREAS, the DEPARTMENT has committed federal Emergency Relief funding, estimated at \$41,243,584, to the Matlacha Project, Financial Project Numbers 451937-2-32-01, 451937-2-32-90, 451937-2-52-01, 451937-2-56-02, and 451937-2-62-01; and
- E. WHEREAS, the actual amount of Emergency Relief funding committed by the DEPARTMENT to the Projects will be determined by the final Detailed Damage Inspection Report (“DDIR”) approved by the Federal Highway Administration (“FHWA”) for the Sanibel Project and the Matlacha Project; and
- F. WHEREAS, the federal Emergency Relief Program requires the recipient to provide matching funds equivalent to eighteen and seven hundredths percent (18.07%) of the final total project costs included in the DDIR, as approved by FHWA; and
- G. WHEREAS, the Parties agree that the State Financial Assistance provided to the COUNTY for the Projects will satisfy the matching requirement under the federal Emergency Relief Program; and
- H. WHEREAS, the DEPARTMENT has included the Projects in its Five-Year Work Program in Fiscal Year 2023/2024, Financial Project Numbers 451936-1-32-01, 451936-1-32-90, 451936-1-G2-01, 451936-1-G2-90, 451936-1-62-01, 451936-1-62-90, 451936-2-32-01, 451936-2-32-90, 451936-2-52-01, 451936-2-52-90, 451936-2-62-01, 451936-4-32-01, 451936-4-32-90 and 451936-2-62-90 for the Sanibel Project; and Financial Project Numbers 451937-2-32-01,

451937-2-52-01, 451937-2-56-02, 451937-2-62-01, and 451937-2-32-90 for the Matlacha Project; and

- I. WHEREAS, the Parties have determined that it is in the best interest of the general public and to the economic advantage of the Parties to enter into this Agreement for the coordination and completion of the Projects; and
- J. WHEREAS, the COUNTY, by Resolution dated the _____, a copy of which is attached hereto and made a part hereof as **Exhibit "A"** has authorized the COUNTY or Designee to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual benefits to be derived from joint participation in this Agreement, the Parties agree as follows:

1. The foregoing recitals are true and correct and are hereby incorporated into and made a part of this Agreement.
2. The Parties agree that the DEPARTMENT will act on behalf of the COUNTY to undertake and to complete the Projects. The Sanibel Project, which involves permanent repairs to the Sanibel Bridge and its McGregor Boulevard approach road, includes the tasks listed and the limits of the project described in **Exhibit "B"**, attached and incorporated into this Agreement, and all other tasks associated with or arising out of the tasks listed therein.
3. The Parties agree that the DEPARTMENT will also act on behalf of the COUNTY to undertake and to complete the Matlacha Project. The Matlacha Project, which involves permanent repairs to the Matlacha corridor and the replacement of the Little Pine Island Bridge, includes the tasks listed and the limits of the project described in **Exhibit "C"**, attached and incorporated into this Agreement, and all other tasks associated with or arising out of the tasks listed therein.
4. The COUNTY hereby consents to and authorizes the DEPARTMENT to act on behalf of, for the benefit of and in the name of the COUNTY, to further do all acts necessary, including securing all environmental and regulatory permits, easements, temporary construction easements and rights of entry associated with the Projects, in the name of the COUNTY. This right of entry shall continue in full force and effect throughout the period of time that the Projects are ongoing.
5. The COUNTY acknowledges that the right-of-way, the improvements, and structures within the limits of the Projects, as identified in Exhibits "B" and "C", are and will remain under the control and ownership of the COUNTY and that the DEPARTMENT will not have any ownership interest in the right-of-way, improvements or structures located thereon. Notwithstanding the requirements hereof, maintenance during construction, with the exception of litter removal and mowing, shall be the responsibility of the DEPARTMENT and its contractor. The COUNTY shall be responsible for litter removal and mowing during construction.
6. To the extent necessary, the COUNTY hereby appoints the DEPARTMENT as its agent for purposes of the construction; reconstruction, and relocation of utilities under Section 337.403(1), Florida Statutes. The COUNTY agrees to fully cooperate with the

DEPARTMENT in the construction, reconstruction and relocation of utilities that may be located within the existing or acquired right-of-way. The Parties agree to meet on a periodic basis, as determined to be necessary by the DEPARTMENT, during the planning, design, construction, and post-construction phases to identify, plan and to relocate utilities. The responsibility for the costs associated with the relocation of utilities shall be based on Florida law as it relates to said matters. The Parties agree that if existing utilities owned by the COUNTY are required to be reconstructed or relocated as a result of the Projects that the costs associated therewith shall be deemed to be a cost of the Projects to be covered by the State Financial Assistance.

7. The COUNTY, as a direct recipient of State Financial Assistance in the amount of SIXTY-FOUR MILLION, ONE HUNDRED AND ONE THOUSAND FIFTY (**\$64,101,050**), out of which **\$51,670,049** is provided for the Sanibel Project and **\$12,431,001** is provided for the Matlacha Project, hereby authorizes the DEPARTMENT to utilize these monies to undertake and complete the Projects; and the COUNTY hereby authorizes the DEPARTMENT to use the State Financial Assistance to satisfy the matching requirement for the Projects under the federal Emergency Relief Program.
8. In the event that the expenses and costs necessary to complete the Sanibel Project and/or the Matlacha Project exceed the sum of federal Emergency Relief funding and State Financial Assistance provided individually to the Sanibel Project and/or the Matlacha Project, respectively, the COUNTY agrees to bear one hundred percent (100%) of all additional expenses and costs necessary to complete the Sanibel Project and/or the Matlacha Project.
9. If the matching funds required by the federal Emergency Relief Program is less than the State Financial Assistance provided to the Sanibel Project and/or the Matlacha Project, respectively, then any unexpended balance of funds appropriated by Specific Appropriation 2042A of the 2023 General Appropriations Act, Chapter 2023-239, Laws of Florida, shall revert to the State of Florida.
10. The DEPARTMENT shall have the sole authority with respect to the making of all decisions relating to, and including the need for change orders and supplemental agreements associated with the Projects.
11. Upon completion of the Sanibel Project and the Matlacha Project, respectively, the DEPARTMENT shall issue a Notice of Final Acceptance to the DEPARTMENT's Contractor, for each project, with a copy of said notice being provided to the COUNTY. Upon issuance of the Notice of Final Acceptance, the COUNTY shall be immediately responsible for the maintenance of the Sanibel Project and the Matlacha Project. The DEPARTMENT shall also have the right to assign interim maintenance responsibility to the COUNTY for specified portions of the Projects before the issuance of the Notice of Final Acceptance. Said assignment of maintenance responsibility shall be sent by the DEPARTMENT to the COUNTY in writing with sufficient description to place the COUNTY on notice of the interim maintenance responsibility. Notwithstanding the issuance of the Notice of Final Acceptance, the DEPARTMENT shall have the right to assure completion of any punch list by the contractor. Additionally, the COUNTY understands and agrees that the DEPARTMENT shall transfer all permits to the COUNTY as the operational maintenance entity and the COUNTY agrees to accept said transfer and to become fully responsible to comply with all operational and

maintenance conditions of the permits.

12. Upon issuance of the Notice of Final Acceptance referenced in paragraph 9, above, the COUNTY agrees to assume all liability for the Projects and all structures therein, and to the extent provided by law, the COUNTY agrees to indemnify, defend and hold harmless the DEPARTMENT against any actions, claims, or damages arising out of, or relating to, the Projects or structures therein. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes.
13. All payment and performance bonds shall be issued in favor of the DEPARTMENT. All warranties, if any, shall be made in favor of the COUNTY.
14. The Parties recognize and accept the funding restrictions set forth in Section 339.135(6)(a), Florida Statutes, hereby incorporated into 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 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.”

15. All notices under the Agreement shall be directed to the following contact persons:

TO DEPARTMENT:

Zoe Giannopoulos
LAP Design Project Manager
FDOT- District One
801 N Broadway Ave.
Bartow, FL 33830
Zoe.giannopoulos@dot.state.fl.us

TO COUNTY:

Dave Harner
County Manager
Lee County
2115 2nd Street
Fort Myers, FL 33901
dharner@leegov.com

16. This Agreement shall continue in effect and be binding on the Parties until the Projects are completed.
17. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Parties' respective sovereign immunity protections, or as increasing the limits of liability under Section

768.28, Florida Statutes.

18. All tracings, plans, specifications, maps and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the DEPARTMENT without restriction or limitation on their use.
19. The DEPARTMENT shall not be obligated or liable hereunder to any party other than the COUNTY. The COUNTY shall not be obligated or liable hereunder to any party other than the DEPARTMENT.
20. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect provided that the part of this Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.
21. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document and executed by both Parties.
22. No modification of this Agreement shall be binding on the Parties unless reduced to writing and signed by a duly authorized representative of the Parties.
23. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any and all actions arising out 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.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives on the date above written.

LEE COUNTY,
a political subdivision of the State of Florida

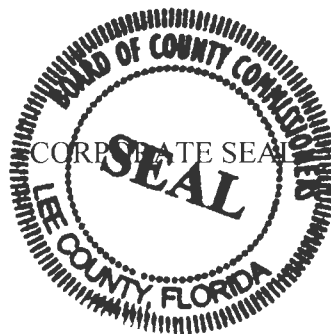
By: *[Signature]*

Title: CHAIR

ATTEST

By: *Melissa Butler*

Title: DEPUTY CLERK



APPROVED AS TO FORM

[Signature]

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____

Title: _____

LEGAL REVIEW



FPN #: 451936-1, 451936-2, 451936-4, & 451937-2

LFA: Lee County

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STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
LOCALLY FUNDED AGREEMENT

EXHIBIT "A"

COUNTY RESOLUTION

FPN #: 451936-1, 451936-2, 451936-4, & 451937-2

LFA: Lee County

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STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
LOCALLY FUNDED AGREEMENT

EXHIBIT "B"

**SANIBEL PROJECT
PROJECT TASKS AND PROJECT LIMITS**

The project scope consists of, but is not limited to, a series of task work orders that will provide permanent repairs to Sanibel Causeway/ McGregor Blvd roadway and bridges damaged by Hurricane Ian to restore access to Sanibel Island. All permanent repairs previously included in the emergency response efforts are included in the Scope of Work for this project. Future task work orders will involve the complete reconstruction of the roadway and permanent repair of the bridges within the limits of the project, including related NEPA documentation and permitting.

The limits of the Project are from east of the Causeway toll facility to Periwinkle Way. Roadway segments within the project limits are owned, operated, and maintained by Lee County.

FPN #: 451936-1, 451936-2, 451936-4, & 451937-2

LFA: Lee County

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STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
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EXHIBIT "C"

**MATLACHA PROJECT
PROJECT TASKS AND PROJECT LIMITS**

The project scope consists of, but is not limited to, NEPA documentation, survey, permitting, utility coordination, preconstruction activities related to the development of construction plans and reconstruction of the Pine Island Road Causeway and approaches to Little Pine Island Bridge Road (Bridge No. 120111) to address permanent repairs required resulting from damage caused by Hurricane Ian.

The limits of the project are CR 78 (Pine Island Road) from west of Little Pine Island Bridge (Bridge No. 120111) to west of Shoreview Drive. Roadway segments within the project limits are owned, operated, and maintained by Lee County.