

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. WORDING FOR AGENDA:

Request Board accept a state grant by adopting a Resolution authorizing the execution of a Joint Participation Agreement (FM #418774-1-94-01) between the Florida Department of Transportation and the Lee County Port Authority providing \$183,666 for repairs associated with hurricane damage at Page Field General Aviation Airport.

2. SUBJECT CATEGORY:

Budgeting, Purchases, Contracts, and Agreements

A14A

3. MEETING

DATE: 02-08-2005

4. AGENDA:

- ☒ CONSENT
- ☒ ADMINISTRATIVE
- ☐ APPEALS
- ☐ PUBLIC

TIME REQUIRED:
(Public Only)

5. REQUIREMENT/PURPOSE:

(Specify)

- ☐ STATUTE
- ☐ ORDINANCE
- ☐ ADMIN.CODE
- ☐ OTHER

6. REQUESTOR OF INFORMATION:

A. (ALL REQUESTS)

NAME Mark Fisher

DIV. Development

B. (PUBLIC ONLY)

CITIZEN NAME

CITIZEN PHONE

7. BACKGROUND:

In response to the devastation Florida experienced through the unprecedented succession of Hurricanes Charley, Frances, Ivan and Jeanne in 2004, the Governor of Florida enacted Executive Order Number 04-248. This Executive Order provides funding specifically for hurricane-related cleanup, repair and replacement costs that were incurred as a result of these storms and that are not covered by any other source, such as FEMA or insurance.

Through coordination with FDOT District One staff in Bartow, a grant in the amount of \$183,666 has been received that will assist in making necessary repairs at Page Field to damage sustained as a result of the hurricanes.

8. RECOMMENDED ACTION:

Recommend Board accept a state grant by adopting a Resolution authorizing the execution of a Joint Participation Agreement (FM #418774-1-94-01) between the Florida Department of Transportation and the Lee County Port Authority providing \$183,666 for repairs associated with hurricane damage at Page Field General Aviation Airport.

9. RECOMMENDED APPROVAL

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|-------------------|------------------|---------|---------------|---------------------------|--------------------|
| DIVISION DIRECTOR | GENERAL SERVICES | FINANCE | PORT ATTORNEY | DEPUTY EXECUTIVE DIRECTOR | EXECUTIVE DIRECTOR |
|-------------------|------------------|---------|---------------|---------------------------|--------------------|

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10. SPECIAL MANAGEMENT COMMITTEE ACTION:

- ☐ APPROVED
- ☐ DENIED
- ☐ DEFERRED
- ☐ OTHER

Chairman

11. PORT AUTHORITY ACTION:

- ☐ APPROVED
- ☐ DENIED
- ☐ DEFERRED
- ☐ OTHER

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION
JOINT PARTICIPATION AGREEMENT

725-030-06
PUBLIC TRANSPORTATION
06/03
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| | | |
|--|--|----------------------------------|
| Financial Project No.: <u>418774-1-94-01</u> (item-segment-phase-sequence) | Fund: <u>010</u> | FLAIR Approp.: <u>089929</u> |
| Contract No.: _____ | Function: <u>215</u> | FLAIR Obj.: <u>750004</u> |
| Catalog of Federal Domestic Assistance Number: <u>NA</u> | Federal No.: <u>NA</u> | Org. Code: <u>55014040189</u> |
| | | Vendor No.: <u>F690500267003</u> |
| | Catalog of State Financial Assistance Number: <u>55004</u> | |

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 referred to as the Department, and Lee County Port Authority
16000 Chamberlain Parkway SE, Fort Myers, Florida, 33913
hereinafter referred to as Agency.

WITNESSETH:

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 332.006(6)
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 Department participation in a project for "2004 Hurricane Damage Repair/Replacement", as
authorized under Governor's Executive Order 04-248,

and as further described in Exhibit(s) A, B, and C attached hereto and by this reference made a part
hereof, hereinafter referred to as 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.

2.00 Accomplishment of the Project

2.10 General Requirements: The Agency shall commence, and complete the project as described in Exhibit "A" attached hereto and by this reference made a part hereof, with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws.

2.20 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.

2.30 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.

2.40 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 may require as listed in Exhibit "C" attached hereto and by this reference made a part hereof.

3.00 Project Cost: The total estimated cost of the project is \$ 229,583. This amount is based upon the estimate summarized 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 estimated cost of the project and any deficits involved.

4.00 Department Participation: The Department agrees to maximum participation, including contingencies, in the project in the amount of \$ 183,666 as detailed in Exhibit "B", or in an amount equal to the percentage(s) of total project cost shown in Exhibit "B", whichever is less.

4.10 Project Cost Eligibility : Project costs eligible for State participation will be allowed only from the effective date of this agreement. It is understood that State 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 paragraph 17.00 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 (Exhibits A & B) at the time appropriation authority becomes available.

4.20 Front End Funding : Front end funding ☐ is ☒ is not applicable. If applicable, the Department may initially pay 100% of the total allowable incurred project costs up to an amount equal to its total share of participation as shown in paragraph 4.00.

5.00 Retainage : Retainage ☐ is ☒ is not applicable. If applicable, NA percent of the Department's total share of participation as shown in paragraph 4.00 is to be held in retainage to be disbursed, at the Department's discretion, on or before the completion of the final project audit.

6.00 Project Budget and Payment Provisions:

6.10 The Project Budget: A project budget shall be prepared by the Agency and approved by the Department. The Agency shall maintain said budget, carry out the project and shall incur obligations against and make disbursements of project funds only in conformity with the latest approved budget for the project. No budget increase or decrease shall be effective unless it complies with fund participation requirements established in paragraph 4.00 of this Agreement and is approved by the Department Comptroller.

6.20 Payment Provisions: Unless otherwise allowed under paragraph 4.20, payment will begin in the year the project or project phase is scheduled in the work program as of the date of the agreement. Payment will be made for actual costs incurred as of the date the invoice is submitted with the final payment due upon receipt of a final invoice.

7.00 Accounting Records:

7.10 Establishment and Maintenance of Accounting Records: The Agency shall establish for the project, in conformity with requirements established by Department's program guidelines/procedures and "Principles for State and Local Governments", separate accounts to be maintained within its existing accounting system or establish independent accounts. Such accounts are referred to herein collectively as the "project account". Documentation of the project account shall be made available to the Department upon request any time during the period of the Agreement and for three years after final payment is made.

7.20 Funds Received Or Made Available for The Project: The Agency shall appropriately record in the project account, and deposit in a bank or trust company which is a member of the Federal Deposit Insurance Corporation, all payments received by it from the Department pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received on account of the project, which Department payments and other funds are herein collectively referred to as "project funds". The Agency shall require depositories of project funds to secure continuously and fully all project funds in excess of the amounts insured under federal plans, or under State plans which have been approved for the deposit of project funds by the Department, by the deposit or setting aside of collateral of the types and in the manner as prescribed by State Law for the security of public funds, or as approved by the Department.

7.30 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 budget or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs.

7.40 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.

7.50 Checks, Orders, and Vouchers: Any check or order drawn by the Agency with respect to any item which is or will be chargeable against the project account will be drawn only in accordance with a properly signed voucher then on file in the office of the Agency stating in proper detail the purpose for which such check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other such documents.

7.60 Audit Reports: In addition to the requirements below, the Agency agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department, including but not limited to site visits and limited scope audits. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the State Comptroller or Auditor General. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of three years from the date the audit report is issued, and shall allow the Department access to such records and working papers upon request. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any state agency inspector general, the Auditor General, or any other state official.

7.61 Federal Audit: In the event the Agency expends a total of \$300,000 or more in Federal awards in its fiscal year, the Agency must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133. 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. If the Agency expends less than \$300,000, this audit is not required and if the Agency elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, the cost of the audit must be paid from non-Federal funds.

The Agency agrees to allow the Department or an independent auditor of the Department, the State Comptroller, and the Auditor General access to the Agency's records and financial statements as may be necessary for complying with the requirements of 31 U.S.C. 7501 et seq.

Pursuant to OMB Circular A-133, Subpart C, .320(d), the Agency shall provide a copy of the reporting package and any management letters to the Department, or copies of audit reports for audits conducted in accordance with OMB Circular A-133, to the Department and to:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

7.62 State Audit: In the event that the Agency expends a total of \$300,000 or more in State awards in its fiscal year, the Agency must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes and the applicable rules of the Executive Office of the Governor, the State Comptroller, and the Auditor General. In determining the State awards expended in its fiscal year, the Agency shall consider all sources of State awards except State awards received for Federal program matching requirements which shall be excluded from consideration. 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. If the Agency expends less than \$300,000, this audit is not required and if the Agency elects to have an audit conducted in accordance with the provisions of Section 215.97, F.S., the cost of the audit must be paid from non-State funds.

The Agency agrees to allow the Department, the State Comptroller, and the Auditor General access to records and independent auditor's working papers, as necessary for complying with the requirements of Section 215.97, F.S.

The Agency shall provide annual financial reporting package of audits prepared in accordance with Section 215.97, F.S., and applicable Rules of the Auditor General to the Department and to:

State of Florida Auditor General
Room 574, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32302-1450

7.63 Other Requirements: If an audit discloses any significant audit findings relating to any award, including material noncompliance with individual project compliance requirements or reportable conditions in internal controls of the Agency, the Agency shall submit as part of the audit package to the Department a plan for corrective action to eliminate such audit findings or a statement describing the reasons that corrective action is not necessary. The Agency shall take timely and appropriate corrective action to any audit findings, recommendations, and corrective action plans.

7.70 Insurance: Execution of this Joint Participation Agreement constitutes a certification that the Agency has and will maintain the ability to repair or replace any project equipment or facilities in the event of loss or damage due to any accident or casualty for the useful life of such equipment or facilities. In the event of the loss of such equipment or facilities, the Agency shall either replace the equipment or facilities or reimburse the Department to the extent of its interest in the lost equipment or facility.

In the event this Agreement is for purchase of land or for the construction of infrastructure such as airport runways the Department may waive or modify this section with an Exhibit "C".

8.00 Requisitions and Payments:

8.10 Action by the Agency: In order to obtain any Department funds, the Agency shall file with the Department of Transportation, District One Public Transportation Office Bartow, FL, 33830 its requisition on a form or forms prescribed by the Department, and any other data pertaining to the project account (as defined in paragraph 7.10 hereof) to justify and support the payment requisitions.

8.11 Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

8.12 Invoices for any travel expenses shall be submitted in accordance with Chapter 112.061, F.S. The Department may establish rates lower than the maximum provided in Chapter 112.061, F.S.

8.13 For real property acquired, submit;

- (1) the date the Agency acquired the real property,
- (2) a statement by the Agency certifying that the Agency has acquired said real property, and actual consideration paid for real property.
- (3) a statement by the Agency certifying that the appraisal and acquisition of the real property together with any attendant relocation of occupants was accomplished in compliance with all federal laws, rules and procedures required by any federal oversight agency and with all state laws, rules and procedures that may apply to the Agency acquiring the real property.

8.20 The Department's Obligations: Subject to other provisions hereof, the Department will honor such requisitions 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 on the project if:

8.21 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;

8.22 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;

8.23 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 expenditures or incurred related obligations without having been advised by the Department that same are approved;

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

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

8.26 Federal Participation (If Applicable): Any federal agency providing federal financial assistance to the project suspends or terminates federal financial assistance to the project. In the event of suspension or termination of federal financial assistance, the Agency will reimburse the Department for all disallowed costs.

8.30 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, costs which are not provided for in the latest approved budget 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.

8.40 Payment Offset: 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 public transportation joint participation agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting amounts shall not be considered a breach of contract by the Department.

9.00 Termination or Suspension of Project:

9.10 Termination or Suspension Generally: If the Agency abandons or, before completion, finally discontinues the project; or if, by reason of any of the events or conditions set forth in paragraphs 8.21 to 8.26 inclusive, or for any other reason, the commencement, prosecution, or timely completion of the project by the Agency is rendered improbable, infeasible, impossible, or illegal, the Department will, 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 any or all of its obligations under this Agreement.

9.11 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: (1) 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; (2) furnish a statement of the project activities and contracts, and other undertakings the cost of which are otherwise includable as project costs; and (3) remit to the Department such portion of the financing and any advance payment previously received as is determined by the Department to be due under the provisions of the Agreement. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and budget 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 budget within a reasonable time. The approval of a remittance by the Agency or the closing out of federal financial participation in the project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

9.12 The Department reserves the right to unilaterally cancel this Agreement for refusal by the contractor or Agency to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F.S. and made or received in conjunction with this Agreement.

10.00 Remission of Project Account Upon Completion of Project: Upon completion of the project, and after payment, provision for payment, or reimbursement of all project costs payable from the project account is made, the Agency shall remit to the Department its share of any unexpended balance in the project account.

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

12.00 Contracts of the Agency:

12.10 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 joint participation funds, including consultant, construction or purchase of commodities 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 as provided in paragraph 8.23. 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.

12.20 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 Chapter 287, F.S., Consultants' Competitive Negotiation Act. At the discretion of the Department, the Agency will involve the Department in the Consultant Selection Process for all contracts. 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.

12.30 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

12.31 DBE Policy: It is the policy of the Department that disadvantaged business enterprises as defined in 49 CFR Part 26, as amended, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of 49 CFR Part 26, as amended, apply to this Agreement.

12.32 DBE Obligation: The Agency and its contractors agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26, as amended, have the maximum 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 49 CFR Part 26, as amended, to ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Grantees, recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department assisted contracts.

13.00 Restrictions, Prohibitions, Controls, and Labor Provisions:

13.10 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, creed, color, sex or national origin. 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, creed, color, sex, or national origin. 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 or operation of the project, except contracts for 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.

13.20 Title VI - Civil Rights Act of 1964: Execution of this Joint Participation Agreement constitutes a certification that the Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et. seq.), the Regulations of the Federal Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto.

13.30 Title VIII - Civil Rights Act of 1968: Execution of this Joint Participation Agreement constitutes a certification that the Agency will comply with all the requirements imposed by Title VIII of the Civil Rights Act of 1968, 42 USC 3601, et seq., which among other things, prohibits discrimination in housing on the basis of race, color, national origin, creed, sex, and age.

13.40 Americans with Disabilities Act of 1990 (ADA): Execution of this Joint Participation Agreement constitutes a certification that the Agency will comply with all the requirements imposed by the ADA (42 U.S.C. 12102, et. seq.), the regulations of the federal government issued thereunder, and the assurance by the Agency pursuant thereto.

13.50 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 during his tenure or for two 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 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 during his tenure or for two 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.

13.60 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.

14.00 Miscellaneous Provisions:

14.10 Environmental Pollution: Execution of this Joint Participation Agreement constitutes a certification by the Agency that the project will be carried out in conformance with all applicable environmental regulations including the securing of any applicable permits. The Agency will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the Department for any loss incurred in connection therewith.

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

14.30 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.

14.40 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.

14.50 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.

14.60 State or Territorial 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.

14.70 Use and Maintenance of Project Facilities and Equipment: The Agency agrees that the project facilities and equipment will be used by the Agency to provide or support public transportation for the period of the useful life of such facilities and equipment as determined in accordance with general accounting principles and approved by the Department. The Agency further agrees to maintain the project facilities and equipment in good working order for the useful life of said facilities or equipment.

14.71 Property Records: The Agency agrees to maintain property records, conduct physical inventories and develop control systems as required by 49 CFR Part 18, when applicable.

14.80 Disposal of Project Facilities or Equipment: If the Agency disposes of any project facility or equipment during its useful life for any purpose except its replacement with like facility or equipment for public transportation use, the Agency will comply with the terms of 49 CFR Part 18 relating to property management standards. The Agency agrees to remit to the Department a proportional amount of the proceeds from the disposal of the facility or equipment. Said proportional amount shall be determined on the basis of the ratio of the Department financing of the facility or equipment as provided in this Agreement.

14.90 Contractual Indemnity: To the extent provided by law, the Agency shall indemnify, defend, and hold harmless the Department and all of 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 agents, or employees, during the performance of the Agreement, except that neither the Agency, its 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.

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 fourteen (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 that 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 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.

15.00 Plans and Specifications: In the event that this Agreement involves the purchasing of capital equipment or the constructing and equipping of facilities, 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 concerning 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 for nonpayment by the Department as provided in paragraph 8.23.

16.00 Project Completion, Agency Certification: The Agency will certify in writing on or attached to the final invoice, 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.

17.00 Appropriation of Funds:

17.10 The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

17.20 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 Chapter 339.135(6)(a), F.S., 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 dollars and which have a term for a period of more than 1 year."

18.00 Expiration of Agreement: The Agency agrees to complete the project on or before July 1, 2007. If the Agency does not complete the project within this time period, this Agreement will expire unless an extension of the time period is requested by the Agency and granted in writing by the District Secretary, or designee. Expiration of this Agreement will be considered termination of the project and the procedure established in paragraph 9.00 of this Agreement shall be initiated.

18.10 Final Invoice: The Agency must submit the final invoice on this project to the Department within 120 days after the expiration of this Agreement. Invoices submitted after the 120 day time period will not be paid.

19.00 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.

20.00 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.

21.00 Restrictions on Lobbying:

21.10 Federal: The Agency agrees that no federal 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 federal 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 Joint Participation 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.

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

22.00 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 five (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 Financial Services. 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), F.S. will be due and payable, in addition to the invoice amount to the Agency. The interest penalty provision applies after a 35 day time period to health care providers, as defined by rule. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices which have to be returned to an Agency because of vendor 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 Financial Services. 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 Department of Financial Services Hotline, 1-800-848-3792.

23.00 Public Entity Crime: Pursuant to 287.133(3)(a) F.S. the following is applicable to this agreement:
287.133(2)(a) "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 s. 287.017, F.S. for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

24.00 Discrimination: 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.

Financial Project No. 418774-1-94-01

Contract No. _____

Agreement Date _____

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

AGENCY

Lee County Port Authority
AGENCY NAME

SIGNATORY (PRINTED OR TYPED)

SIGNATURE

TITLE

FDOT

See attached Encumbrance Form for date of Funding
Approval by Comptroller

LEGAL REVIEW
DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

Deputy Director of Transportation Development
TITLE

FM Number: 418774-1-94-01
Contract Number:

EXHIBIT "A"
PROJECTS DESCRIPTION AND RESPONSIBILITIES

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and The Lee County Port Authority 16000 Chamberlin Parkway S.E. Ft. Myers Fl, 33913
dated _____.

PROJECT LOCATION: Page Field Airport, Fort Myers, Florida

PROJECT DESCRIPTION: 2004 Hurricane Damage Repair/Replacement

SPECIAL CONSIDERATIONS BY AGENCY:

Agency agrees that Department funds provided under this Agreement are specifically for hurricane-related clean-up, repair, and replacement costs for Agency-owned facilities that have not been, nor will be reimbursed by any other source, including but not limited to, FEMA, FAA, and/or insurance. This project includes design, engineering, administration, construction, acquisition, installation, and purchasing costs, as applicable.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

This Agreement is for 2004 Hurricane Damage Repair and Replacement, authorized under Governor's Executive Order 04-248. Accordingly, the provisions of Section 8.30, "Disallowed Costs" notwithstanding, the Department may approve and participate in costs incurred by the Agency prior to the effective date of this Agreement.

FM Number: 418774-1-94-01
Contract Number:

EXHIBIT "B"
PROJECT BUDGET

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and The Lee County Port Authority 16000 Chamberlin Parkway S.E. Ft. Myers Fl. 33913

dated _____.

2004 HURRICANE DAMAGE REPAIR/REPLACEMENT

I. PROJECT COST: \$ 229,583

II. PARTICIPATION:

Agency Participation (20%) \$45,917

Maximum Department Participation,
(80%) \$183,666

TOTAL PROJECT COST \$ 229,583

III. PROGRAMMED STATE FUNDS

Project funds are programmed in the Department's Work Program in the following fiscal year(s):

FY 04/05 \$ 183,666

Project years may be advanced or deferred subject to Legislative appropriation or availability of funds.

FM Number: 418774-1-94-01
Contract Number:

EXHIBIT "C"
AVIATION PROJECT REQUIREMENTS & PROGRAM ASSURANCES

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and The Lee County Port Authority 16000 Chamberlin Parkway S.E. Ft. Myers Fl, 33913

dated _____.

SECTION 1 - AVIATION PROJECT REQUIREMENTS

I. REQUIRED SUBMITTALS (AS APPLICABLE):

SUBMITTAL/CERTIFICATION

RESPONSIBILITY

Consultant Selection Compliance
(CCNA Certification)

Public Agency Attorney
Certification

Feasibility Study

Public Agency

Design Submittal
100% Plans, Specifications and Contract Documents

Engineer Certification*

Construction/Procurement

Public Agency

Audit Reports

Public Agency Annually
During Life of Project

* Criteria for development and certification of Plans, Specifications, and Contract Documents are defined in Section VI of this Exhibit, "DESIGN DEVELOPMENT CRITERIA". Submittal format is specified in Section VII of this Exhibit, "PLANS & SPECIFICATIONS FORMAT".

II. REQUESTS FOR REIMBURSEMENT (INVOICE SUBMITTALS) - In accordance with Section 215.422 Florida Statutes and the requirement of Paragraph 22.00 of this Agreement:

1. Required Submittal Format

The Agency shall submit invoices on forms provided by the Department and prepared in accordance with instructions given by the Department. Back-up documentation will include the appropriate items necessary to verify costs incurred and the eligibility of said costs.

2. Approval of Submittal

Goods or services received under this agreement shall be approved/disapproved by the Department no later than five (5) working days after receipt, by the District Public Transportation Office, of a properly prepared and submitted invoice. Should the invoice be incomplete or incorrect, the Department shall inform the Agency within five (5) working days of receipt and return the invoice for corrections.

III. THIRD PARTY CONTRACTS

The Department must approve third party contracts pursuant to Paragraph 12.00 except that written approval is hereby granted for:

1. Contracts for materials from a valid state or intergovernmental contract. Such materials must be included in the Department approved project scope and/or quantities.
2. Contracts, purchase orders, and construction change orders (excluding engineering consultant services) up to the threshold limits of Category Three. Such contracts must be for services and/or materials included in the Department approved project scope and/or quantities. Purchasing Categories and Thresholds are defined in Section 287.017 Florida Statutes, and in Rule Chapter 60, Florida Administrative Code. The threshold limits are adjusted periodically for inflation, and it shall be the sole responsibility of the Agency to ensure that any obligations made in accordance with this section comply with the current threshold limits. Obligations made in excess of the appropriate limits shall be cause for Department non-participation.
3. Contracts, purchase orders, and construction change orders that exceed the current JPA budget, provided they are within the threshold limits of Category Three, as defined in Section 287.017 Florida Statutes, and in Rule Chapter 60, Florida Administrative Code. Such contracts must be for services and/or materials included in the Department approved project scope and/or quantities.

This approval does not represent a State financial commitment for funds exceeding the current JPA budget unless and until the JPA is supplemented to provide for the additional cost.

In all cases, the Agency shall include a copy of the executed contract or other agreement with the backup documentation of the invoice for reimbursement of costs associated with the contract.

IV. FORCE ACCOUNT WORK

"Force Account Work" by the Agency utilizing their own forces and equipment must be approved in writing by the Department prior to performance.

V. ENGINEER'S CERTIFICATION OF PLANS & SPECIFICATIONS

Paragraph 15.00, "Plans and Specifications" of this Agreement is hereby amended to read:

"In the event that this Agreement involves the purchasing of capital equipment or the constructing and equipping of facilities, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the project. The Registered Professional Engineer of the Agency or their Consultant Engineering Firm shall certify in writing that the plans and specifications were developed in compliance with the criteria specified in Section V of this Exhibit, "DESIGN DEVELOPMENT CRITERIA". The Department will review the certification and, if deemed acceptable, provide official written approval of the plans. Failure to obtain this written approval shall be sufficient cause for nonpayment by the Department as provided in paragraph 8.23. Receipt of such approval shall not relieve the agency of the responsibility for obtaining Department review and written approval for all third party contracts as specified in paragraph 12.10".

VI. DESIGN DEVELOPMENT CRITERIA

The plans, specifications, construction contract documents, and any and all other similar engineering, construction, and contractual documents produced by the Engineer for the project are hereinafter collectively referred to as "plans" in this Exhibit.

Plans shall be developed in accordance with sound engineering and design principles, and with generally accepted professional standards.

Plans shall be consistent with the intent of the project as defined in Exhibits "A" and "B" of this Agreement.

The Engineer shall perform a thorough review of the requirements of the following standards and make a determination as to their applicability to this project. Plans produced for this project shall be developed in compliance with the applicable requirements of these standards:

- Federal Aviation Administration Regulations and Advisory Circulars*
- Florida Department of Transportation Standards of Design for General Aviation Projects*
- Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, State of Florida, "Green Book"*
- Manual on Uniform Traffic Control Devices*

Development of the plans shall comply with all applicable laws, ordinances, zoning and permitting requirements, public notice requirements, and other similar regulations that apply to the scope and location of the project.

- The current version(s) or edition(s) as of the execution date of the Engineering Agreement for the design of the project.

VII. PLANS & SPECIFICATIONS FORMAT

Paragraph 15.00 of this Agreement, as modified, requires submission of plans and specifications for Department review and approval. Submittals shall be in IBM compatible electronic format on standard CD-R format compact disk. The format used shall be either Micro Station® "DGN" or AutoCAD® "DWG" format for plans, and Adobe® "PDF" format for text documents. The agency may request Department review of other industry standard formats for use. The Department shall issue written approval of other format if deemed acceptable.

When the project deliverable is a study or other specialized document, hard copies in a quantity suitable to Department shall be required in addition to an electronic copy of the final product.

VIII. AUDIT REQUIREMENTS

The audit report(s) required in paragraph 7.60 of the Agreement shall include a schedule of project assistance that will reflect the Department's fiscal year of award, contract number, Financial Project Number, Catalog of State Financial Assistance title and number, and the Catalog of Federal Domestic Assistance title and number, where applicable, and the amount of state funding action (receipt and disbursement of funds) and any federal or local funding action and the funding action from any other source with respect to the project.

IX. TERMINAL BUILDING PROJECTS

The Agency shall provide a presentation sign to inform the public of the project. The design and location of the sign shall be approved by the Department prior to advertising the project for bids. The sign shall be erected prior to the start of project construction and remain in place until project completion.

SECTION 2 - AVIATION PROGRAM ASSURANCES

A. GENERAL

1. Duration: The terms, conditions, and assurances of the Agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date that the Agreement is executed. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with state funds.

2. Obligation: The Agency shall honor these assurances for the duration of this Agreement. If the Agency takes any action that is not consistent with these assurances, the full amount of this Agreement will immediately become due and payable to the Florida Department of Transportation.

B. GENERAL ASSURANCES

The Agency hereby assures that:

1. Good Title: The Agency holds good title, satisfactory to the Department, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Department that good title will be acquired.

2. Preserving Rights and Powers:

a. The Agency will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances

in the Agreement without the written approval of the Department, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the Agency. This shall be done in a manner acceptable to the Department.

b. If an arrangement is made for management and operation of the airport by any agency or person other than the Agency or an employee of the Agency, the Agency will reserve sufficient rights and authority to ensure that the airport will be operated and maintained according to applicable federal and state laws, regulations, and rules.

3. Hazard Removal & Mitigation: The Agency will clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

4. Compatible Land Use: The Agency will take appropriate action to ensure local government adoption of airport zoning ordinances that comply with Chapter 333, F.S. The ordinances shall address height restrictions and other potential aviation hazards and limitations on incompatible land uses in the vicinity of the airport. The vicinity of the airport includes all areas that will be affected by normal aircraft operations and noise.

The Agency assures that it will take appropriate action to oppose and/or disapprove any attempted change in local land use regulations that would adversely affect the continued level of airport operations by the creation or expansion of incompatible land use areas. The Agency assures that it will provide the Department with a copy of all local airport zoning ordinances, codes, rules, regulations, and amendments, including proposed and granted variances thereto.

5. Consistency with Local Plans: The Agency will take appropriate actions to have the current airport master plan adopted into the local government comprehensive plan at the earliest feasible opportunity.

6. Airport Layout Plan:

a. The Agency will keep a layout plan of the airport up to date showing:

(1) Boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Agency for airport purposes and proposed additions thereto;

(2) Location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and

(3) Location of all existing and proposed non-aviation areas and of all existing improvements thereon.

b. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Department. The Agency will not make or permit any changes or alterations in the airport or any of its facilities that are not in conformity with the airport layout plan as approved by the Department and which might, in the opinion of the Department, adversely affect the safety, utility, or efficiency of the airport.

7. Fee and Rental Structure: The Agency will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport taking into account such factors as the volume of traffic and economy of collection. If this Agreement results in a facility that will be leased or otherwise produces revenue, the Agency assures that the revenue will be at fair market value or higher.

8. Airport Revenue: The Agency assures that all revenue generated by the airport will be expended for capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property, or for environmental or noise mitigation purposes on or off the airport.

9. Financial Plan: The Agency will develop and maintain a cost-feasible financial plan to accomplish the projects necessary to achieve the proposed airport improvements depicted in the airport layout plan. The financial plan shall be a part of the airport master plan. The financial plan shall realistically assess project phasing considering availability of state funding and local funding and the likelihood of federal funding under the Federal Aviation Administration's priority system. All project cost estimates contained in the financial plan shall be entered in the Joint Automated Capital Improvement Program (JACIP) Online Web site. The JACIP Online information shall be kept current as the financial plan is updated.

10. Operation & Maintenance: The Agency assures that the airport and all facilities which are necessary to serve the aeronautical users of the airport, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal and state agencies for maintenance and operation. The Agency assures that it will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Department. The Agency will have arrangements for promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when flooding or other climatic conditions interfere with such operation

and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the Agency.

11. Economic Nondiscrimination: The Agency will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

12. Exclusive Rights: The Agency will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.

13. Federal Funding Eligibility: The Agency will take appropriate actions to maintain federal funding eligibility for the airport. Further, it will avoid any action that renders the airport ineligible for federal funding.

14. Termination of Agreement: As to each project governed by this Agreement, the Agency will make expenditures or incur obligations and invoice the Department for such costs within two years after the date of each project's original Joint Participation Agreement date, or the Department may terminate this Agreement as to that project.

15. Retention of Rights and Interests: It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which state funds have been expended, for the duration of the terms, conditions, and assurances in the Agreement without approval by the Department.

16. Consultant, Contractor, Scope, and Cost Approval: The Agency will grant the Department the right to disapprove the Agency's employment of specific consultants, contractors, and subcontractors for all or any part of this project if the specific consultants, contractors, or subcontractors have a record of poor project performance with the Department. Further, the Agency assures that it will grant the Department the right to disapprove the proposed project scope and cost of professional services.

C. PLANNING PROJECTS

If this project involves planning or other aviation studies, the Agency assures that it will:

1. Project Scope: Execute the project in accordance with the approved project narrative or with approved modifications.

2. Reports: Furnish the Department with such periodic project and work activity reports as required.
3. Public Information: Make such material available for examination by the public. No material prepared under this Agreement shall be subject to copyright in the United States or any other country.
4. Disclosure: Grant the Department unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this Agreement.
5. Department Guidelines: Comply with Department airport master planning guidelines if the project involves airport master planning or developing an airport layout plan. This includes:
 - a. Providing copies, in electronic and editable format, of final project materials to the Department. This includes computer-aided drafting (CAD) files of the airport layout plan.
 - b. Developing a cost-feasible financial plan, approved by the Department, to accomplish the projects described in the airport master plan or depicted in the airport layout plan. The cost-feasible financial plan shall realistically assess project phasing considering availability of state and local funding and the likelihood of federal funding under the Federal Aviation Administration's priority system.
 - c. Entering all projects contained in the cost-feasible plan out to twenty years in the Joint Automated Capital Improvement Program (JACIP) database.
6. No Implied Commitments: Understand and agree that Department approval of this project Agreement or any planning material developed as part of this Agreement does not constitute or imply any assurance or commitment on the part of the Department to approve any pending or future application for state aviation funding.

D. LAND ACQUISITION PROJECTS

If this project involves land purchase, the Agency assures that it will:

1. Applicable Laws: Acquire the land interest in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; the National Environmental Policy of 1969; FAA Order 5100.37A; FAA Order 5050.4A.; chapters 73 and 74, F.S., when property is acquired through condemnation; and section 286.23, F.S.
2. Administration: Maintain direct control of project administration, including:

- a. Maintaining responsibility for all contract letting and administrative procedures necessary for the acquisition of the land interests.
 - b. Securing written permission from the Department to execute each agreement with any third party.
 - c. Furnishing a projected schedule of events and a cash flow projection within twenty (20) calendar days after completion of the review appraisal.
 - d. Establishing a project account for purchase of land interests.
 - e. Collecting and disbursing federal, state, and local project funds.
3. Loans: Comply with the following requirements if the funding conveyed by this Agreement is a loan for land purchase according to Chapter 332, F.S.:
- a. The Agency shall apply for a Federal Aviation Administration Airport Improvement Program grant for the land purchase within 60 days of executing this Agreement.
 - b. If federal funds are received for the land purchase, the Agency shall notify the Department by U.S. Mail within 14 calendar days of receiving the federal funds and is responsible for reimbursing the Department within 30 calendar days to achieve normal project federal, state, and local funding shares as described in Chapter 332, F.S.
 - c. If federal funds are not received for the land purchase, the Agency shall reimburse the Department to achieve normal project state and local funding shares as described in Chapter 332, F.S., within 30 calendar days after the loan matures.
 - d. If federal funds are not received for the land purchase and the state funding share of the land purchase is less than or equal to normal state and local funding shares as described in Chapter 332, F.S., when the loan matures, no reimbursement to the Department shall be required.
4. New Airports:
- a. Protect the airport and related airspace by ensuring local government adoption of an airport zoning ordinance or amending an existing airport zoning ordinance, consistent with the provisions of Chapter 333, F.S., prior to the completion of the project.
 - b. Apply for federal and state funding to construct a paved runway, associated aircraft parking apron, and connecting taxiway within one year of the date of land purchase.

- c. Complete an airport master plan within two years of land purchase.
- d. Complete construction necessary for basic airport operation within ten years of land purchase.

5. Airfield Access: The Agency will not grant or allow easement or access that opens onto or crosses the airport runways, taxiways, flight line, passenger facilities, or any area used for emergency equipment, fuel, supplies, passengers, mail and freight, radar, communications, utilities, and landing systems, including but not limited to flight operations, ground services, emergency services, terminal facilities, maintenance, repair, or storage.

6. Use of Land: The Agency shall use the land for aviation purposes in accordance with the terms of this Agreement within ten years after the acquisition date.

7. Disposal of land: For land purchased under an Agreement for airport noise compatibility or airport development purposes, disposition of such land will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

E. AVIATION CONSTRUCTION PROJECTS

If this project involves construction, the Agency assures that it will:

- 1. Certifications: Provide certifications that:
 - a. Consultant and contractor selection comply with all applicable federal, state and local laws, rules, regulations, and policies.
 - b. All design plans and specifications comply with federal, state, and professional standards and applicable Federal Aviation Administration advisory circulars.
 - c. The project complies with all applicable building codes and other statutory requirements.
 - d. Completed construction complies with the original project plans and specifications.
- 2. Construction Inspection & Approval: Provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Department for the project. The Agency assures that it will allow the Department to inspect the work. The Department may require cost and progress reporting by the Agency.

3. Pavement Preventative Maintenance: With respect to a project for the replacement or reconstruction of pavement at the airport, implement an effective airport pavement maintenance management program and the Agency assures that it will use such program for the useful life of any pavement constructed, reconstructed, or repaired with state financial assistance at the airport.

F. NOISE MITIGATION PROJECTS

If this project involves noise mitigation, the Agency assures that it will:

1. Local Government Agreements: For all noise compatibility projects that are carried out by another unit of local government or are on property owned by a unit of local government other than the Agency enter into an agreement with that government. The agreement shall obligate the unit of local government to the same terms, conditions, and assurances that apply to the Agency. The agreement and changes thereto must be satisfactory to the Department. The Agency assures that it will take steps to enforce the agreement if there is substantial non-compliance with the terms of the agreement.

2. Private Agreements: For noise compatibility projects to be carried out on privately owned property, enter into an agreement with the owner of that property to exclude future actions against the airport. The Agency assures that it will take steps to enforce the agreement if there is substantial non-compliance with the terms of the agreement.

MEMO TO: Kathy Geren
Public Resources

FROM: Joann M. Van Tine *JMVT*
General Services

DATE: January 20, 2005

SUBJECT: Agenda Item for February 8, 2005 Meeting



Enclosed please find a green sheet with accompanying backup documentation for an item the Port Authority would like to have included on the agenda for the February 8 Board of County Commissioners Meeting.

Please call me at 768-4309 if you have any questions or need additional information.

:jmv

Enclosure: Hurricane Grant-FMY

cc w/enc.: Robert M. Ball, Executive Director
Edmunde J. Henke, Deputy Executive Director
Mark Fisher, Development
Pamela L. Conner, General Services
Greg Hagen, Legal Services