

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

AND

(AGENCY)

**STATE-FUNDED
STATE INFRASTRUCTURE BANK
LOAN AGREEMENT**

—————
(AGENCY VERSION)

Catalog of State Financial Assistance (CSFA): 55.020

Contract Number: _____

Financial Project Number: _____

State of Florida Department of Transportation
605 Suwannee Street
Tallahassee, Florida 32399-0450

STATE INFRASTRUCTURE BANK LOAN AGREEMENT

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EXHIBITS

**STATE-FUNDED
STATE INFRASTRUCTURE BANK LOAN AGREEMENT**

THIS AGREEMENT is dated as of _____ and is by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (the "Department") and _____ (the "Agency"), existing as a limited liability corporation under the laws of the State of Florida.

WITNESSETH:

WHEREAS, pursuant to Section 339.55, Florida Statutes (the "State Act"), the Department is authorized to make loans to governmental units and private entities to finance or refinance the construction, reconstruction, and improvement of transportation facilities that are on the State Highway System or that provide for increased mobility on the State's transportation system or provide intermodal connectivity with airports, seaports, rail facilities, and other transportation terminals; and

WHEREAS, in accordance with the provisions of the State Act, the Department has responsibility for the performance of various activities in connection with such loans; and

WHEREAS, the Agency has made application for the financing of the Project (as hereinafter defined), through a loan made under and pursuant to the State Act, and the Department has determined that the Project meets all requirements for a loan and has agreed to make a loan to the Agency for the financing of the Project as set forth in this Agreement (the "Loan"); and

WHEREAS, in accordance with the provisions of Sections 215.57 – 215.83 (the "State Bond Act") and that certain Resolution of the Division of Bond Finance of the State Board of Administration of Florida (the "Division"), dated March 30, 2004, as supplemented and amended from time to time (the "Resolution"), the Division is authorized to issue bonds (the "Bonds") on behalf of the Department to fund loans pursuant to the State Act and to refund Bonds; and

WHEREAS, the Loan and all payments of principal and interest thereon, including prepayments, and all proceeds thereof, have been or are intended to be pledged and assigned under the Resolution as security for the payment of principal of, premium, if any, and interest on the Bonds;

NOW, THEREFORE, in consideration of the Department making the loan to the Agency, in the principal amount and pursuant to the covenants hereinafter set forth, and intending to be legally bound by this Agreement, the Department and the Agency agree as follows:

ARTICLE I – DEFINITIONS

1.01. WORDS AND TERMS.

In addition to the words and terms elsewhere defined in this Agreement, the following words and terms shall have the meanings set forth below:

- (1) "Agreement" or "Loan Agreement" shall mean this loan agreement and all exhibits and schedules attached hereto.
- (2) "Agreement Date" means the date first written above.
- (3) "Applicable Tax-Exempt Bonds" shall mean Tax-Exempt Bonds, the proceeds of which are allocated to the Loan.
- (4) "Authorized Representative" shall mean the official or officials of the Agency authorized by ordinance or resolution to sign documents associated with the Loan.
- (5) "Capitalized Interest" shall mean a finance charge that accrues on Loan proceeds from the time of disbursement. Capitalized Interest is financed as part of the Loan principal.
- (6) "Code" shall mean the Internal Revenue Code of 1986, the Treasury Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable.
- (7) "Defeasance Obligations" means, to the extent permitted by law, direct non-callable obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States and including advance refunded tax-exempt bonds fully secured by non-callable direct obligations of the United States of America, non-callable obligations guaranteed by the United States of America, or "stripped" interest payment obligations of debt obligations of the Resolution Funding Corporation.
- (8) "Financing Rate" shall mean the charges, expressed as a percent per annum, imposed on the unpaid principal of the Loan as set forth herein.
- (9) "Loan" shall mean the loan made to the Agency pursuant to this Agreement and the State Act in the initial principal amount of _____.
- (10) "Loan Application" shall mean the completed form which provides all information required to support obtaining the Loan.
- (11) "Loan Payment" shall mean the periodic loan payment due from the Agency.
- (12) "Operations and Maintenance Expense" shall mean the costs of operating and maintaining the Project determined pursuant to generally accepted accounting principles, exclusive of interest on any debt payable from Gross Revenues, depreciation, and any other items not requiring the expenditure of cash.
- (13) "Pledged Revenues" shall mean the specific revenues pledged as security for repayment of the Loan and shall be the [*name applicable revenues] [derived yearly from _____ and the operation of the Transportation Systems after payment of the Operation and Maintenance Expense] and the satisfaction of all yearly payment obligations on account of { *If applicable} the Senior Revenue Obligations and any senior obligations issues pursuant to Section 7.02 of this Agreement.

(14) "Project" shall mean the state capital outlay project financed by this Loan, consisting of all labor, materials, and equipment to construct or acquire the [name of project, brief description], as more fully described in the Loan Application, in accordance with applicable law and the summary specifications included in Exhibit D, for the following contracts:

(a) (*title).

(b) (*title). [*If applicable] This contract includes installation of [equipment], which will be furnished by the contract listed under (c), below.

(c) (*title). [*If applicable] This contract is for purchasing [equipment], which will be installed by the contract listed under (b), above.

(d) (*title).

The Project is in agreement with the planning documentation accepted by the Department effective _____ [*include other studies if applicable].

(15) [*If applicable] "Senior Revenue Obligations" shall mean the following debt obligations:

(a) (*Name), Florida, _____ Refunding Bonds, Series _____, issued in the amount of \$ _____, pursuant to Ordinance/Resolution No. _____; and

(b) (*Name), Florida, _____ Refunding Bonds, Series _____, issued in the amount of \$ _____, pursuant to Ordinance/Resolution No. _____; and

(c) Additional debt obligations permitted [by the Department] to be issued on a parity with and senior to the lien of this Loan Agreement on the Pledged Revenues pursuant to Section 7.02.

(d) Any refunding bonds issued to refund the obligations identified above provided that the debt service payments on such bonds in any fiscal year shall not exceed the debt service payments on the refunded obligations in such year during the repayment period of this Loan.

(16) "State" means the State of Florida.

(17) "State Fiscal Year" shall mean the period commencing on July 1 of each year and ending on June 30 of the succeeding year.

(18) "State Infrastructure Bank" or "SIB" means the State-funded State Infrastructure Bank created pursuant to Section 339.55, Florida Statutes.

(19) "Tax-Exempt Bonds" means Bonds the interest on which is intended on their date of issuance to be excludable from gross income of the holders thereof for federal income tax purposes.

(20) [“Transportation System” shall mean the Agency’s interconnected transportation facilities and services intended for the movement of people or property from place to place, which are constructed, operated or maintained in whole or in part from public funds.]

1.02. CORRELATIVE WORDS.

Words of the masculine gender shall be understood to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural and the word "person" shall include departments and associations, including public bodies, as well as natural persons.

ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

2.01. GENERAL WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Agency warrants, represents and covenants that:

(1) The Agency has full power and authority to enter into this Agreement and to comply with the provisions hereof and shall initiate and prosecute to completion all proceedings necessary to enable the Agency to provide the necessary funds for repayment of the Loan.

(2) The Agency currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

(3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the Agency’s knowledge, threatened, which seeks to restrain or enjoin the Agency from entering into or complying with this Agreement.

(4) All permits, real property interests, and approvals required as of the date of this Agreement have been obtained for construction and use of the Project. The Agency knows of no reason why any future required permits or approvals are not obtainable.

(5) The Agency shall undertake the Project on its own responsibility, to the extent permitted by law.

(6) To the extent permitted by law, the Agency shall release and hold harmless the State, its agencies, the Department, and each of their respective officers, members, and employees from any claim arising in connection with the Agency’s actions or omissions in the Agency’s planning, engineering, administrative, and construction activities financed by the Loan or its operation of the Project.

(7) All Agency representations to the Department, pursuant to the Loan Application and this Agreement, were and are true and accurate as of the date the Loan Application and this Agreement were each executed by the Agency. The financial information delivered by the Agency to the Department was current and correct as of its date. Since the date of such financial information, there has not been any material adverse change in the financial condition or revenues and expenditures of the Agency, or in the collection of the Pledged Revenues. The Agency shall comply with all applicable State and Federal laws, rules, and regulations. To the

extent that any assurance, representation, or covenant requires a future action, the Agency shall take such action as is necessary for compliance.

(8) The Agency shall adhere to accepted governmental accounting principles established by the Governmental Accounting Standards Board. As part of its bookkeeping system, the Agency shall keep accounts of the Project separate from all other accounts and it shall keep accurate records of all expenditures relating to the Project, the Pledged Revenues and Loan disbursement receipts.

(9) [For inclusion in covenant-to-budget type financing] In the event the anticipated Pledged Revenues are shown by the Agency's annual budget to be insufficient to make the Loan Repayments for such Fiscal Year when due, the Agency shall include in such budget other legally available funds which will be sufficient, together with the Pledged Revenues, to make the Loan Repayments. Such other legally available funds shall be budgeted in the regular annual governmental budget and designated for the purpose provided by this paragraph (9), and the Agency shall collect such funds for application as provided herein. The Agency shall notify the Department immediately in writing of any such budgeting of other legally available funds. Nothing in this covenant shall be construed as creating a pledge, lien, or charge upon any such other legally available funds; requiring the Agency to levy or appropriate ad valorem tax revenues; or preventing the Agency from pledging to the payment of any bonds or other obligations all or any part of such other legally available funds.

(10) Pursuant to Section 216.347 of the Florida Statutes, the Agency shall not use the Loan proceeds for the purpose of lobbying the Florida Legislature, the Judicial Branch, or a State agency.

(11) The Agency agrees to construct and/or acquire the Project or cause the Project to be constructed and/or acquired materially in accordance with the plans, specifications and time schedules set forth or referenced in the Loan Application. Delays incident to strikes, riots, acts of God, and other events beyond the reasonable control of the Agency are excepted. If for any reason construction or acquisition is not completed as scheduled, there shall be no resulting diminution or delay in the Loan Payment unless consented to by the Department in writing.

(12) The Agency covenants that this Agreement is entered into for the purpose of constructing, acquiring, refunding, or refinancing the Project which will in all events serve a public purpose. The Agency covenants that it will, under all conditions, complete and operate the Project to fulfill the public need.

(13) [*Include for refinancing loans] The proceeds of any indebtedness, which will be refunded or refinanced by this Loan, were used for the construction or acquisition of this Project. Refinancing shall be in the proportion of the ratio of completed allowable construction work or acquisition cost to the total construction work or acquisition cost originally financed and shall be limited to unretired debt principal, excluding any reserves such as for debt service. The Agency agrees to use the proceeds of this Loan to completely retire the indebtedness referenced by the previous sentence within 90 days after the issuance of Applicable Tax-Exempt Bonds.

(14) The Agency shall submit to the Department such data, reports, records, contracts and other documents relating to the Project as the Department may request in order to ascertain the performance by the Agency of its obligations under this Agreement. The Department shall have the right to conduct on-site monitoring visits and audits, and the Agency shall cooperate

and assist the Department in the reasonable inspection and audit of books, records, accounts, data and other information related to the Project, and in copying and removing the same for such purposes at all reasonable times. The Agency shall provide additional information as deemed appropriate by the Department.

(15) At such time as may be requested by the Department or the Division, the Agency shall execute a Disclosure Agreement, the form of which is attached hereto as Exhibit E, and shall furnish and certify to such information and execute and deliver and cause to be executed and delivered such documents, certificates and opinions as the Department or the Division may reasonably require in connection with the Bonds, including, without limitation, any continuing disclosure undertaking necessary for the Department or the Division to satisfy the requirements of Securities and Exchange Commission Rule 15c2-12.

(16) The Project is in agreement with the planning documentation accepted by the Department effective _____ [*include other studies if applicable].

2.02. TAX WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Agency acknowledges that the Department may issue Applicable Tax Exempt Bonds and that the maintenance of the tax-exempt status of such Applicable Tax-Exempt Bonds will depend, in part, on the Agency's compliance with the provisions of this Agreement. Accordingly, the Agency warrants, represents and covenants that:

(1) Notwithstanding any other provisions of this Agreement, including specifically Section 2.02(8), if the Agency shall be notified by the Department or the Division as of any date that any payment is required to be made to the United States Treasury in respect of Applicable Tax-Exempt Bonds, and such payment is due to the failure of the Agency to comply with this Agreement, the Agency shall pay to the Department or the State Board of Administration, as the case may be, (for deposit to the appropriate Account or Subaccount established by the Resolution) the amount specified in the notice by the Department or the Division.

(2) The Agency is a "governmental person" (as defined in Treasury Regulations §1.141-1(b)) (a "Governmental Unit") and it is legally authorized to expend its revenues for purposes of the Project.

(3) The Agency will not take any action or omit to take any action, which action or omission will adversely affect the exclusion from gross income of the interest on the Applicable Tax-Exempt Bonds for federal income tax purposes or cause the interest on the Applicable Tax-Exempt Bonds, or any portion thereof, to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Code, and in the event of such action or omission, promptly upon having such brought to its attention, it will take such reasonable actions based upon a Bond Counsel Opinion, obtained at the expense of the Agency, as may rescind or otherwise negate such action or omission. The Agency will not, directly or indirectly, use or permit the use of any proceeds of the Applicable Tax-Exempt Bonds or any other funds of the Agency, or take or omit to take any action, that would cause the Applicable Tax-Exempt Bonds to be or become "arbitrage bonds" within the meaning of Section 148(a) of the Code or to fail to meet any other applicable requirement of Sections 141, 148, 149 and 150 of the Code or (except for Applicable Tax-Exempt Bonds which constitute Tax-Exempt AMT Bonds, as defined in the Resolution) cause the interest on the Applicable Tax-Exempt Bonds, or any portion thereof, to become an item of tax preference for purposes of the alternative

minimum tax imposed on individuals and corporations under the Code. To that end, the Agency will comply with all requirements of Sections 141, 148, 149 and 150 of the Code to the extent such provisions apply to the Applicable Tax-Exempt Bonds. In the event that at any time the Department or the Division is of the opinion that it is necessary to restrict or limit the yield on the investment of any moneys held by the Agency, the Department or the Division shall so instruct the Agency in writing and the Agency shall so restrict the yield.

(4) The Agency (or any "related party", as defined in Treasury Regulations §1.150-1(b)) is prohibited from purchasing and shall not purchase any Applicable Tax-Exempt Bonds other than purchases in the open market for the purpose of tendering them to the Division for purchase and retirement.

(5) The Agency will take no action, nor will it permit or suffer any action or event, which will cause any of the Applicable Tax-Exempt Bonds to be or become a "private activity bond" within the meaning of the Code. To that end, the Agency will not permit more than 5% of the Project or portion thereof financed with Tax-Exempt Bonds, including Applicable Tax-Exempt Bonds, to be used for a Private Business Use. The term "Private Business Use" means use directly or indirectly in a trade or business or any other activity carried on by any Private Person other than use as a member of, and on the same basis as, the general public. The term "Private Person" means any person other than a Governmental Unit. For this purpose, the United States or any agency or instrumentality thereof is not a Governmental Unit and is therefore a Private Person. For purposes of this paragraph (5), property is considered "used" by a Private Person if:

- (i) it is owned by, or leased, to such Private Person;
- (ii) it is operated, managed or otherwise physically employed, utilized or consumed by such Private Person, other than operation or management pursuant to an agreement that meets the conditions described in paragraph (6) below;
- (iii) capacity in or output service from such property is reserved or committed to such Private Person under a take-or-pay, output, incentive payment or similar contract or arrangement;
- (iv) such property is used to provide service to (or such service is committed to or reserved for) such Private Person on a basis or terms that are different from the basis or terms on which such service is provided (or committed or reserved) to members of the public generally (except possibly for the amount of use and any corresponding rate adjustment);
- (v) such Private Person is a developer and a significant amount of the Project financed with proceeds of Tax-Exempt Bonds serves only a limited area substantially all of which is owned by such Private Person, or a limited group of developers, unless such improvement carries out an essential governmental function, such developer reasonably expects to proceed with all reasonable speed to develop the improvement and property benefited by that improvement, and the improvement is in fact transferred to a Governmental Unit promptly after the property benefited by the improvement is developed; or

(vi) substantial burdens and benefits of ownership of the Project financed with proceeds of Tax-Exempt Bonds are otherwise effectively transferred to such Private Person.

(6) Use of Bond-Financed Property.

(i) For purposes of this Agreement, the use by a Private Person of the Project financed with the proceeds of Tax-Exempt Bonds (the "Bond Financed Property") pursuant to a Qualified Use Contract (as hereafter defined) shall not be treated as a Private Business Use by such Private Person of such Bond-Financed Property or of funds used to finance or refinance such Bond-Financed Property.

(ii) An arrangement under which services are to be provided by a Private Person involving the use of all or any portion of, or any function of, the Bond-Financed Property (for example, management services for an entire facility or a specific department of a facility ("Use Contract")) is a "Qualified Use Contract" if it complies (as determined by a Bond Counsel Opinion obtained at the Agency's expense) with the provisions set forth in Revenue Procedure 97-13 or 97-14, as applicable, and as amended or superceded by the Code, Regulations or additional administrative promulgation from the Internal Revenue Service.

(iii) The Agency may treat a Use Contract that does not comply with the criteria of subparagraph (6)(ii) as not resulting in Private Business Use of Bond-Financed Property if it delivers to the Department and the Division, at its expense, a Bond Counsel Opinion to the effect that to do so would not adversely affect the exclusion from gross income of interest on the Applicable Tax-Exempt Bonds or cause the interest on the Applicable Tax-Exempt Bonds, or any portion thereof, to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Code.

(7) Notwithstanding any provision of this Section 2.02, if the Agency provides to the Department and the Division a Bond Counsel Opinion, obtained at the Agency's expense, to the effect that any action required under this Section is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of interest on the Applicable Tax-Exempt Bonds pursuant to Section 103(a) of the Code, the Agency, the Department and the Division may rely conclusively on such opinion in complying with the provisions hereof, and the covenants hereunder shall be deemed to be modified to that extent.

(8) All tax warranties, representations, covenants and obligations of the Agency contained in this Section 2.02 shall remain in effect and be binding upon the Agency until all of the Applicable Tax-Exempt Bonds have been paid, notwithstanding any earlier termination of this Agreement or any provision for payment of principal of and premium, if any, and interest on the outstanding Applicable Tax-Exempt Bonds and release and discharge of the Resolution.

(9) The Agency may create an account (a "Loan Debt Service Account") for the purpose of matching revenues to debt service on the loan. Any amounts deposited from time to time in any such Loan Debt Service Account will be used to pay principal of or interest on the Loan within 13 months after the amounts are so deposited.

(10) The Agency has not established and except as set forth above, does not expect to establish or use any sinking fund, debt service fund, redemption fund, reserve or replacement fund, or similar fund, or any other fund to pay principal of, interest and any redemption premium on the Loan. Except for money referred to in paragraph (9) above, no other money or investment property (including, without limitation, fixed income, equity and other investments) is or will be pledged as collateral or used for the payment of such principal and interest (or for the reimbursement of any others who may provide money to pay that principal and interest), or is or will be restricted, dedicated, encumbered, or set aside in any way as to afford the Department or holders of the Applicable Tax-Exempt Bonds reasonable assurance of the availability of such money or investment property to pay debt service on the Loan or the Applicable Tax-Exempt Bonds.

(11) Except as stated otherwise in this Agreement, no portion of the Loan will be used:

(i) to pay principal of or interest on, refund, renew, roll over, retire, or replace any other obligations issued by or on behalf of the Department, the Agency or any other Governmental Unit,

(ii) to replace any proceeds of another issue of tax-exempt bonds that were not expended on the project for which such other issue was issued,

(iii) to replace any money that was or will be used directly or indirectly to acquire investments,

(iv) to make a loan to any other person or Governmental Unit,

(v) to pay any working capital expenditure other than expenditures identified in Treasury Regulations §1.148-6(d)(3)(ii)(A) and (B) (i.e., issuance costs of the Applicable Tax-Exempt Bonds, qualified administrative costs, reasonable charges for a qualified guarantee or for a qualified hedge, interest on the Loan for a period commencing on the issuance date of the Applicable Tax-Exempt Bonds and ending on the date that is the later of three years from that issuance date or one year after the date on which the Project was or will be placed in service, and costs, other than those already described, that do not exceed 5% of the sale proceeds of the Applicable Tax-Exempt Bonds and that are directly related to capital expenditures financed or deemed financed by the Applicable Tax-Exempt Bonds), or

(vi) to reimburse any expenditures made prior to the issuance date of the Applicable Tax-Exempt Bonds except those that qualify as a reimbursement of prior capital expenditures, based upon a Bond Counsel Opinion, obtained at the Agency's expense, delivered to the Department and the Division.

(12) The Agency does not intend to sell or otherwise dispose of its interest in the Project or any portion thereof during the term of the Applicable Tax-Exempt Bonds except for dispositions of property in the normal course at the end of such property's useful life to the Agency. The Agency will not sell, assign ownership, or otherwise dispose of its interest in the Project or specific rights to utilize any portion of its interest in the Project without the prior consent of the Department and receipt by the Department of a Bond Counsel Opinion, obtained at the Agency's expense, that such Agency action will not adversely impact the tax status of Applicable Tax-Exempt Bonds.

(13) None of the Loan Repayments shall be federally guaranteed within the meaning of Section 149(b) of the Code.

(14) The term of the Loan does not exceed the expected useful life of the Project

2.03. LEGAL AUTHORIZATION.

Upon signing this Agreement, the Agency's legal counsel shall express the opinion, subject to laws affecting the rights of creditors generally, that:

(1) This Agreement has been duly authorized by the Agency and shall constitute a valid and legal obligation of the Agency enforceable in accordance with its terms upon execution by both parties; and

(2) This Agreement specifies the revenues pledged for repayment of the Loan, and the pledge is valid and enforceable.

2.04. AUDIT AND MONITORING REQUIREMENTS.

The administration of resources awarded by the department to the Agency may be subject to audits and/or monitoring by the department, as described in this section. For further guidance, see the Executive Office of the Governor website, which can be found at: www.fssa.state.fl.us.

Recipients of state funds (i.e. a non-state entity as defined by Section 215.97(2)(1), Florida Statutes) are to have audits done annually using the following criteria:

In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Executive Office of the Governor and the CFO; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements.

In connection with the audit requirements, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(d), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

If the recipient expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the

non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

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 findings is required. Current year audit findings require corrective action and status of findings.

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 FDOT, the Comptroller, and the Auditor General. This section does 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 other state official. Copies of financial reporting packages, reports, or management letters required by this agreement shall be submitted by or on behalf of the recipient directly to following offices:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, FL 32399-0450
E-Mail: FDOTSingleAudit@dot.state.fl.us

Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

Any reports, management letter, or other information required to be submitted to the Department pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

Recipients, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

The submission requirement may be satisfied with the availability of the Financial Reporting Package on the recipient's Internet Web site, in which case a hard copy will not be required. The Department is to be notified when the Reporting Package is available, including the Internet address.

Progress Reports. The Agency shall provide to the Department's SIB Program Manager semi-annual progress reports on "program and financial activities" that occur each year. The report will be signed or submitted electronically in accordance with Chapter 668, Florida Statutes, by an individual authorized by the governing board of the Agency. The following program information shall be included: program accomplishments (specific action taken to implement approved objectives/activities) and percent of accomplishments for each in terms of percentage

completed; problems delaying implementation; and revised Project schedules if activities are not conforming to approved Project schedules as contained in the application. The following financial information shall be included: beginning fund balance; amount of expenditures; ending fund balance; interest earned to date; and the amount and percent of funds being contributed to the Project from other sources. The semi-annual progress report is available on the SIB website at <http://www.dot.state.fl.us/officeofcomptroller/PFO/sib.shtm>.

Records Retention. The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of at least five years from the date the audit report is issued, and shall allow the Department, or its designee, the state CFO or Auditor General access to such records upon request. The recipient shall ensure that the independent audit working papers are made available to the Department, or its designee, the state CFO, or Auditor General upon request for a period of at least five years from the date the audit report is issued, unless extended in writing by the Department.

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.

Any check or order drawn by the Agency with respect to any item which is or will be supported by the Loan must be supported with a properly signed voucher 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, and readily accessible, and, to the extent feasible, kept separate and apart from all other such documents.

Access to Project Site. The Agency shall provide access to Project sites and administrative offices to authorized representatives of the Department at any reasonable time. The Agency shall cause its engineers and contractors to cooperate during Project inspections, including making available working copies of plans and specifications and supplementary materials.

ARTICLE III - LOAN REPAYMENT ACCOUNTS

3.01. LOAN REPAYMENT ACCOUNT.

The Agency may establish a Loan Repayment Account for the purpose of matching Pledged Revenues to Loan Repayments.

If at any time the Agency has advance notice that it will not be able to pay any Loan Payment when due, the Agency shall immediately notify the Department of such inability to make the required payment.

ARTICLE IV - THE PROJECT

4.01. PROJECT CHANGES.

The Agency covenants and agrees that it will not change the scope of the Project or alter the nature of the Project in any material fashion, or substitute any other project for the Project, without the prior written approval of the Department.

4.02. TITLE OF PROJECT.

[to be utilized in situations where the Agency owns the Project] The Agency shall have an interest in [real] [personal] property sufficient for the [construction] [acquisition] and location of the Project free and clear of liens and encumbrances which would impair the usefulness of such sites for the intended use. [*If applicable] The Authorized Representative shall submit a clear site title certification by _____ [date].

4.03. PERMITS AND APPROVALS.

The Agency or the owner of the Project shall have obtained, prior to the award of construction contracts, all permits and approvals required for construction of the Project or portion of the Project funded under this Agreement.

4.04. PROHIBITION AGAINST ENCUMBRANCES.

[to be utilized in situations where revenues derived from the Project are pledged to secure the Loan] The Agency is prohibited from selling, leasing, or disposing of any part of the Project which would materially adversely affect the ability of the Agency to meet its obligations under this Agreement so long as this Agreement, including any amendment thereto, is in effect unless the written consent of the Department is first secured.

4.05. COMPLETION MONEYS.

[to be utilized in situations where revenues derived from the Project are pledged to secure the loan] In addition to the proceeds of this Loan, the Agency covenants that it has obtained, or will obtain, sufficient moneys from other sources to complete construction and place the Project in operation on, or prior to, the Project completion date specified in Article X. Failure of the Department to approve additional financing, where required, shall not constitute a waiver of the Agency's covenants to complete and place the Project in operation.

4.06. PROJECT SCHEDULE AND INDEBTNESS.

The Agency agrees:

- (1) Initiation of Project construction/acquisition is anticipated to be _____.
- (2) Completion of Project construction/acquisition is anticipated to be _____.
- (3) [*Include statement if clear site certification has not been provided] A clear site title certification is anticipated to be submitted no later than _____. [*Construction close-out date]
- (4) The Loan Repayments shall be due at the times and in the amounts set forth on Exhibit B.

4.07. OFFICIAL INTENT.

This Loan Agreement, when executed by an authorized representative of the Agency, shall constitute the Agency's official intent, within the meaning Treasury Regulation § 1.150-2,

to reimburse itself with proceeds of tax-exempt debt for obligations incurred with respect to the Project.

ARTICLE V – RATE COVENANTS AND USE OF TRANSPORTATION SYSTEM

5.01. RATE COVERAGE.

To the extent that the Pledged Revenues are derived from revenues that may be adjusted by the Agency, the Agency shall maintain rates and charges generating such revenues at a level sufficient to provide, in each Fiscal Year, Pledged Revenues equal to or exceeding _____ times the sum of the Loan Repayments due in such Fiscal Year. In addition, the Agency shall satisfy the coverage requirements of all senior and parity debt obligations.

5.02. NO FREE SERVICE.

To the extent the Pledged Revenues are derived from revenues that may be adjusted by the Agency, the Agency shall not, except to the extent otherwise required by law, permit access to property or furnish any service that generates such revenues without making such charge therefore based on the Agency's uniform schedule or rates, fees, and charges.

5.03. MAINTENANCE OF PROJECT.

[to be utilized in situations where revenues derived from the Project are pledged to secure the Loan] The Agency shall operate and maintain the Transportation System and the Project in a proper, sound and economical manner and shall make all necessary repairs, renewals, and replacements.

5.04. PROJECT ADDITIONS AND MODIFICATIONS.

[to be utilized in situations where revenues derived from the Transportation System and the Project are pledged to secure the Loan] The Agency may make any additions, modifications or improvements to the Project which it deems desirable and which do not materially adversely affect the ability of the Agency to meet its obligations under this Agreement. All such renewals, replacements, additions, modifications and improvements shall become part of the Transportation System.

5.05. COLLECTION OF PLEDGED REVENUES.

The Agency shall use its best efforts to collect all Pledged Revenues and other amounts due to it, and shall take no action to impair the collection of the Pledged Revenues.

ARTICLE VI - DEFAULTS AND REMEDIES

6.01. EVENTS OF DEFAULT.

Each of the following events is hereby declared an event of default:

(1) Failure to make any Loan Payment when it is due and such failure shall continue for a period of 5 days.

(2) Any warranty, representation or other statement by, or on behalf of, the Agency contained in this Agreement or in any document, certificate or information furnished in compliance with, or in reference to, this Agreement, is determined to be false or misleading.

(3) An order or decree is entered, with the acquiescence of the Agency, appointing a receiver for any part of the Project or the Pledged Revenues; or if such order or decree, having been entered without the consent or acquiescence of the Agency, shall not be vacated or discharged or stayed on appeal within 60 days after the entry thereof.

(4) Any proceeding is instituted, with the acquiescence of the Agency, for the purpose of effecting a composition between the Agency and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are payable from Pledged Revenues.

(5) Any bankruptcy, insolvency or other similar proceeding is instituted by, or against, the Agency under federal or state bankruptcy or insolvency law now or hereafter in effect and, if instituted against the Agency, is not dismissed within 60 days after filing.

(6) Except as provided in Subsection 6.01(1), any failure to comply with the provisions of this Agreement or failure in the performance or observance of any of the covenants or actions required by this Agreement (a "General Non-compliance Default"), provided, however, that if the Agency provides the Department with written notice of a General Non-compliance Default within 30 days of the date of such General Non-compliance Default, then the Agency shall have 60 days from the date of such General Non-compliance Default to cure such General Non-compliance Default to the satisfaction of the Department in the Department's sole and absolute discretion. If the Agency fails, within the time periods provided in the previous sentence, to (i) provide written notice of a General Non-compliance Default, or (ii) cure the General Non-compliance Default to the satisfaction of the Department in the Department's sole and absolute discretion, then the Agency shall be deemed to be in default of this Agreement as of the date of the General Non-compliance Default.

6.02. REMEDIES.

Upon any event of default, the Department or the Division may pursue any available remedy at law or in equity, including:

(1) By mandamus or other proceeding at law or in equity, cause the Agency to remit to the Department Pledged Revenues sufficient to enable the Agency to satisfy its obligations under this Agreement.

(2) By action or suit in equity, require the Agency to account for all moneys received pursuant to this Agreement and to account for the receipt, use, application, or disposition of the Pledged Revenues.

(3) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Department or the Division.

(4) By applying to a court of competent jurisdiction, cause the appointment of a receiver to manage the Project, establish and collect fees and charges, and apply the revenues to the reduction of the obligations under this Agreement.

(5) By certifying to the Auditor General and the Chief Financial Officer delinquency on Loan repayments, the Department may provide for the payment to the Department of the delinquent amount plus a penalty from any unobligated funds due to the Agency under any revenue or tax sharing fund established by the State, except as otherwise provided by the State Constitution. A penalty may be imposed in an amount not to exceed an interest rate of 18 percent per annum on the amount due in addition to charging the cost to handle and process the debt.

(6) By notifying financial market credit rating agencies and potential creditors of the event of default.

(7) By suing for payment of amounts due, or becoming due, with interest on overdue payments together with all costs of collection, including attorneys' fees.

(8) By accelerating the repayment schedule or increasing the Financing Rate on the unpaid principal of the Loan to as much as 1.667 times the Financing Rate for a default under Subsection 6.01(1).

In addition to pursuing one or more of the above remedies, upon an event of default, the Department may, by providing 60 days advance written notice to the Agency, elect to terminate this Agreement, and the Department shall have no further obligation or commitment under this Agreement to the Agency. Any partial Loan Repayments by the Agency shall be allocated first to interest and second to principal.

6.03. REMEDIES NOT EXCLUSIVE; DELAY AND WAIVER.

No remedy conferred upon or reserved to the Department by this Article is exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy. No delay or omission by the Department to exercise any right or power accruing as a result of an event of default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient. No waiver of any default under this Agreement shall extend to or affect any subsequent event of default, whether of the same or different provision of this Agreement, or shall impair consequent rights or remedies.

ARTICLE VII - THE PLEDGED REVENUES

7.01. SUPERIORITY OF THE PLEDGE TO THE DEPARTMENT.

From and after the Agreement Date, the Department shall have a lien on the Pledged Revenues, which along with any other Department liens on the Pledged Revenues, will be prior and superior to any other lien, pledge or assignment with the following exception. All obligations of the Agency under this Agreement shall be junior, inferior and subordinate in all respects in right of payment and security to [*If applicable] the Senior Revenue Obligations defined in Section 1.01 of this Agreement and to any additional senior obligations issued with the Department's consent pursuant to Section 7.02. [*If applicable] The BBB or higher bond rating (from a nationally recognized bond rating agency) on the existing Senior Revenue Obligations is attached hereto as Exhibit _____. Any of the Pledged Revenues may be released from the lien on such Pledged Revenues in favor of the Department if the Department makes a determination, based upon facts deemed sufficient by the Department, that the remaining

Pledged Revenues will, in each Fiscal Year, equal or exceed _____ times the debt service coming due in each Fiscal Year under the terms of this Agreement.

7.02. ADDITIONAL DEBT OBLIGATIONS.

The Agency may not issue additional debt obligations on a parity with, or senior to, the lien of the Department on the Pledged Revenues.

ARTICLE VIII - GENERAL PROVISIONS

8.01. DISCHARGE OF OBLIGATIONS.

All payments required to be made under this Agreement shall be cumulative and any deficiencies in any Fiscal Year shall be added to the payments due in the succeeding Fiscal Year and all Fiscal Years thereafter until fully paid. Loan Repayments shall continue to be secured by this Agreement until all of the payments required shall be fully paid to the Department. If at any time the Agency shall have paid all amounts due under this Agreement, or shall, in accordance with the provisions of this Section 8.01 have defeased the Loan, the pledge of, and lien on, the Pledged Revenues to the Department shall be no longer in effect and, except as provided in Section 2.02, this Agreement shall terminate. Deposit of sufficient cash or Defeasance Obligations may be made to effect defeasance of this Loan; provided that, the deposit shall be made in irrevocable trust with a banking institution or trust company for the sole benefit of the Department or its assignees and the Department has approved in writing such deposit. Notwithstanding any provision of this Agreement to the contrary, the Agency may prepay this Loan only upon the express written consent of the Department, which consent shall not be withheld if such prepayment, in the judgment of the Department and the Division, will not adversely impact the Department's ability to comply with covenants relating to obligations secured by such Loan.

8.02. RESERVED.

8.03. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

The Agency hereby expressly acknowledges that the Loan and all payments of principal and interest thereon, and all proceeds thereof, have been pledged and assigned under the Resolution as security for the payment of principal of, premium, if any, and interest on the Bonds and by the execution of this Agreement the Agency in all respects consents to such pledge and assignment. The Department and the Division may further pledge or assign all or any parts of this Agreement without the prior consent of the Agency after written notification to the Agency. The Agency shall not assign its rights and obligations under this Agreement without the prior written consent of the Department and receipt by the Department and the Division of a Bond Counsel Opinion, obtained at the Agency's expense, that such assignment will not adversely impact the tax status of Applicable Tax-Exempt Bonds.

8.04. AMENDMENT OF AGREEMENT.

This Agreement may be amended in writing, except that no amendment shall be permitted which is inconsistent with any applicable State or Federal law. This Agreement may be amended after all construction contracts are executed to re-establish the Project cost, Project

schedule, and Loan amount. A final amendment establishing the final Project costs shall be completed after the Department's final inspection of the Project records.

8.05. ANNULMENT OF AGREEMENT.

The Department, in consultation with the Division, may unilaterally annul this Agreement if the Agency has not drawn any of the Loan proceeds within six months of the first scheduled disbursement date referenced in Article X. If the Department unilaterally annuls this Agreement, the Department will provide written notification to the Agency.

8.06 SUSPENSION AND TERMINATION.

If the Agency abandons or, before completion, discontinues the Project; or if the commencement, prosecution, or timely completion of the Project by the Agency is rendered improbable, infeasible, impossible, or illegal, by written notice to the Agency, the Department may 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 at its option, the Department may terminate any or all of its remaining obligations under this Agreement.

Upon receipt of any termination or suspension notice, the Agency shall proceed promptly to carry out the actions required therein which may include, but not be limited to: (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 Loan; (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) repay the SIB according to the provisions of the Agreement, or as otherwise agreed upon, in writing, by the Department and the Agency. 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 Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency to allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement.

8.07. SEVERABILITY CLAUSE.

If any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

8.08. APPROPRIATION.

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

The provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated verbatim: "(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."

ARTICLE IX – INSURANCE

[for utilization in situations where revenues derived from the Project are pledged to secure the Loan]

The Agency shall cause the Project to be and remain insured by an insurance company or companies licensed to do and doing business in the State against loss or damage due to any accident or casualty. Such insurance shall remain in place for the useful life of the Project.

The Proceeds of insurance policies received as a result of damage to or destruction of the Project shall be used to (i) restore or replace damaged or destroyed portions of the Project, (ii) with the written consent of the Department, repay all or a portion of the Loan, or (iii) any combination of the foregoing. If such insurance proceeds are insufficient to restore or replace damaged portions of the Project, the Agency shall provide additional funds to restore or replace such portions of the Project. Repair, construction or replacement shall be promptly completed.

ARTICLE X - DETAILS OF FINANCING

10.01. PRINCIPAL AMOUNT OF LOAN.

The Department agrees to lend to the Agency, and the Agency agrees to repay the Department the Loan at the times, in the amounts and in the manner set forth in this Agreement. The principal amount of the Loan as of any date shall consist of the aggregate Disbursements (as defined below), plus [if applicable] Capitalized Interest that has accrued and been added to the principal amount of the Loan, plus interest other than Capitalized Interest, if any, that has accrued and been added to the principal amount of the Loan, less the aggregate principal component of all Loan Repayments made, all as of such date.

[If applicable] Capitalized Interest is not disbursed to the Borrower, but is amortized via Loan Repayments as if it were actually disbursed. Capitalized Interest shall be computed at the rate of ____% per annum and shall accrue on the principal amount of the Loan based on an actual-days-elapsed/365 day counting convention. Capitalized Interest accruing on the principal amount of the Loan through December 31 of each year shall be added to the principal amount of the Loan on the following January 1 until the date which is _____ months prior to the date the first Loan Payment is due, at which time the amount of Capitalized Interest accruing since the previous January 1 shall be added to the principal amount of the Loan and no additional Capitalized Interest shall accrue. {Note: this assumes an amortization schedule where the payments are made at the end of the payment period]

The estimated principal amount of the Loan as of the date of the first Loan Payment is _____, which consists of the amounts scheduled to be disbursed to the Borrower in the amounts and at the times set forth in Disbursement Schedule attached hereto as Exhibit A (each such scheduled disbursement a "Disbursement") and [if applicable] \$_____ of estimated Capitalized Interest.

10.02. FINANCING RATE.

Interest shall accrue on the principal amount of the Loan at the Financing Rate (defined below) [Note: this assumes an amortization schedule where the payments are made at the end of the payment period]. The Financing Rate is _____% per annum, compounded annually, using an actual-days-elapsed/365 day counting convention, as indicated by the schedule of Loan Disbursement/Repayments attached hereto as Exhibit B.

10.03. LOAN DISBURSEMENTS.

The Department shall disburse the Loan to the Agency in the amounts and at the times set forth in the Disbursement Schedule (Exhibit A), provided that prior to each Disbursement, the Department receives a completed Disbursement Request Form substantially in the form of Exhibit C attached hereto and such other certificates or documents as the Department shall reasonably request from time to time upon 30 days written notice to the Agency.

Upon written request by the Agency, the Department may, in its sole and absolute discretion, amend the Disbursement Schedule to take into account unexpected events or reasonable adjustments to the financing of the Project, including, but not limited to, increases or decreases in the Disbursement amounts and acceleration or delays in the construction of the Project. The Department may, in its sole and absolute discretion, adjust the Loan Disbursement/Repayment Schedule attached hereto as Exhibit B to take into account the adjustments permitted by the previous sentence.

Under no circumstances shall the sum of the Disbursements to the Agency exceed _____ under this Agreement. Furthermore, the Department's obligation to fund any Disbursement is subject to funds being made available by an appropriation made pursuant to Florida law.

Notwithstanding anything herein to the contrary, any disbursement to be utilized for repayment of prior Agency indebtedness must be expended within 90 days of issuance of Applicable Tax-Exempt Bonds unless the Department shall receive a Bond Counsel Opinion, obtained at the Agency's expense, to the effect that such utilization will not adversely impact the tax status of such Applicable Tax-Exempt Bond.

10.04. LOAN REPAYMENTS.

Loan Repayments shall be made at the time and in the amounts set forth in the Loan Disbursement/Repayment Schedule attached hereto as Exhibit B. To the extent the actual principal amount of the Loan calculated as provided in Section 10.01 above is less than the estimated principal amount of the Loan as set forth in Section 10.01 hereof, the amount of the scheduled Loan Payment credited to principal shall increase and the Loan Payment Schedule shall be adjusted, so that the Loan is paid in full over a shorter amount of time. Notwithstanding

the foregoing, however, if the actual principal amount of the Loan calculated as provided in Section 10.01 above is less than the estimated principal amount of the Loan as set forth in Section 10.01, the parties to this Agreement hereby agree to adjust the Loan Payment Schedule in such a way as to not adversely impact any obligations of the Department secured by repayments under this Agreement.

Loan Repayments shall be credited first to interest accruing on the principal amount of the Loan, if any, then to principal.

ARTICLE XI – MISCELLANEOUS

11.01. THIRD PARTY AGREEMENTS

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 for the procurement of consultant services, construction or purchase of commodities contracts or amendments thereto, with any third party with respect to the Project without the prior written approval of the Department. Failure to obtain such approval from the Department shall be deemed a material breach of this Agreement, relieving the Department of any obligation to make Disbursements under this Agreement. 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. Such decisions shall be deemed final and binding on the Agency.

11.02. COMPLIANCE WITH CONSULTANT’S COMPETITIVE NEGOTIATION ACT.

Compliance with Consultants' Competitive Negotiation Act: The Agency’s Attorney shall certify to the Department that selection of consultants has been accomplished in compliance with the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, if and to the extent the Consultants' Competitive Negotiation Act applies to the procurement.

11.03. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY AND OBLIGATION.

It is the policy of the Department that disadvantaged business enterprises as defined in 49 CFR Part 23, as amended, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with funds disbursed by the Department under this Agreement.

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.

11.04. DISCRIMINATORY VENDOR.

Pursuant to Section 287.134(3)(a), Florida Statutes, the following is included in this Agreement. Section 287.134(2)(a), Florida Statutes: "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, proposals, or replies 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."

11.05. 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.

11.06. PROHIBITED INTERESTS.

Neither the Agency nor any of its contractors, subcontractors, consultants, or subconsultants shall enter into any contract with one another, or arrangement in connection with the Project or any property included or planned to be included in the Project, which violates any provision of Chapter 112, Florida Statutes, relating to conflicts of interest and prohibited transactions. The Agency shall further diligently abide by all provisions of Florida law regulating the Agency with respect to procurement, contracting, and ethics. The Agency shall insert in all contracts entered into in connection with the Project subsequent to the date hereof, and shall hereafter require its contractors and consultants to insert in each of their contracts the following provision:

"The Agency is governed in its contracts and transactions by provisions of Florida law relating to conflicts of interest, prohibited transactions, and ethics in government. All parties to contracts with the Agency relating to this project shall familiarize themselves with Chapter 112, Florida Statutes, and with general Florida law regulating the Agency's ethical requirements, prohibitions, and limitations with respect to procurement and contracts."

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.

11.07. ENVIRONMENTAL POLLUTION.

Execution of this 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.

11.08. NO OBLIGATION TO THIRD PARTIES.

Except to the extent set forth herein, neither the Department nor the Agency shall be obligated or liable hereunder to any person or entity not a party to this Agreement.

11.09. WHEN RIGHTS AND REMEDIES NOT WAIVED.

In no event shall the making by the Department of any Disbursement 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 Disbursement 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.

11.10. 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 Loan established hereunder.

11.11. USE AND MAINTENANCE OF PROJECT.

The Agency agrees that the Project facility and equipment will be used by the Agency to provide or support public transportation for the period of the useful life of such facility and equipment as determined in accordance with general accounting principles. The Agency further agrees to maintain the Project facility and equipment in good working order for the useful life of said facility or equipment, and maintain property records, conduct physical inventories, and develop control systems.

11.12. INDEMNITY.

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

If the Department receives 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 Department's failure to promptly notify the Agency of a claim will not act as a waiver or any right herein.

11.13. PLANS AND SPECIFICATIONS.

In the event that this Agreement involves the purchasing of capital equipment or the constructing and equipping of a facility, the Agency shall design and construct the equipment and/or facility in accordance with the standards applicable to the Agency. Failure to follow the

plans and specifications shall be sufficient cause for delays in the distribution of disbursements by the Department.

11.14. PROJECT COMPLETION, AGENCY CERTIFICATION.

Upon completion of the Project, the Agency will certify in writing that the Project (or expending of the Loan) was completed in accordance with applicable plans and specifications and that the Project is accepted by the Agency as suitable for the intended purpose.

11.15 THIRD PARTY BENEFICIARY.

To the extent this Agreement confers upon or grants to the Division any right, remedy, or claim hereunder, the Division is hereby recognized as being a third party beneficiary hereunder and may enforce any such right, remedy or claim given or granted hereunder.

11.16. ENTIRE AGREEMENT.

The Loan Application executed by the Agency, all exhibits, attachments and schedules attached to the Loan Application, and this Agreement ("the Agreement Documents") sets forth the entire agreement between the parties and incorporate and supercede all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and therein, and the parties hereto agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in the Agreement Documents. Accordingly, it is agreed that no deviation from the terms of the Agreement Documents shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms and conditions contained in the Agreement Documents shall be effective unless contained in a written document executed by the parties hereto.

It is further agreed that the Department will have no obligation to honor any request for disbursement made by the Agency or otherwise make any disbursement under this agreement in the event that the Department has notified the Agency that an event of default has occurred under this or any other agreement between the Agency and the Department, or if the Department, in its sole discretion, determines that events have occurred which substantially diminish the likelihood that the Agency will timely and fully honor its obligations under this agreement or any other agreement between the Department and the Agency. Any waiver of this provision by disbursement following an event of default by the Agency under the terms of this agreement, or any other agreement between the Agency and the Department, will not constitute a continuing waiver of this provision and the Department may refuse to make further disbursements without any liability to the Agency whatsoever.

In the event of conflict between the terms and conditions of the Agreement Documents: (i) the terms and conditions contained in the body of this Agreement prevail over conflicting terms and conditions contained in any exhibits, schedules and attachments attached to this Agreement; (ii) the terms and conditions contained in the body of the Loan Application prevail over any conflicting terms and conditions contained in any exhibits, schedules and attachments attached to the Loan Application; and (iii) the terms and conditions of the Agreement, including all exhibits, schedules and attachments hereto, prevail over conflicting terms and conditions contained in the Loan Application and any exhibits, schedules and attachments thereto.

11.17. NOTICES.

Any notice, demand, request or other instrument which is required to be given under this Agreement in writing shall be delivered to the following addresses:

If to the Department: SIB Program Manager
Florida Department of Transportation
Office of Comptroller – Project Finance
605 Suwannee Street, MS #10
Tallahassee, Florida 32399-0450

If to Agency: _____

11.18. E-VERIFY

The Agency shall utilize the U.S. Department of Homeland Security’s E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

All persons employed by the Agency during the term of this Agreement to perform employment duties within Florida; and

All persons, including subcontractors, assigned by the Agency to perform work pursuant to this Agreement.

ARTICLE XII - EXECUTION OF AGREEMENT

This Agreement shall be executed in three or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Department has caused this Agreement to be executed on its behalf by its Secretary and the Agency has caused this Agreement to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this Agreement shall be the Agreement Date.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Secretary

Legal

[AGENCY]

Its:

Attest

I attest to the opinion expressed in Section 2.03, entitled Legal Authorization, and as to form and legal sufficiency.

Its:

Agency

SEAL

EXHIBIT A

Disbursement Schedule Form

Total SIB Loan Amount: _____

Total SIB Commitment: _____

SIB Estimated Disbursement Schedule:

| <u>Fiscal Year</u> | <u>Amount</u> | <u>Balance</u> |
|--------------------|---------------|----------------|
|--------------------|---------------|----------------|

Based on agency application, estimated annual expenditures and the Department's historical cash flow rates.

EXHIBIT B

Loan Disbursement/Repayment Schedule

| ??? | | | | | | | | | |
|-------------|------|-------------------|-------------------------------|------------------------------|----------------------------|------------------------|-----------------------|-----------------|----------------|
| ??? | | | | | | | | | |
| Fiscal Year | Date | Beginning Balance | Estimated/Actual Disbursement | Interest Accrued at ?.??% | Balance Including Interest | Repayment to Principal | Repayment to Interest | Total Repayment | Ending Balance |
| | | | | | | | | | |
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| | | | | | | | | | |
| | | | \$0.00 | \$0.00 | | | \$0.00 | \$0.00 | \$0.00 |

Interest begins accruing with the first disbursement and will accrue and compound annually each October 1 thereafter, until loan is completely repaid.

These calculations assume the following disbursement dates:

FY 2015 \$0.00
 FY 2016 \$0.00
 FY 2017 \$0.00

If disbursements are made on dates other than those above, the interest calculations will be modified and this schedule updated according.

Total Loan Amount \$0.00
 Total Interest \$0.00
 Total Repayments \$0.00

Remit Payment to:

Mailing Address: Florida Department of Transportation
 Office of the Comptroller
 605 Suwannee Street, MS #42
 Tallahassee, FL 32399-0450

Note on Payment for "FDOT SIB Loan - ???

Mailing Address: State Board of Administration of Florida
 Post Office Box 13300
 Tallahassee, FL 32317-3300

Street Address: State Board of Administration of Florida
 1801 Hermitage Boulevard, Suite 100
 Tallahassee, FL 32308

Wiring Instructions: Bank of America
 ABA #0260-0959-3
 Credit: State Board of Administration
 Account #: 003660048119

Note on Payment for "FDOT SIB Loan - ???

EXHIBIT C

Disbursement Request Form

| | |
|---|---------------|
| VENDOR NAME: | FEC PEVT, LLC |
| TOTAL SIB LOAN AMOUNT: | \$ _____ |
| DATE OF THIS DISBURSEMENT REQUEST: | _____ |
| DISBURSEMENT/INVOICE NUMBER: | _____ |
| AMOUNT REQUESTED FOR THIS DISBURSEMENT: | \$ _____ |
| BALANCE OF LOAN TO BE DISBURSED: | \$ _____ |
| FINANCIAL PROJECT NUMBER: | _____ |
| VENDOR IDENTIFICATION NUMBER: | _____ |
| CONTRACT NUMBER: | _____ |
| DRAW PERIOD RELATED TO THIS REQUEST: | _____ |

Warrant should be disbursed to:

| | |
|---------------------------|-------|
| Vendor Name: | _____ |
| | _____ |
| Address: | _____ |
| | _____ |
| Contact Person: | _____ |
| Contact Title: | _____ |
| Contact Telephone Number: | _____ |
| Contact E-Mail Address: | _____ |

Per Section 10.03 Loan Disbursements of the State Infrastructure Bank Loan Agreement, I certify, to the best of my knowledge, \$ _____ in expenses is needed on the FEC PEVT, LLC Intermodal Container Transfer Facility project and these costs are eligible for advancement/reimbursement and use of the SIB funds.

Signature

Printed Name and Title

EXHIBIT D

Summary Project Specifications

EXHIBIT E

Continuing Disclosure Agreement

FORM OF CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “Disclosure Agreement”) is executed and delivered by _____ (the “Agency”) in connection with the execution of that certain Loan Agreement dated _____ by and between the Department and the Agency (the “Loan Agreement”). This Disclosure Agreement is being executed and delivered pursuant to Paragraph 15 of Section 2.01 of the Loan Agreement. The Agency hereby covenants and agrees as follows:

SECTION 1. PURPOSE OF THE DISCLOSURE AGREEMENT. This Disclosure Agreement is being executed and delivered by the Agency to the Department in order to assist the Department in fulfilling its disclosure obligations under applicable rules of the Securities and Exchange Commission (the “SEC”) and to assist in complying with SEC Rule 15c2-12 (the “Rule”).

SECTION 2. DEFINITIONS. The definitions set forth in the Loan Agreement apply to any capitalized term used in this Disclosure Agreement.

SECTION 3. CONTINUING DISCLOSURE. (A) Information To Be Provided. The Agency assumes all responsibilities for any continuing disclosure as described below. The Agency hereby agrees to provide or cause to be provided the information set forth below, or such other information as the Department may reasonably require to be provided, from time to time, in order to comply with the Rule and other applicable SEC rules.

(1) Financial Information and Operating Data. For fiscal years ending on June 30, 2011 and thereafter, annual financial information and operating data shall be provided within six months after the end of the State’s Fiscal Year. Such information shall include:

- (a) Information pertaining to the Pledged Revenues, including but not limited to historical and projected collections and material events affecting the collection of Pledged Revenues;
- (b) Information pertaining to the Loan, including but not limited to historical and projected debt service coverage;
- (c) Information pertaining to the Project, including but not limited to the extent to which Project milestones have deviated scheduled completion dates, any changes in anticipated Project completion dates, and any material events affecting the completion or projected use of the Project; and
- (d) Information pertaining to the computation of debt service coverage ratios.

(2) Audited Financial Statement. If not submitted as part of the annual financial information, a copy of the Agency’s audited financial statements, prepared in accordance with generally accepted accounting principles, will be provided when and if available.

(3) Material Events Notices. Notice of the following events relating to the Loan Agreement will be provided in a timely manner:

- (a) principal and interest payment delinquencies;
- (b) non-payment related defaults;
- (c) unscheduled draws on Loan Agreement reserves, if any, reflecting financial difficulties;
- (d) unscheduled draws on Loan Agreement credit enhancements, if any, reflecting financial difficulties;
- (e) substitution of credit or liquidity providers, or their failure to perform;
- (f) adverse tax opinions received by the Agency or events within the reasonable knowledge of the Agency affecting the tax-exempt status of Applicable Tax Exempt Bonds;
- (i) defeasance of the Loan Agreement;
- (j) release, substitution or sale of property securing repayment of the Loan Agreement;
- (k) any change in any credit rating of the Agency.

(4) Failure to Provide Annual Financial Information; Remedies.

Failure of Agency to provide the information required at the time and in the manner provided herein shall constitute an event of default under the Loan Agreement.

(5) Methods of Providing Information.

All information described herein shall be provided to the Department as follows:

- (a) electronic facsimile transmissions confirmed by first class mail, postage prepaid;
- (b) overnight delivery service;
- (c) electronic delivery;
- (d) first class mail, postage prepaid;
- (e) any other delivery method generally acceptable in the tax-exempt bond market; or
- (e) by whatever means are mutually acceptable to the Department or its designated agent and the entity to which it is to be provided.

Where applicable, the following address for the Department may be used until further notice to the Agency provided as set forth in the Loan Agreement:

Florida Department of Transportation
Office of Comptroller – Project Finance
605 Suwannee Street, MS #10
Tallahassee, Florida 32399-0450
Attention: SIB Program Manager

(C) If this Disclosure Agreement is amended to change the operating data or financial information to be disclosed, the annual financial information containing amended operating data or financial information will explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

(D) The Agency's obligations hereunder shall continue until such time as Agency's obligations under the Loan Agreement have terminated.

(E) This Disclosure Agreement may be amended or modified by mutual consent of the Agency and the Department so long as any such amendments are not violative of any rule or regulation of the SEC or MSRB, or other federal or state regulatory body.

SECTION 4. ADDITIONAL INFORMATION. If, when submitting any information required by this Disclosure Agreement, the Agency chooses to include additional information not specifically required by this Disclosure Agreement, the Agency shall have no obligation to update such information or include it in any such future submission.

Dated this ____ day of _____, 2012

AGENCY

By: _____

EXHIBIT F
FORM OF
NON-ARBITRAGE CERTIFICATE

I, the undersigned, hereby certify that I am a duly qualified and acting officer of the _____ ("Agency"), and that in my official capacity as such officer, I am responsible for executing and delivering on behalf of the Agency that certain State Infrastructure Bank Loan Agreement between the Agency and the State of Florida Department of Transportation, dated as of _____, 2012, (the "Loan Agreement"). This Certificate is being issued pursuant to Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and Treasury Regulations, Sections 1.148-0 through 1.148-11 and 1.150-1 and 1.150-2 (the "Regulations"). The following facts, estimates and circumstances are in existence on the date of this Certificate or are reasonably expected to occur hereafter. Capitalized terms not defined herein have the meanings ascribed to them in the Loan Agreement.

1. The Loan Agreement will provide for the financing by the Agency of the acquisition of the Project described in the Loan Agreement. Pursuant to the Loan Agreement, the Agency will be required to make Loan Repayments, comprising principal and interest, on the dates and in the amounts set forth in applicable Schedules to the Loan Agreement.

2. The Project will be acquired and implemented with due diligence, and it is expected that at least 85 percent of the spendable proceeds of a Disbursement will be allocated to the cost of Project on the date of the Disbursement and in any event within three years from the date thereof.

3. Not more than 50 percent of the unexpended proceeds of a Disbursement will be invested in obligations having a substantially guaranteed yield for four years or more.

4. The proceeds of any Disbursement under the Loan Agreement, and the interest to be earned thereon, will not exceed the amount necessary for the purpose for which the Disbursement is requested.

5. The interest of the Agency in the Project has not been and is not expected during the term of the Loan Agreement to be sold or disposed of by the Agency.

6. No sinking fund is expected to be created by the Agency with respect to the Loan Repayments.

7. For purposes of this certificate, "yield" has the meaning ascribed to it under the Regulations pertaining to obligations issued under Section 103 of the Code.

8. The Agency hereby covenants to comply with all requirements of the Code and Regulations relating to the rebate of arbitrage profit to the United States of America. It is expected that all gross proceeds of the financing derived from each Disbursement will be expended on and allocated to the Project no later than the day which is six months after the date of each Disbursement.

9. Neither the proceeds of the financing nor the Project financed therewith shall be used for any "private business use" within the meaning of Section 141(b)(6) of the Code. No proceeds of the financing will be used to make or finance a loan to another person.

10. The payment of Loan Repayments is not guaranteed, directly or indirectly, in whole or in part by the United States or any agency or instrumentality thereof, nor is it otherwise federally guaranteed within the meaning of Section 149(b) of the Code.

11. There are no other obligations of the Agency that (i) are being sold within 15 days of the date of the Loan Agreement; (ii) are being sold pursuant to a common plan of financing together with the Loan Agreement; and (iii) will be paid out of substantially the same source of funds as the Loan Agreement.

12. To the best of the knowledge and belief of the undersigned, the expectations of The Agency, as set forth above, are reasonable, and there are no present facts, estimates and circumstances which would change the foregoing expectations.

13. The Agency has not been notified of the listing or proposed listing of it by the Internal Revenue Service as an issuer whose arbitrage certificates may not be relied upon.

WITNESS my hand this _____ day of _____, 2012

AGENCY

Name:

Title: