



TO: SELENA GRIFFETT, PROJECT ENGINEER, ENGINEERING
FROM: ANDREA H. DUENAS, ASSISTANT CITY ATTORNEY **AHD**
THROUGH: SARA HEDGES, CITY ATTORNEY *SH*
RE: REVIEW OF FDOT PROVIDED STATE FUNDED GRANT AGREEMENT FOR EXECUTION
CAO RLS FILE: 24-105
DATE: MARCH 21, 2024

This office previously reviewed two documents: (1) a State Funded Grant Agreement provided by the FDOT and (2) the adopting Resolution. This office was unable to approve the Resolution or Exhibit A to the SFGA, and asked Staff to clarify the project description and make necessary corrections. [RLS 24-46, memo attached]

The present RLS seeks review of the revised Resolution and revised Exhibit A to the SFGA.

Exhibit A to the SFGA is approved as to form and correctness. This office previously approved the remainder of the SFGA as to form and correctness so the entire SFGA with revised Exhibit A is now approved.

I have made suggested changes to the Resolution. It is uploaded to AgendaQuick as a Track Changes version. I also uploaded a Clean Copy version that is approved as to form and correctness.

When you are putting the Resolution together for the City Commission to approve, the SFGA (with exhibits including the approved Exhibit A) should be attached as Exhibit 1.

If you have any questions about how to proceed, please do not hesitate to contact this office.

/ahd



TO: SELENA GRIFFETT, PROJECT ENGINEER, ENGINEERING
FROM: ANDREA H. DUENAS, ASSISTANT CITY ATTORNEY **AHD**
THROUGH: SARA HEDGES, CITY ATTORNEY **SH**
RE: REVIEW OF FDOT-PROVIDED STATE FUNDED GRANT AGREEMENT FOR EXECUTION
CAO RLS FILE: 24-46
DATE: MARCH 7, 2024

This Request for Legal Services seeks approval of two documents: (1) a State Funded Grant Agreement provided by the FDOT and (2) the adopting Resolution.

I have reviewed the RLS; the proposed State Funded Grant Agreement with its Exhibits (the "SFGA"); the proposed Resolution; and the Local Funding Initiative Request which I understand constituted the City's application for the grant (the "Application").

I am unable to approve the SFGA or the Resolution as submitted because of discrepancies in the project description. The discrepancies I noted include:

- Referring to 29th Street as "S 29th Street" on some documents and "N. 29th Street" on others;
- Describing the project as including "**construction** of concrete pavers" on Exhibit A to the SFGA and **removal** of concrete paver intersection on the Application;
- Describing the project as including "stamped asphalt **at intersections**" on Exhibit A to the SFGA and "stamped asphalt **crosswalks**" on the Application;
- Including the reconstruction of US1 to Indian River Drive on the Application and omitting any reference to reconstruction of US1 from the other three documents.

I am attaching Exhibit A of the SFGA to this memo. Staff should scrutinize it carefully and if the Project Description is not accurate, suggested corrections should be forwarded to FDOT.

I made two minor changes to the adopting Resolution which I have uploaded to AgendaQuick in Word. In addition to these changes, Staff should review the project description in the opening paragraph for accuracy as it refers to **South** 29th Street which may or may not describe the project.

Once you have confirmed (or corrected) the project description in Exhibit A to the SFGA, please resubmit that Exhibit for final approval. Once you have accepted the changes I made to the Resolution and confirmed (or corrected) the project description in the opening paragraph, please resubmit for final approval.

The remainder of the SFGA is approved as to form and correctness. As this is a "Standard Form" for the FDOT, it includes some provisions that you should be aware of. The remainder of this memo focuses on those provisions:

1. The City is obligated to complete the project even if the agreement has expired and funding is potentially no longer available.
2. The FDOT may terminate the agreement “any time the interest of the Department requires such termination.” The City does not have this right. The City can only terminate the agreement if the FDOT agrees to termination.
3. As written, the project needs to be completed and all grant funds disbursed to the City during 2024.
4. Paragraph 7 entitled “Compensation and Payment” refers to project “deliverables” which are supposedly described in Exhibit A. While Exhibit A describes the project in broad terms, it does not describe discrete deliverables. I recommend careful review of Exhibit A to make sure the City understands the project “deliverables,” and also careful review of Paragraph 7 of the SFGA, so the City is aware of when/how it will be entitled to disbursement of grant funds.
5. In order to receive any funds under the SFGA, the City must comply with (and may be required to certify compliance with) the following Florida Statutes (which I uploaded to AgendaQuick):
 - a. Florida Statutes section 287.057 which discusses the competitive solicitation process requirement.
 - b. Florida Statutes section 287.055 which addresses the hiring of professional consultants under the Consultants’ Competitive Negotiation Act.
 - c. Florida Statutes section 255.0991 which prohibits certain local government preferences.
6. The SFGA mandates that the City adhere to the Department’s “Conflict of Interest Procedure” (FDOT Topic No. 375-030-006). I recommend that Staff obtain a copy of the referenced Conflict of Interest Procedure and thereafter ensure compliance therewith.
7. Because the size of the grant (\$1.5 million) exceeds the State’s audit threshold, the “Single Audit Act” applies (section 215.97, F.S., uploaded to AgendaQuick). The City must have an audit conducted for 2024 and must submit a financial reporting package. The City must retain its records demonstrating compliance with the SFGA for five years from the date the audit report is issued. Exhibit J to the SFGA contains a link with guidance and additional information regarding compliance with the Single Audit Act.
8. Paragraph 13 of the SFGA contains restrictions with regard to labor. Under this paragraph:
 - a. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the FDOT to be a “non-

responsible contractor” may not submit a bid or perform work on a contract with the City.

- b. The City must use the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of **all new employees hired by the City** during the term of the contract.
 - c. The City must expressly require its contractors and subcontractors performing work pursuant to the SFGA to likewise use the E-Verify system .
9. Paragraph 14-c contains language regarding indemnification and insurance that the City must include in all contracts with contractors, consultants, etc. who perform work in connection with the SFGA.
10. Paragraph 15-h mandates that the City comply with Florida Statutes section 20.055(5) which requires the City to “cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section,” and also requires that the City include in “each contract, bid, proposal, and application or solicitation for a contract . . . a statement that the corporation, partnership, or person understands and will comply with this subsection.”

If you have any questions about how to proceed, please do not hesitate to contact this office.

EXHIBIT A

PROJECT DESCRIPTION AND RESPONSIBILITIES

FPN: 453170-1-54-01

This exhibit forms an integral part of the Agreement between the State of Florida, Department of Transportation and
The City of Fort Pierce (the Recipient)

PROJECT LOCATION:

- The project is on the National Highway System.
- The project is on the State Highway System.

PROJECT LENGTH AND MILE POST LIMITS: 1.666 Miles; Roadway ID #94000017 BMP 0.00 to EMP 1.404 and Roadway ID #94500001 BMP 0.437 to EMP 0.699.

PROJECT DESCRIPTION: Avenue D Road Improvements from N. 29th Street to US-1: Project includes milling and resurfacing of roadway, construction of concrete pavers, and stamped asphalt at intersections.

The Recipient shall provide completed signed and sealed plans, including but not necessarily limited to roadway and signing and marking plans.

Project plans shall be produced in accordance with the design criteria and standards that are outlined for Class D Projects. The Recipient is required to use Florida Greenbook or an approved minimum design standard(s) that conform with the minimum criteria as outlined in the Florida Greenbook. The recipient is required to ensure specifications are approved in advance.

The Recipient shall be responsible for coordinating, preparing, and holding all Project public involvement meetings as required per the Department's guidelines and procedures.

SPECIAL CONSIDERATIONS BY RECIPIENT:

The Recipient is required to provide a copy of the design plans for the Department's review and approval to coordinate permitting with the Department, and notify the Department prior to commencement of any right-of-way activities.

The Recipient will not be reimbursed for cost that are incurred before the execution of this agreement.

The Recipient shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

- a) Construction to be completed by June 30, 2026.

If this schedule cannot be met, the Recipient will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of funding.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

Issuance of FDOT Notice to Proceed for Construction activities such as project advertisement and contract award is subject to the submittal and approval of the agency production package. To be included; the 100% final plans, specifications, and estimates with all work shown within the right of way and applicable permits.