

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

**COUNTY INCENTIVE GRANT PROGRAM AGREEMENT
(City Letting)**

This is an Agreement by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "**DEPARTMENT**", and **PALM BEACH** County, hereinafter referred to as the "**COUNTY**", and **CITY OF BOCA RATON**, hereinafter referred to as the "**CITY**".

WITNESSETH

WHEREAS, the **DEPARTMENT** has the authority, under Section 334.044, Florida Statutes, to enter into this Agreement; and

WHEREAS, the County Incentive Grant Program has been created by Section 339.2817, Florida Statutes, to provide grants to counties to improve a transportation facility which is located on the State Highway System or which relieves traffic congestion on the State Highway System; and

WHEREAS, the **COUNTY** has certified to the **DEPARTMENT** that it has met the eligibility requirements of said Section 339.2817, Florida Statutes; and

WHEREAS, the **DEPARTMENT** is willing to provide the **COUNTY** with financial assistance under Financial Project No. 419672-1-58-01 for **DEPLOYMENT OF DYNAMIC MESSAGE SIGNS (DMS) ON STATE ROADS**, hereinafter referred to as the "**PROJECT**," in accordance with Section 339.2817, Florida Statutes; and

WHEREAS, the **COUNTY** does hereby assign all of its interests and obligations, financial and otherwise, in the oversight and management of the **PROJECT** to the **CITY**; and

WHEREAS, the **DEPARTMENT** agrees to the assignment by the **COUNTY** to the **CITY** as stated above; and

WHEREAS, the **COUNTY** by Resolution No. _____ dated the ____ day of _____, _____, a copy of which is attached hereto and made a part hereof, has authorized the Chairman of its Board of Commissioners to enter into this Agreement.

WHEREAS, the **CITY** by Resolution No. _____ dated the ____ day of _____, _____, a copy of which is attached hereto and made a part hereof, has authorized the Chairman of its City Council to enter into this Agreement.

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

1-SERVICES AND PERFORMANCE

A. The CITY shall furnish the services with which to construct the PROJECT. Said PROJECT consists of: PLANNING, DESIGN, EQUIPMENT PROCUREMENT, CONSTRUCTION, AND CONSTRUCTION ENGINEERING INSPECTION (CEI) SERVICES.

B. The CITY agrees to undertake the construction of the PROJECT in accordance with all applicable federal, state and local statutes, rules and regulations, and standards. The CITY shall be responsible for obtaining clearances/permits required for the construction of the PROJECT from the appropriate permitting authorities. Upon completion of the PROJECT, the CITY shall certify to the DEPARTMENT that the PROJECT has been completed in accordance with the applicable standards, statutes, rules and regulations in writing.

C. The DEPARTMENT will be entitled at all times to be advised, at its request, as to the status of work being done by the CITY and of the details thereof. Coordination shall be maintained by the CITY with representatives of the DEPARTMENT. CITY shall provide the DEPARTMENT with quarterly progress reports.

D. i) For projects located on the State Highway System, the DEPARTMENT must approve any consultant and/or contractor scope of services including project budget. CITY shall obtain DEPARTMENT approval of plans and specifications prior to bidding the project. This provision applies only to projects located on the State Highway System.

ii) The CITY must certify that the consultant has been selected in accordance with the Consultants Competitive Negotiation Act (Section 287.055, Florida Statutes). Contractor must be prequalified by the DEPARTMENT as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2000), as amended.

E. The CITY shall not sublet, assign, or transfer any work under this Agreement without the prior written consent of the DEPARTMENT.

F. All notices under this Agreement shall be directed to the following addresses:

TO DEPARTMENT:	TO CITY:
Leos A. Kennedy, Jr.	T. Douglas Hess, P.E.
Florida Department of Transportation	City of Boca Raton
3400 W. Commercial Blvd.	201 W. Palmetto Park
Fort Lauderdale, FL 33309	Boca Raton, FL 33432-3795

2-TERM

A. Except as otherwise set forth herein, this AGREEMENT shall continue in effect and be binding to both the COUNTY, CITY, and the DEPARTMENT until the Project is completed as evidenced by the written acceptance of the DEPARTMENT or June 30, 2007, whichever occurs first.

B. This Agreement shall not be renewed. Any extension shall be in writing and executed by both parties, and shall be subject to the same terms and conditions set forth in this Agreement.

3-COMPENSATION AND PAYMENT

A. The parties agree that the estimated total project costs are **ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00)**. The parties further agree that the **DEPARTMENT'S** maximum participation is **SIXTY THOUSAND DOLLARS (\$60,000.00)**, for equipment procurement, construction, and CEI services. All remaining costs of the project will be borne by the **CITY**.

i) The **CITY** shall submit one invoice (4 copies) plus supporting documentation required by the **DEPARTMENT** to the Project Manager for approval and processing:

_____ - monthly, or

XX - quarterly, or

_____ - once the **PROJECT** has been accepted by the **CITY** and approved by the **DEPARTMENT**.

ii) Any provisions for an advance payment are provided in an Exhibit attached to this agreement.

iii) In the event the **CITY** proceeds with the construction and construction engineering inspection services (CEI) of the **PROJECT** with its own forces, the **CITY** will only be reimbursed for direct costs (this excludes general and administrative overhead).

iv) All costs charged to the **PROJECT** shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

B. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the **DEPARTMENT'S** Comptroller under Section 334.044 (29), Florida Statutes.

C. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.

D. The **COUNTY** must submit the final invoice to the **DEPARTMENT** within 180 days after the final acceptance of the project. Invoices submitted after the 180-day time period will not be paid.

E. The **DEPARTMENT'S** obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

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

G. Travel costs will not be reimbursed.

H. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who

may be experiencing problems in obtaining timely payments(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the Department of Financial Service's Hotline, at 1-800-848-3792.

I. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the **DEPARTMENT** at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the **DEPARTMENT** upon request. Records of costs incurred include the **CITY'S** general accounting records and the project records, together with supporting documents and records of the **CITY** and all subcontractors performing work on the project, and all other records of the **CITY** and subcontractors considered necessary by the **DEPARTMENT** for a proper audit of costs.

J. 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 one 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 TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than one year.

K. It is unlawful for the board of county commissioners to expend or contract for the expenditure in any fiscal year more than the amount budgeted in each fund's budget, except as provided herein, and in no case shall the total appropriations of any budget be exceeded, except as provided in s. 129.06, and any indebtedness contracted for any purpose against either of the funds enumerated in this chapter or for any purpose, the expenditure for which is chargeable to either of said funds, shall be null and void, and no suit or suits shall be prosecuted in any court in this state for the collection of same, and the members of the board of county commissioners voting for and contracting for such amounts and the bonds of such members of said boards also shall be liable for the excess indebtedness so contracted for. Section 129.07, Florida Statutes.

L. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

4-INDEMNITY AND INSURANCE

A. i) To the extent allowed by law, the **COUNTY** and **CITY** 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 act, error, omission, or negligent act by the **COUNTY, CITY**, their respective agents, or employees, during the performance of the Agreement, except that neither the **COUNTY, CITY**, or their respective agents, and/or employees will be liable under this paragraph for any claim, loss, damages, cost, charge, or expense arising out of act, error, omission, or negligent act by the **DEPARTMENT**, or any of its officers, agents, or employees, during the performance of the Agreement.

ii) When either party receives notice of claim for damages that may have been caused by the other party in the performance of services required under this Agreement, that party will immediately forward the claim to the other party. Each party will evaluate the claim, and report its findings to each other within fourteen (14) working days and jointly discuss options in defending the claim. A party's failure to promptly notify the other of a claim will not act as a waiver or any right herein.

iii) The **COUNTY** and **CITY** agree to include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement:

"The contractors, subcontractors, consultants, and/or subconsultants, shall indemnify, defend, save, and hold harmless the **DEPARTMENT** and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor, its officers, agents, or employees. Neither the contractor/consultant, nor any of its officers, agents, or employees will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of the **DEPARTMENT** or any of its officers, agents, or employees."

B. **LIABILITY INSURANCE.** The **CITY** shall carry and keep in force during the period of this Agreement a general liability policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$100,000 per person and \$300,000 each occurrence, and property damage insurance of at least \$50,000 each occurrence, for the services to be rendered in accordance with this Agreement. However, in the event the **CITY** maintains a self-insurance fund to cover such liability, the **CITY** agrees to maintain sufficient reserves in the fund to pay the above-described liability limits. In addition to any other forms of insurance or bonds required under the terms of this Agreement, the **CITY** must comply or cause its contractor to comply with Section 7-13 of the **DEPARTMENT'S** Standard Specifications for Road and Bridge Construction (2000), as amended.

C. **WORKERS' COMPENSATION.** The **CITY** shall also carry and keep in force Workers' Compensation insurance as required for the State of Florida under the Workers' Compensation Law.

5-COMPLIANCE WITH LAWS

A. The **CITY** shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **CITY** in conjunction with this Agreement. Failure by the **CITY** to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the **DEPARTMENT**.