

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**.

B. The **CITY** shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

C. No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch, or a state agency.

D. The **COUNTY, CITY,** and the **DEPARTMENT** agree that the **COUNTY, CITY,** and their respective agents, employees, contractors, subcontractors, consultants, and/or subconsultants are not agents of the **DEPARTMENT** as a result of this Agreement for purposes other than those set out in Section 337.274, Florida Statutes.

E. Recipients of state funds are to have audits done annually using the following criteria:

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

In the event that the recipient expends a total amount of State awards (i.e., State financial assistance provided to the recipient to carry out a State project) 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 Comptroller, and Chapter 10.600, Rules of the Auditor General.

In connection with the audit requirements addressed in the paragraph above, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a reporting package as defined by Section 215.97(2)(d), Florida Statutes, and Chapter 10.600, Rules of the Auditor General.

If the recipient expends less than \$500,000 in State awards 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 awards 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 non-State funds (i.e., the cost of such an audit must be paid from recipient funds obtained from other than State entities).

Reporting Packages and management letters generated from audits conducted in accordance with Section 215.97, Florida Statutes, and Chapter 10.600, Rules of the Auditor General shall be submitted to the awarding FDOT office, by the recipient, within 30 days of receiving it. The aforementioned items are to be received by the appropriate FDOT office no later than 9 months after the end of the recipient's fiscal year.

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

Project records shall be retained and available for at least 5 years from the date the audit report is issued. 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 workpapers shall be given FDOT, the Comptroller, and the Office of the Auditor General.

The recipient shall submit required audit documentation as follows:

A Financial Reporting Package of audits conducted in accordance with Section 215.97, Florida Statutes, and *Chapter 10.600, Rules of the Auditor General* shall be sent to:

State of Florida Auditor General
Room 401, Pepper Building
111 West Madison Street
Tallahassee, FL 32302-1450

6-TERMINATION AND DEFAULT

The **DEPARTMENT** may terminate this Agreement, upon sixty (60) days written notice, at any time the interest of the **DEPARTMENT** requires such termination, as follows:

A. If the **DEPARTMENT** determines that the performance of the **CITY** is not satisfactory, the **DEPARTMENT** shall have the option of (a) immediately terminating the Agreement, or (b) notifying the **CITY** of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by the **DEPARTMENT**.

B. If the **DEPARTMENT** requires termination of the Agreement for reasons other than unsatisfactory performance of the **CITY**, the **DEPARTMENT** shall notify the **CITY** of such termination, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

C. If the Agreement is terminated before performance is completed, the **CITY** shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress will become the property of the **DEPARTMENT** and will be turned over promptly by the **CITY**.

7-MISCELLANEOUS

A. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

B. The **DEPARTMENT** shall not be obligated or liable hereunder to any party other than the **CITY**.

C. In no event shall the making by the **DEPARTMENT** of any payment to the **CITY** 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 **CITY**, and the making of such payment by the **DEPARTMENT** while any such breach or default exists shall in no way impair or prejudice any right or remedy available to the **DEPARTMENT** with respect to such breach or default.

D. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the

parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

E. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect provided that the part of this Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.

F. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue of any judicial proceedings arising out of this Agreement shall be in Broward County, Florida.

G. This Agreement shall be effective upon execution by both parties and shall continue in effect and be binding on the parties until the PROJECT is completed as evidenced by the written acceptance of the DEPARTMENT or June 30, 2007, whichever occurs first or terminated in accordance with Paragraph 6.

H. An entity or affiliate which has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

IN WITNESS WHEREOF, the COUNTY has caused this Agreement to be executed in its behalf this ____ day of _____, _____, by the Chairman of the Board of Commissioners, authorized to enter into and execute same by Resolution Number _____ of the Board on the ____ day of _____, _____, the CITY has caused this Agreement to be executed in its behalf this day of _____, _____, by the Chairman of the City Council, authorized to enter into and execute same by Resolution Number _____ of the Board on the ____ day of _____, _____, and the DEPARTMENT has executed this Agreement through its District Secretary for District _____, Florida Department of Transportation, this _____ day of _____, _____.

PALM BEACH COUNTY, FLORIDA

ATTEST: _____ (SEAL)
CLERK

BY: _____
CHAIRMAN, BOARD OF
COUNTY COMMISSIONERS

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY


COUNTY ATTORNEY

CITY of BOCA RATON, FLORIDA

ATTEST Sharma A
Caramante (SEAL)
CLERK

BY: [Signature]
~~CHAIRMAN, CITY COUNCIL~~
Mayor

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

ATTEST: _____ (SEAL)
EXECUTIVE SECRETARY

BY: _____
DIRECTOR TRANSPORTATION
DEVELOPMENT
DISTRICT _____

NAME: _____

DOT Legal Review:

Approved as to Terms
and Conditions

Availability of Funds Approval:

By: [Signature]

(Date)