

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Cost	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	-0-				

ADDITIONAL FTE POSITIONS (Cumulative)

Is Item Included in Current Budget? Yes X No
 Budget Account No.: Fund Agency Org. Object
 Reporting Category

B. Recommended Sources of Funds/Summary of Fiscal Impact:

This item has no fiscal impact.

[Handwritten Signature]

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:
 Construction of a grade separation is included in the Five Year Road Program.

[Handwritten Signature] 4-11-07
 OFMB
 4-11-07
 [Stamp: 4/19/07]

[Handwritten Signature] 4/12/07
 Contract Dev. and Control
 4/12/07
 At the time of CDC's review, the Agreement was a draft.

B. Legal Sufficiency:

[Handwritten Signature] 4/22/07
 Assistant County Attorney

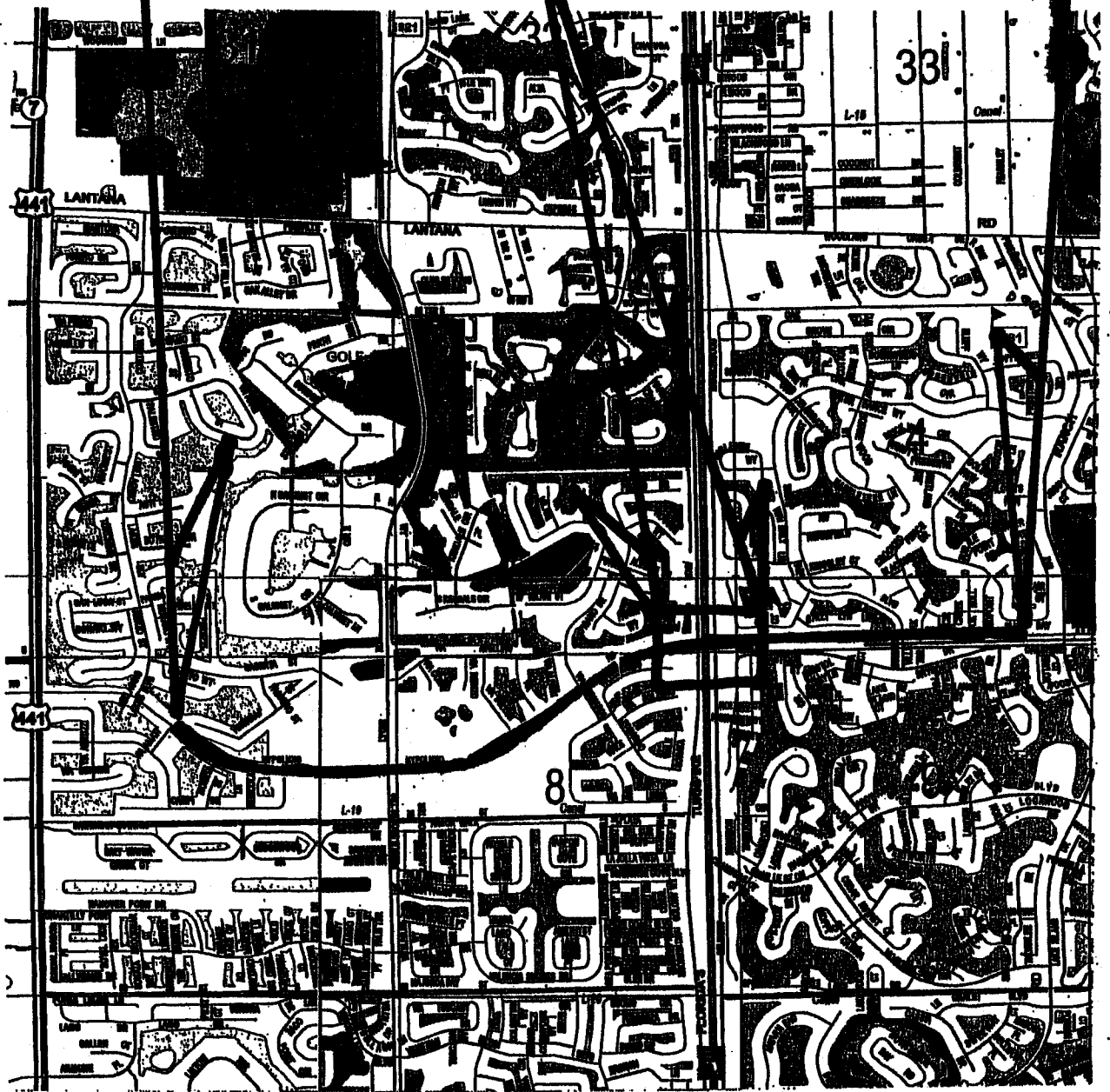
C. Other Department Review:

 Department Director

PROJECT LOCATION

HYPOLUXO ROAD
FROM WEST OF LYONS ROAD
TO
WEST OF HAGEN RANCH ROAD

BRIDGE LOCATION



LOCATION SKETCH

**LICENSE AND MAINTENANCE AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
PALM BEACH COUNTY
FOR
CONSTRUCTION OF A GRADE SEPARATION TO CONVEY
HYPOLUXO ROAD OVER
SR 91 AT MILEPOST 90.01- 90.03**

This License and Maintenance Agreement (hereinafter the "Agreement") is made and entered into on this _____ day of _____, 2007, by and between the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, an executive agency of the State of Florida, (hereinafter referred to as the "Department"), whose address is Turnpike Headquarters, Florida's Turnpike, Milepost 263, Building 5315, (Post Office Box 613069), Ocoee, Florida 34761, and PALM BEACH COUNTY, a body politic and corporate in the State of Florida (hereinafter referred to as the "County"), with principal offices located at 2300 North Jog Road; 3rd Floor West, West Palm Beach, FL 33411.

WITNESSETH:

WHEREAS, the County is presently planning to construct a bridge for Hypoluxo Road in Palm Beach County to cross SR 91 (Florida's Turnpike) right-of-way at or near Turnpike Milepost 90.01- 90.03 (Section mile post 16.97-16.99) (hereinafter the "Project"); and

WHEREAS, the Department has reviewed the County's plans for the bridge to be constructed and is able to accommodate the location of the County's bridge on and over the Department's right-of-way.

NOW, THEREFORE, in consideration of the mutual benefits and conditions, promises and covenants hereinafter set forth, and for other good and valuable consideration the sufficiency of which is acknowledged hereto by the parties, the County and Department hereby agree as follows:

ARTICLE 1
PROJECT DEFINITION

The Project consists of the construction of a bridge by the County over and across the State Road 91 limited access right-of-way at or near Turnpike Milepost 90.01-90.03 (hereinafter referred to as the "Bridge") to provide for the elevation of Hypoluxo Road over Florida's Turnpike at the location more particularly described in Exhibit 2, which is attached hereto and incorporated herein. The Project shall be constructed in accordance with the plans and specifications reviewed by the Department and attached to and made a part of the Turnpike Reference # TP-93-BR-015-07 and Department Permit #: 07-K-853-010 which was approved on February , 2007.

ARTICLE 2
OBLIGATIONS OF THE COUNTY AND THE DEPARTMENT TO ONE ANOTHER

2.1 The Department and the County acknowledge and agree that while any duties and obligations of the County may be fulfilled as set forth herein by an agent, contractor, or subcontractor of the County's, in addition to employees of the County, the County is primarily responsible and will be the Department's sole source of contact in regard to all matters concerning this Agreement.

2.2 The County shall determine whether there are any utilities holding easements or permits within the Project limits. The County will be solely responsible for resolving all utility issues arising from the Project and obtaining the Department permit for construction of the Project and for any and all associated costs.

2.3 The County shall administer, design, construct, and maintain the Bridge passing over the Turnpike right-of-way. The County and the Department agree that the Project shall be constructed in accordance with the latest edition of the Florida Department of Transportation Design Standards (2006) and the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, (2004 ed., including all supplements and special provisions appended thereto), which are hereby incorporated by reference, as if set forth herein.

2.4 The County shall ensure that the Department shall be named as an additional insured on the County's prime construction contractor's general liability insurance policy,

2.5 The County shall ensure that the prime construction contractor shall maintain a payment and performance bond in the penal amount of 100% of the contract amount, and that all the aforementioned shall be maintained in effect during construction until final acceptance of the Project by the County.

2.6 The County shall administer the Project construction contract in conformity with the Project plans, specifications, contract provisions, the provisions of this Agreement

and the above referenced Department Permit, and in accordance with good engineering practice, and the County shall monitor and inspect the work to insure same.

2.7 The COUNTY shall administer and construct the bridge in accordance with current applicable DEPARTMENT Standard Specifications for Road and Bridge Construction, and plans approved by the Department, comply with all secured, applicable local, state and federal permits, and all relevant Department policies, procedures, safety standards and maintenance of traffic standards. The COUNTY shall cause to be performed all Construction Engineering and Inspection (CEI) and management engineering services necessary to assure proper coordination of all activities and all operations involved, in order to achieve a project constructed in accordance with the plans, permits, and specifications.

2.8 The County shall perform or cause to be performed all management engineering services necessary to assure the proper coordination of activities of all parties involved in the Project and, further, the County shall provide interpretation of the plans, specifications and contract provisions and maintain an adequate level of surveillance of the construction contractor's activities.

2.9 The County shall perform sampling and testing of component materials and completed work items so as to determine that the materials and workmanship incorporated into the Project are in conformity with the Project Plans. The minimum sampling frequencies set out in the Department's *Material Sampling, Testing and Reporting Guide*, which is hereby incorporated by reference, shall be met.

2.10 The County shall be responsible for all Project costs and expenses, including all costs and expenses associated with the design, construction, CEI services, Maintenance of Traffic (MOT), and maintenance of the Project.

2.11 The County shall ensure that all applicable local, state, and federal environmental permits are secured and adhered to.

2.12 The Bridge shall include a secure enclosure over any sidewalk or bikeway; if no such sidewalk is constructed then the Bridge shall be designed and constructed with a fence or protective screen on the parapet. Such fence or protective screen shall conform to Florida Department of Transportation Standard Specifications Index 811. The fence or protective screen shall be erected on both northbound and southbound sides of the Bridge. The Bridge shall have a minimum clearance of at least 16 feet, six inches from the underside of the bridge to the profile grade line of the underlying Turnpike roadway.

2.13 Maintenance of traffic along the Turnpike shall be continuous at all times. The MOT plan shall also be subject to the prior written approval of the Turnpike Director of Highway Operations or their designee. The MOT plan shall be in accordance with the Manual of Uniform Traffic Control Devices (MUTCD), the Department's Design Standards, and the Turnpike Lane Closure Policy dated January 24, 2005. The Department shall be notified at least two (2) business days prior to, and invited to be

present at, the pre-construction meeting at which maintenance of traffic is to be discussed. The Department may make Field changes in maintenance of traffic as necessary to ensure compliance with the MUTCD, Design Standards and Lane Closure Policy.

2.14 To the extent permitted by law, the County shall indemnify and hold harmless the Department from and against all liabilities, claims, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the County, its agents, or employees, arising out of, or resulting from, activities carried out under this Agreement by the County, or arising out of the design, construction, or maintenance of the Project; notwithstanding the foregoing neither the County, its agents, contractors or employees shall be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the negligence or willful acts of the Department, or any of its respective officers, agents or employees. This indemnity is intended to extend until the removal of the Project from the Turnpike right-of-way.

2.15 The County shall require the Project construction contractor to indemnify the Department in accordance with Section 725.06 (2), Florida Statutes, and the language set forth in Exhibit 1. The language set out in Exhibit 1 shall be made a part of the Project specifications and bid documents. The County shall provide a copy of such agreements to the Department.

2.16 In the event that Project structural defects or deficiencies come to the attention of the Department that are not corrected by the County within a reasonable time after receipt of written notice from the Department, the failure to correct such deficiencies may be deemed a breach by the County of this Agreement. Alternatively, the Department may elect to affect the repairs; and the County agrees to reimburse the Department for the reasonable costs of the repairs, and any reasonable costs and attorneys' fees necessary to enforce this right.

2.17 The County shall maintain the bridge to protect and prevent any hazards from occurring to the public traveling on or below the Bridge. It shall be the County's responsibility to monitor, inspect and maintain the structural integrity of the Bridge, including county bridge inspections and reports in accordance with Section 335.074, Florida Statutes. In the event that bridge structural deficiencies, beyond the requirements of periodic maintenance, come to the attention of the Department that are not corrected by the County within a reasonable time after written notice from the Department, such failure to correct such structural deficiencies may be deemed a breach of this Agreement, and grounds for repair or removal of the Bridge by the Department. County agrees to reimburse the Department for the cost of repairs or removal in the event that County does not correct bridge structural deficiencies, together with attorneys' fees and costs to enforce this provision. The Department reserves the right to inspect the bridge at its discretion.

2.18 The responsibility for maintenance of any light or lighting circuit, including any bridge mounted light, shall remain with the owner of the load-center supplying power to the light or lighting circuit.

ARTICLE 3 GENERAL

3.1 The County agrees that this Agreement is a license for permissive use of the Department's property only. Neither construction nor maintenance of the Project upon the Department's property shall operate to create or vest any property right or right to compensation in the County, its successors or assigns.

3.2 This Agreement, together with the terms and conditions of the Department Permit referenced above and incorporated herein, incorporate and include all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no other commitments, agreements or understandings concerning the subject matter of this Agreement. Accordingly, it is agreed that no deviations from the terms thereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no modifications, amendments or alterations in the terms or conditions contained herein shall be effective unless contained in written document executed with the same formality and of equal dignity herewith.

3.3 This document shall be executed in no less than four (4) counterparts, each of which shall be deemed an original.

3.4 In the event that the Bridge or the County construction or Bridge operations interfere with the Department's operations or responsibilities, the Executive Director of Florida's Turnpike Enterprise shall decide all questions, difficulties and disputes involving construction, maintenance of traffic, and maintenance within the Department's right-of-way that may occur in connection with or by reason of this Agreement. The Executive Director's decisions upon all questions, difficulties and disputes shall be final and conclusive upon the parties hereto.

ARTICLE 4

4.1 Term of Agreement. This Agreement shall remain in full force and effect for a period of twenty-five (25) years from the effective date hereof, unless sooner terminated in accordance with the provisions of this Agreement, and may be renewed upon written approval and consent of the Department as described in Section 4.3 below.

4.2 Cancellation. The Department may cancel this Agreement due to a breach of the Agreement by the County, or under the circumstances set forth in paragraph 4 of the Turnpike Reference # TP-93-BR-015-07 and Department Permit #: 07-K-853-010. In the case of a breach of the Agreement by the County, cancellation will occur only if such violation is not corrected within 30 days following receipt of written notice from the Department, or if other arrangements are not made by the County to the satisfaction of

the Department. In the event of and upon failure to complete construction, or at the time of the termination of this Agreement, including such extensions of the term of this Agreement as may be mutually agreed upon, the County shall remove the bridge, or any partial construction, and restore the site to a condition meeting state standards at the time. After written notice from the Department, if the County fails to remove the structure and restore the site to a condition to state standards, the Department shall have the right to remove same, and County agrees to reimburse the Department for all costs incurred, including any attorney's fees reasonably incurred to enforce this right.

4.3 Renewal. This agreement may be renewed upon written approval and consent of the Department for a successive twenty-five (25) year period; provided that, as a condition of any such renewal, County agrees to make any repairs, reconstruction, and improvements necessary to assure that the bridge remains a safe structure free of material structural defects.

ARTICLE 5 MISCELLANEOUS

5.1 Notices. All notices, demands, or other communications hereunder shall be in written form and addressed to the parties as follows:

As to the Department:

Director of Highway Operations
Florida's Turnpike Enterprise
Eleanor Register Turnpike Operations
Florida's Turnpike, Milepost 65
Pompano Beach, FL 33069
(P.O. Box 9828
Ft. Lauderdale, FL 33310-9828)

With a Copy to:

Turnpike General Counsel
Florida's Turnpike Enterprise
Turnpike Headquarters
Florida's Turnpike, Milepost 263
Building 5315
(P.O. Box 613069)
Ocoee, FL 34761

As to the County:

Omelio Fernandez, P.E., Director
Palm Beach Co. Engineering & Public Works
2300 N. Jog Road' 3rd Floor West
West Palm Beach, FL 33411

With a Copy to:

Marlene Everitt, Esquire
Assistant County Attorney
301 N. Olive Ave; Ste 600
West Palm Beach, FL 33401

5.2 Unless the address is changed by a party by like notice given to the other, notice shall be in writing, by certified mail, return receipt requested, postage prepaid and shall be deemed delivered when mailed or upon hand delivery to the address indicated. Notwithstanding the foregoing, notices, requests, demands or other communication referred to may be sent by telegraph or Federal Express, but shall be deemed given only when received.

5.3 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent

jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

5.4 No waiver of any of the provisions of this Agreement shall be effective unless in writing and signed by the parties against whom it is asserted and any such written waiver shall only be applicable to the specified instance to which it relates and shall not be deemed to be a continuing or future waiver.

5.5 The provisions of this Agreement may not be modified, rescinded, or amended in whole or in part without the written consent of the Department and County.

5.6 This Agreement may be recorded in the official records of Broward County, Florida.

5.7 This Agreement shall become effective upon the date of execution by the Department or County, whichever is later.

IN WITNESS WHEREOF, the County and the Department have executed this Agreement for the purposes herein expressed on the dates indicated below.

PALM BEACH COUNTY, FLORIDA
Board of County Commissioners

ATTEST: Sharon R. Bock

By: _____
Addie L. Greene; Chairperson

By: _____
Palm Beach County Clerk and
Comptroller

Date: _____

Date: _____

Approved as to Form and Legal
Sufficiency:

Witnesses:

By: _____

Name: _____

Title: _____

Approved as to Terms and Conditions

By: *Donald A. Fernandez*

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
Sharon R. Bock
COUNTY ATTORNEY

State of Florida
County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by _____, as _____ of the Board of County Commissioners of Palm Beach County of Palm Beach County. He/She is personally known to me, or has provided _____ as identification, and he/she acknowledged executing the same on behalf of Palm Beach County, for the purposes therein expressed.

Signature of Notary:

Name of Notary printed or typed
Commission Number: _____

My Commission Expires: _____

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

Witnesses:

By: _____
James L. Ely, D.P.A.
Executive Director and
Chief Executive Officer
Florida Turnpike Enterprise

Date: _____

Turnpike Legal Review:

Jack R. Leonard

**State of Florida
County of Palm Beach**

The foregoing instrument was acknowledged before me this ___ day of _____, 2007, by James L. Ely, D.P.A., as Executive Director and Chief Executive Officer of the Florida Turnpike Enterprise of the State of Florida Department of Transportation, who is personally known to me, and who did acknowledge before me that he executed the same on behalf of the State of Florida Department of Transportation, for the purposes therein expressed.

Signature of Notary:

Name of Notary printed or typed
Commission Number: _____

My Commission Expires: _____

EXHIBIT 1

INDEMNIFICATION/HOLD HARMLESS CLAUSE

In accordance with Section 725.06(2), Florida Statutes, the Contractor shall indemnify, defend, and hold harmless, the State of Florida, Department of Transportation ("Department") and Palm Beach County, and all of their respective officers, agents and employees from liabilities, damages, loss and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor, or its sub-contractors, employed in the performance of the construction contract; *except that* neither the Contractor nor any of its subcontractors will be required to indemnify, defend, or hold harmless the Department or Palm Beach County, together with their respective employees, officers, directors or agents from the negligence, recklessness, or intentional wrongful misconduct of the Department or Palm Beach County.

EXHIBIT 2

PROJECT LOCATION

See the attached Index Sheet from the drawings for the Hypoluxo Road Bridge.

THIS CONTRACT PLAN SET INCLUDES

**COUNTY OF PALM BEACH
STATE OF FLORIDA
BOARD OF COUNTY COMMISSIONERS
PROJECT NO. 2004513**

**HYPOLUXO ROAD FROM WEST OF LYONS ROAD
TO WEST OF HAGEN RANCH ROAD**

**KAREN T. MARCUS
DISTRICT 1**

**JEFF KOONS
DISTRICT 2**

**WARREN H. NEWELL
DISTRICT 3**

**MARY McCARTY
DISTRICT 4**

**BURT AARONSON
DISTRICT 5**

**TONY MASILOTTI
DISTRICT 6**

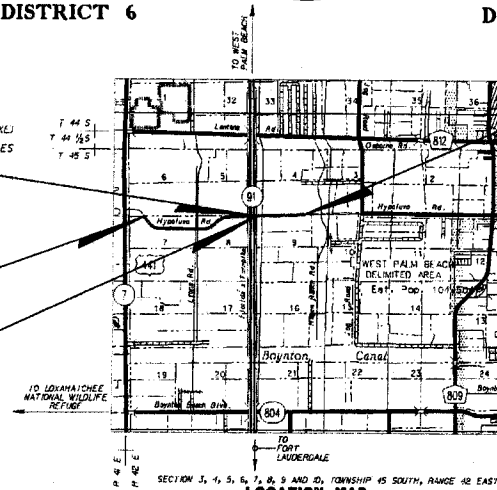
**ADDIE L. GREENE
DISTRICT 7**



ROADWAY PLANS
SIGNING & PAVEMENT MARKING PLANS

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**END PROJECT
STA 199+70.00**

*** TURNPIKE PERMIT SUBMITTAL
(ONLY TURNPIKE RELEVANT
PLANS INCLUDED)
DECEMBER 6, 2006**

Kimley-Horn and Associates, Inc.
© 2006 KIMLEY-HORN AND ASSOCIATES, INC.

PLANS PREPARED BY:
KIMLEY-HORN AND ASSOCIATES, INC.
CONSULTING ENGINEERS AND PLANNERS
4430 EMBARCADERO DRIVE
WEST PALM BEACH, FLORIDA 33407
FLORIDA BUSINESS CERT. NO. 066
PHONE (561) 846-0885
FAX (561) 882-0988

ROADWAY PLANS
ENGINEER OF RECORD: MARWAN H. MUELEH, P.E.
P.E. NO.: 45329

DESIGNING STANDARDS AND SPECIFICATIONS
FLORIDA DEPARTMENT OF TRANSPORTATION
ROADWAY AND TRAFFIC DESIGN STANDARDS
DATED JANUARY 2005 AND
STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE
CONSTRUCTION DATED 2004
AS AMENDED BY CONTRACT DOCUMENTS.

LOCATION MAP
PROJECT LENGTH IS BASED ON E OF CONSTRUCTION

LENGTH OF PROJECT		
	LINEAR FEET	MILES
ROADWAY	1,408	2.74
BRIDGES	12	0.02
NET LENGTH OF PROJECT	1,420	2.76
SACCRETIONS	0	0
GROSS LENGTH OF PROJECT	1,420	2.76

PALM BEACH COUNTY
ENGINEERING AND PUBLIC WORKS
ENGINEERING SERVICES
P.O. BOX 3829, WEST PALM BEACH, FLORIDA

PROJECT: HYPOLUXO ROAD FROM WEST OF LYONS ROAD TO WEST OF HAGEN RANCH ROAD
SHEET: 1
OF: 1
PROJECT NO.: 2004513