

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: May 20, 2008

Consent  
 Workshop

Regular  
 Public Hearing

Department:

Submitted By: Engineering & Public Works  
Submitted For: Roadway Production Division

Project No. 1998506A

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to: Adopt a resolution approving a Transportation Regional Incentive Program (TRIP) Agreement with the State of Florida Department of Transportation (FDOT), in the amount of \$5,400,596 for the intersection improvements at Jog Road and 45th Street (Project).

**Summary:** Through this Agreement, Palm Beach County (County) will receive a grant of \$5,400,596 from the TRIP for the Project. The County will be responsible for all costs above this grant.

**District:** 6 (MRE)

**Background and Justification:** The TRIP is intended to provide grants to improve regionally significant transportation facilities. The Project will construct a four lane divided urban arterial from 45<sup>th</sup> Street to 0.8 miles north of 45<sup>th</sup> Street. The County's funding for this Project is in the currently adopted Five-Year Road Program for fiscal year 2008.

**Attachments:**

- 1. Location Sketch
- 2. Agreement (7 copies)
- 3. Resolution (7 copies)

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Recommended by: RBK *Mr. Rose* 4/17/08 *[Signature]*  
Division Director Date  
for  
Approved By: S. T. Wehl 4/20/08  
County Engineer Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Capital Expenditures	#10,801,192	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	<#5,400,596>	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	#5,400,596	-0-	-0-	-0-	-0-
# ADDITIONAL FTE	-0-	-0-	-0-	-0-	-0-
POSITIONS (Cumulative)	-0-	-0-	-0-	-0-	-0-

Is Item Included In Current Budget? Yes \_\_\_\_\_ No X

**Budget Account No.:**

Fund \_\_\_\_\_ Agency \_\_\_\_\_ Organization \_\_\_\_\_ Object \_\_\_\_\_

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

This item has no immediate fiscal impact.

\* At the time of awarding the construction contract we will do a Budget Amendment to recognize the funding from FDOT for this TRIP Grant agreement as well as provide the County's matching funds.

**C. Departmental Fiscal Review: \_\_\_\_\_**

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

*atwillhite 5.6.08* *Jim J. Jacobs 5/11/08*  
 OFMB SN 5/15/08 CN 4/28/08 Contract Dev. and Control  
 5/15/08 5/7/08

**B. Legal Sufficiency:**

*Marlene R. Little 5/13/08*  
 Assistant County Attorney

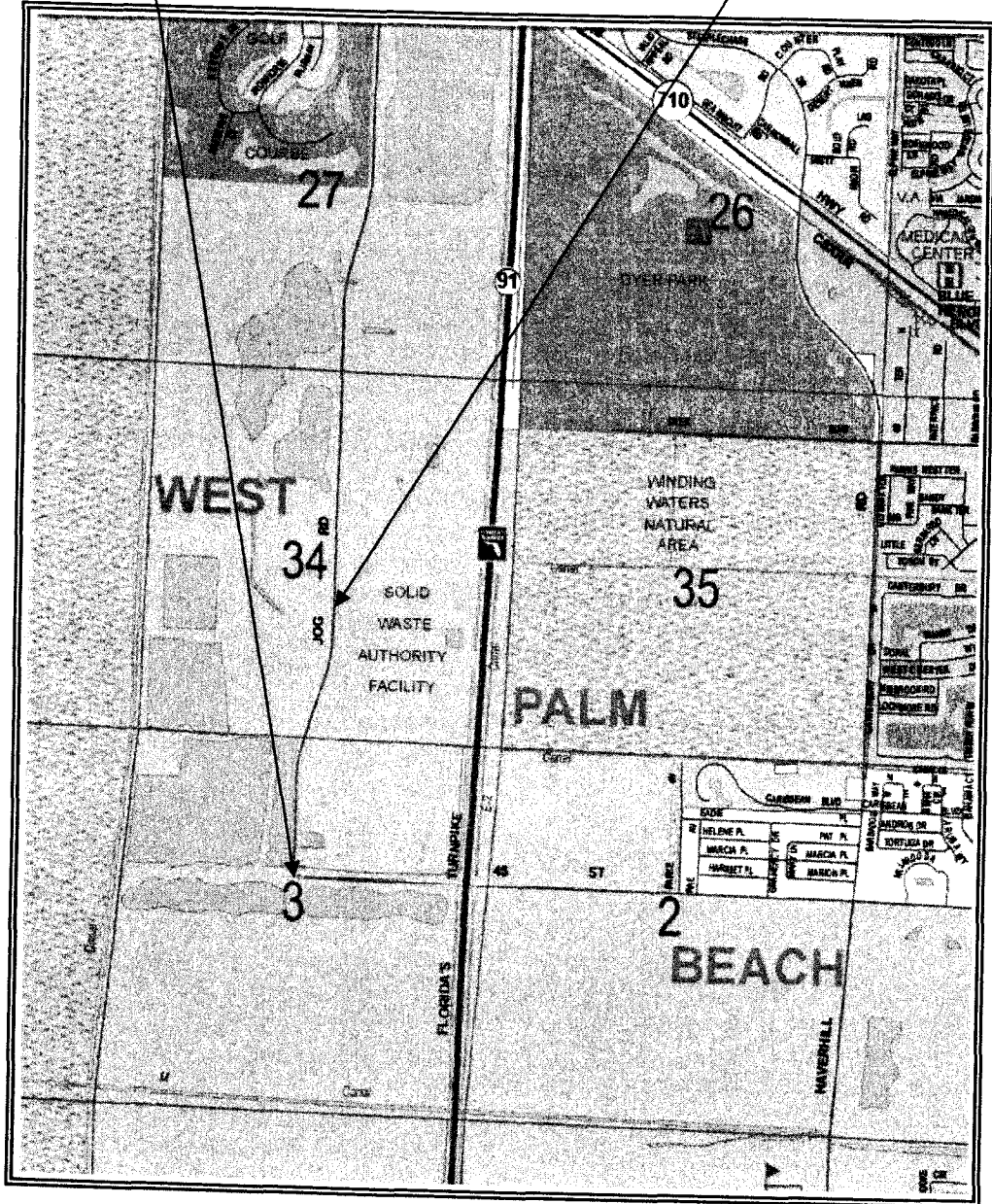
This Contract complies with our contract review requirements.

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

This summary is not to be used as a basis for payment.

**PROJECT LOCATION  
JOG ROAD  
45<sup>TH</sup> STREET TO 0.8 MI NORTH OF 45<sup>TH</sup> STREET  
PALM BEACH COUNTY PROJECT #1998506**



LOCATION MAP

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**TRANSPORTATION REGIONAL INCENTIVE PROGRAM AGREEMENT**

THIS Transportation Regional Incentive Program Agreement ("AGREEMENT"), entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, 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**."

**WITNESSETH**

**WHEREAS**, the **DEPARTMENT** is willing to provide the **COUNTY** with financial assistance under Financial Management (FM) No. **422769-2-58-01 Construction and Construction Engineering Inspection (CEI) Services for Intersection Improvements on Jog Road at 45<sup>th</sup> Street**. Refer to **Exhibit "A"**, Scope of Services attached hereto and made a part hereof; and

**WHEREAS**, the purpose of this Agreement, the **Construction and CEI services of Jog Road at 45<sup>th</sup> Street** hereinafter referred to as the "**PROJECT**," is in accordance with **Fla. Stat. §339.2819**; and

**WHEREAS**, the **DEPARTMENT** has the authority, under Fla. Stat. §334.044, to enter into this Agreement; and

**WHEREAS**, the Transportation Regional Incentive Program was created by **Fla. Stat. §339.2819** to provide funds to improve regionally significant transportation facilities in "regional transportation areas" pursuant to **Fla. Stat. §339.155 (5)**; and

**WHEREAS**, the **COUNTY** has certified to the **DEPARTMENT** that it has met the eligibility requirements of **Fla. Stat. §339.2819**; and

**WHEREAS**, the Southeast Florida Regional Transportation Council, acting as a designated regional partnership under **Fla. Stat §339.155 (5)(c)** and formed by an interlocal agreement, designated **Jog Road** as a regional facility.

**WHEREAS**, the **COUNTY** by Resolution No. \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, a copy of which is attached hereto and made a part hereof, has authorized the Chairman of its Board of Commissioners or designee to enter into this Agreement.

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

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. **SERVICES AND PERFORMANCE**
  - A) The **PROJECT** consists of: **Intersection Improvements on Jog Road at 45<sup>th</sup> Street**.

- B) The **COUNTY** agrees to undertake the design, construction and construction engineering and inspection (CEI) of the **PROJECT** in accordance with all applicable, federal, state and local statutes, rules and regulations, and standards. The **COUNTY** 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 **COUNTY** shall certify to the **DEPARTMENT** in writing that the **PROJECT** has been completed in accordance with the applicable standards, statutes, rules and regulations.
- 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 **COUNTY** and of the details thereof. Coordination shall be maintained by the **COUNTY** with representatives of the **DEPARTMENT**. The **COUNTY** shall provide the **DEPARTMENT** with monthly progress reports.
- D) The **COUNTY** shall not assign or transfer any work under this Agreement without the prior written consent of the **DEPARTMENT**.
- E) All notices under this Agreement shall be directed to the following addresses:

<b>TO DEPARTMENT:</b>	<b>TO COUNTY:</b>
<b>Florida Department of Transportation</b>	<b>Palm Beach County- Roadway Production</b>
<b>3400 West Commercial Blvd.</b>	<b>2300 N. Jog Road, 3<sup>rd</sup> Floor West</b>
<b>Fort Lauderdale, FL 33309-3421</b>	<b>West Palm Beach, FL 33411-2745</b>
<b>Attn: Leos A. Kennedy, Jr.</b>	<b>Attn: Holly Knight, P.E.</b>
<b>With a copy to: Arleen Dano</b>	<b>With a copy to: County Attorney</b>
<b>A second copy : District General Counsel</b>	

### 3. **TERM**

- A) Except as otherwise set forth herein, this Agreement shall continue in effect and be binding to both the **COUNTY** and the **DEPARTMENT** until the **PROJECT** is completed as evidenced by the written acceptance of the **DEPARTMENT** or **June 30, 2011**, whichever occurs first, or unless terminated earlier in accordance with the terms of paragraph 9.
- 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 and contingent upon the **DEPARTMENT'S** Director of Transportation Development or Designee's Approval.

### 4. **COMPENSATION AND PAYMENT**

- A) The **COUNTY** and the **DEPARTMENT** agree to share the cost of this **PROJECT** FM #422769-2-58-01. The **COUNTY** agrees to provide one-half (1/2) of the **PROJECT** expenditures and the **DEPARTMENT** agrees to provide the other one-half (1/2) pursuant to Fla. Stat. §339.2819.
- B) The estimated total cost as set forth in the **DEPARTMENT'S** adopted work program for this **PROJECT** is **TEN MILLION EIGHT HUNDRED ONE THOUSAND ONE HUNDRED NINETY TWO DOLLARS (\$10,801,192.00)**. The estimated **COUNTY** share for one-half (1/2) the **PROJECT** cost is **FIVE MILLION FOUR HUNDRED**

**THOUSAND FIVE HUNDRED NINETY SIX DOLLARS (\$5,400,596.00).** The estimated **DEPARTMENT** share for one-half (1/2) the **PROJECT** cost is **FIVE MILLION FOUR HUNDRED THOUSAND FIVE HUNDRED NINETY SIX DOLLARS (\$5,400,596.00)** which is the maximum participation by the **DEPARTMENT**, for actual costs incurred during the construction and CEI phase. The parties further agree all remaining costs of the **PROJECT** shall be the sole responsibility of the **COUNTY**.

- i) In the event the **COUNTY** proceeds with the construction/construction inspection of the **PROJECT** with its own forces, the **COUNTY** will only be reimbursed for direct costs (this excludes general and administrative overhead).

The CEI services will be provided, when required by specifications [defined as Contractor Quality Control (**CQC**)], by personnel meeting the requirements of the **DEPARTMENT'S** Construction Training and Qualification Program (**CTQP**). The County may choose to satisfy this requirement by either hiring a **DEPARTMENT** prequalified consultant firm or utilizing **COUNTY** staff that meet these requirements or a combination thereof. The CEI staff shall also include one individual that has completed the Advanced Maintenance of Traffic Advanced Level Training. The CEI staff shall be present on the **PROJECT** at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida licensed Professional Engineer.

- ii) 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.
- C) The **COUNTY** acknowledges and agrees that the **DEPARTMENT'S** obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.
  - 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) Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the **DEPARTMENT** under Section 334.044 (29), Florida Statutes.
  - F) Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit.
  - G) Travel costs will not be reimbursed.
  - H) If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.
  - I) The **COUNTY** shall submit one invoice (3 copies), plus supporting documentation required by the **DEPARTMENT** to the Project Manager for approval and processing on a monthly basis.

- J) The **COUNTY** providing goods and services to the **DEPARTMENT** should be aware of the following time frames. Upon receipt, the **DEPARTMENT** has ten (10) working days to inspect and approve the goods and services. The **DEPARTMENT** has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The Twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
- K) If a payment is not available within Forty (40) days, separate interest penalty at a rate as established pursuant to Section 55.03(1), F.S., will be due and payable, in addition to the invoice amount, to the **COUNTY**. Interest penalties of less than one (1) dollar will not be enforced unless the **COUNTY** requests payment. Invoices that have to be returned to a **COUNTY** because of **COUNTY** preparation error will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the **DEPARTMENT**.
- L) 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 Services Hotline, 1-800-848-3792.
- M) 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 includes the **COUNTY'S** general accounting records and the project records, together with supporting documents and records of the **COUNTY** and all subcontractors performing work on the project, and all other records of the **COUNTY** and subcontractors considered necessary by the **DEPARTMENT** for a proper audit of costs.
- N) 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.

## 5. ROADWAY LEVEL OF SERVICE

- A) Fla. Stat. §163.3180 requires that facilities funded through the Transportation Regional Incentive Program adopt the level of service standards established by the **DEPARTMENT** for the PROJECT limits.
- B) The logical termini for level of service purposes are Okeechobee Blvd/(SR-704) to 45<sup>th</sup> Street/(CR-702).

- C) The **COUNTY** agrees that once the additional capacity from the **PROJECT** is available for purposes of concurrency under **Fla. Stat. §163.3180**, it will officially adopt the **DEPARTMENT'S** level of service for the segment of **Jog Road** between the logical termini specified in (B), above. This will be accomplished through and update to the comprehensive plan within one year.

## 6. INDEMNITY AND INSURANCE

### A) INDEMNITY

- i) 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.
- ii) With respect to any of the **COUNTY'S** agents, consultants, subconsultants, contractors, and/or sub-contractors, such party in any contract for this Project shall agree to indemnify, defend, save and hold harmless the **DEPARTMENT** from all claims, demands, liabilities, and suits of any nature arising out of, because of or due to any intentional and/or negligent act or occurrence, omission or commission of such agents, consultants, subconsultants, contractors and/or subcontractors. The **COUNTY** shall provide to the **DEPARTMENT** written evidence of the foregoing upon the request of the **DEPARTMENT**. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the **DEPARTMENT** for its own negligence.

### B) LIABILITY INSURANCE.

- i) The **COUNTY** 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 **COUNTY** maintains a self-insurance fund to cover such liability, the **COUNTY** 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 **COUNTY** must comply or cause its contractor to comply with §7-13 of the **DEPARTMENT'S** Standard Specifications for Road and Bridge Construction (2007), as amended. Upon the **DEPARTMENT'S** request the **COUNTY** must provide documentation to the **DEPARTMENT** that shows that the insurance requirements are being met in accordance with the Agreement.

### C) WORKERS' COMPENSATION.

- i) The **COUNTY** shall also carry and keep in force Workers' Compensation insurance as required for the State of Florida under the Workers' Compensation Law.

## 7. COMPLIANCE WITH LAWS

- A) The **COUNTY** shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the **COUNTY** in conjunction with this Agreement. Failure by the **COUNTY** to grant