

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	<u>\$1,000,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>\$1,000,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

ADDITIONAL FTE
POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes X No _____
Budget Acct No.: Fund 3500 Dept. 361 Unit 1118 Object 6572.
Program

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

Transportation Improvement Fund
Old Boynton Rd/Congress Ave to Boynton Bch Blvd

Bridge Replacement \$1,000,000.00

C. Departmental Fiscal Review: R.D. Ward 4/16/08

III. REVIEW COMMENTS

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

A. White 5.14.08
OFMB
SW 5/13/08 VO 05/109

[Signature] 5/15/08
Contract Dev. and Control
5/15/08

This Contract complies with our contract review requirements.

B. Approved as to Form and Legal Sufficiency:

Marlene R. Little 5/23/08
Assistant County Attorney

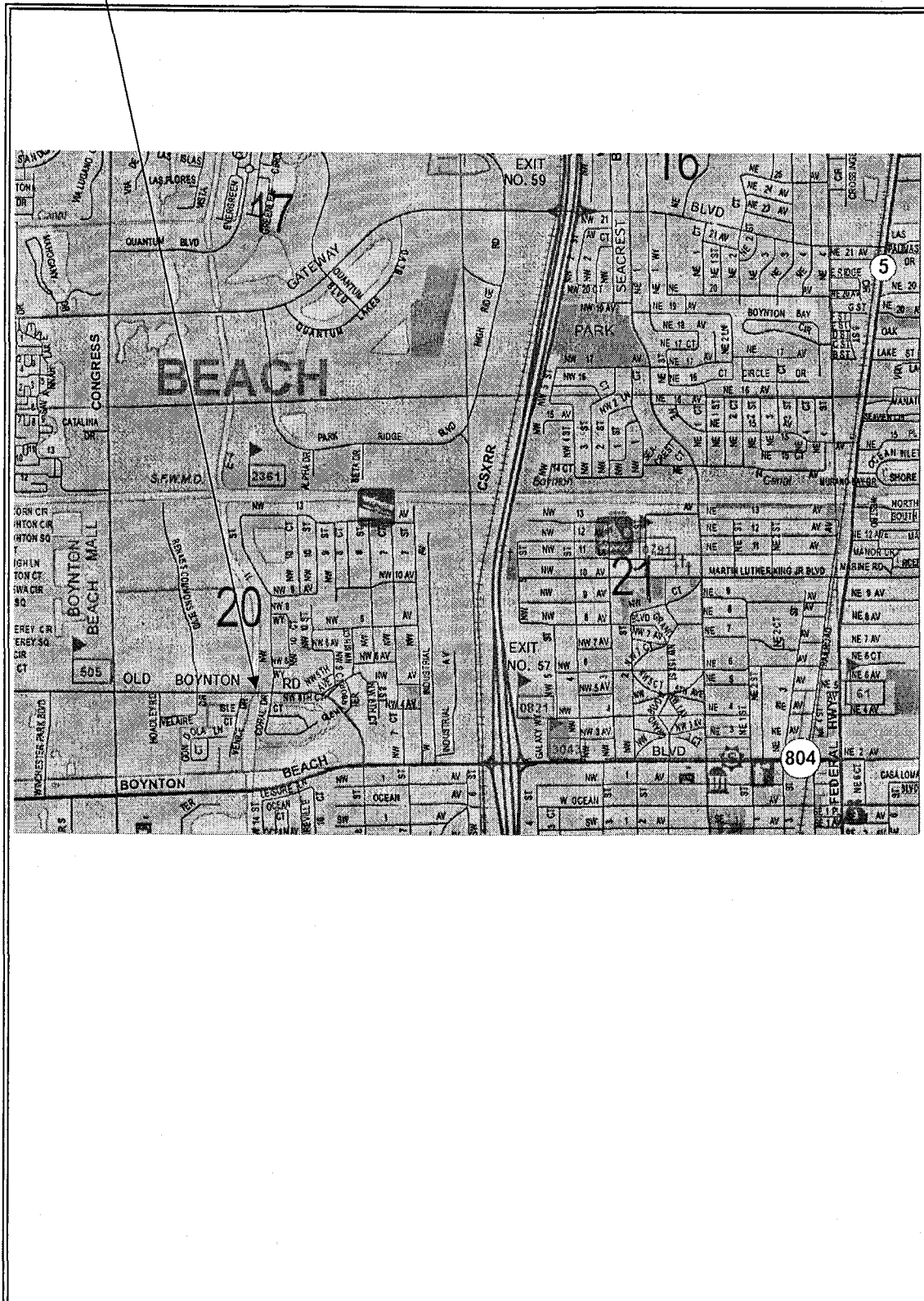
C. Other Department Review:

Department Director

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

LOCATION MAP

OLD BOYNTON ROAD BRIDGE OVER LWDD E-4 CANAL



**COUNTY PARTICIPATION AGREEMENT WITH 1950 CONGRESS
AVENUE LLC FOR IMPROVEMENTS TO THE OLD BOYNTON
ROAD BRIDGE OVER THE LWDD E-4 CANAL**

THIS AGREEMENT, made and entered into on _____, by and between THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY", and 1950 CONGRESS AVENUE, LLC, a Florida Limited Liability Company, 5858 Central Avenue, St. Petersburg, Florida 33707, hereinafter referred to as "1950".

WHEREAS, the County desires to replace the existing two lane Old Boynton Road bridge over the LWDD E-4 Canal with a new three lane bridge (known as Bridge #934981 and hereinafter referred to as the "BRIDGE") which will be expandable to five lanes, and had placed the replacement of this bridge in its December 16, 2003 Five-Year Road Program for construction in FY 2006; and

WHEREAS, 1950 is the master developer for the aggregated Boynton Village and Boynton Town Center projects on the Winchester Property; and

WHEREAS, the aggregated Boynton Village and Boynton Town Center projects are phased to the widening of Old Boynton Road to five lanes from Congress Avenue to Boynton Beach Boulevard as part of the Traffic Performance Standards approval, dated February 1, 2005; and

WHEREAS, the COUNTY approved a CRALLS for Old Boynton Road between Congress Avenue and Boynton Beach Boulevard on November 28, 2005, which required that 1950 construct a five lane section of Old Boynton Road from Congress Avenue to the project spine road and a three lane section from the spine road to Boynton Beach Boulevard, hereinafter referred to as the "IMPROVEMENT" (COUNTY Project No. 2004611); and

WHEREAS, the estimated cost for the IMPROVEMENT is \$5,850,000; and

WHEREAS, the BRIDGE over the LWDD E-4 Canal is located within the segment of Old Boynton Road from the spine road to Boynton Beach Boulevard and is part of the IMPROVEMENT; and

WHEREAS, the BRIDGE includes all of the portion of the IMPROVEMENT located within the LWDD E-4 Canal right-of-way and the appropriate tie-ins to the remainder of the IMPROVEMENT, and is more particularly described in the plans entitled "Old Boynton Road Bridge", prepared by Alan Gerwig & Associates (Gerwig's Project No. 06-014), as the same may be revised pursuant to the COUNTY's review and comments (hereinafter referred to as the "BRIDGE PLANS"); and

WHEREAS, contingent upon the issuance of applicable permits from the COUNTY, 1950 anticipates commencing construction of the IMPROVEMENT approximately September 1, 2008 and expects the IMPROVEMENT to be completed approximately September 1, 2009; and

WHEREAS, the COUNTY amended its Five-Year Road Program on August 15, 2006 to replace the COUNTY'S construction of the BRIDGE with a payment toward the construction of the BRIDGE in the amount of \$1,000,000 in FY 2008, with the note that the COUNTY anticipated that there would be a Developer Agreement specifying the terms of that payment; and

WHEREAS, this Agreement is the Developer Agreement anticipated in the Five-Year Road Program.

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

ARTICLE 1. RECITALS The above recitations are true and correct and are incorporated herein and are a part hereof by this reference.

ARTICLE 2. 1950 RESPONSIBILITIES

2.1. 1950 shall be responsible for designing and constructing the BRIDGE, based on the approved BRIDGE PLANS, which shall be included in 1950's design and construction of the IMPROVEMENT. 1950 shall be responsible for the selection, hiring and administration of consultant services for the design of the BRIDGE.

2.2. 1950 shall be solely responsible for obtaining and complying with all necessary permits, approvals, and authorizations required for the BRIDGE from any federal, state, regional or local agency and the COUNTY shall issue to 1950 any required permits.

2.3. Bridge Construction.

2.3.1. 1950 shall supervise and administer construction of the BRIDGE, including disbursement of funds associated with the work.

2.3.2. 1950 shall contract for and provide all labor and materials necessary for construction of the BRIDGE.

2.3.3. In constructing the BRIDGE, 1950 agrees to recommend the lowest responsible bidder to the COUNTY. The selected contractor and bid will be submitted to Roadway Production for review and approval. The COUNTY's review will include, but not be limited to, the requirements of the Small Business Enterprise Program, inclusion on the state convicted vendor list, similar work experience, and anti-discrimination policies and practices. The selected contractor shall be deemed approved if the COUNTY does not notify 1950 of its determination within thirty (30) days of 1950 submitting the selected contractor and bid to Roadway Production. Once a selected contractor is approved, 1950 may enter into a contract with the selected contractor without further approval of the Board of County Commissioners.

2.3.4. All construction contracts entered into by 1950 and other persons or entities in connection with the construction of the BRIDGE, including the main contract with the Bridge Contractor and all construction contracts entered into by the Bridge Contractor with other persons or entities in connection with the construction of the BRIDGE, shall include the following language:

(The person or entity) shall indemnify, defend, save and hold harmless the County and 1950 and all of their respective 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 (person or entity), its officers, agents, or employees. Neither the (person or entity), 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 County and/or 1950 or any of their respective officers, agents or employees.

2.3.5. 1950 shall require that each contractor engaged by 1950 for work associated with this Agreement maintain the following:

- (1) Workers' Compensation coverage in accordance with Florida Statutes;
- (2) Commercial General Liability coverage, including vehicle coverage, in combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000). 1950 and the COUNTY shall be included in the coverage as additional insured.

2.3.6. All construction contracts entered into by 1950 and other persons or entities in connection with the construction of the BRIDGE, including the main contract with the Bridge Contractor, and all construction contracts entered into by the Bridge Contractor and other persons or entities in connection with the construction of the BRIDGE, shall include an anti-discrimination clause that will be provided to 1950 by the COUNTY.

2.4. After 1950 submits its initial invoice to the COUNTY, 1950 shall submit invoices not more than once a month. The final invoice shall be submitted no later than sixty (60) days after the COUNTY's final acceptance of the completed BRIDGE construction. Invoices shall be submitted to the COUNTY'S contract monitor or his designee in the following form. All invoices shall include a Contract Payment Request Form and a Contractual Services Purchase Schedule Form (hereinafter referred to as "COUNTY FORMS"), attached hereto and incorporated herein as Exhibit A, and a Certificate of Payment, all of which are required for each and every reimbursement requested by 1950. COUNTY FORMS shall list: (i) each invoice payable by 1950; (ii) the vendor invoice number; (iii) invoice date; and (iv) the amount attributable to the COUNTY obligation for funding the BRIDGE. 1950 shall attach a copy of each vendor invoice paid by 1950 along with a copy of the respective check, and shall make reference thereof to the applicable item listed on the Contractual Services Purchases Schedule Form. The Certificate for Payment shall certify: (i) that all of the invoices are true, accurate and complete copies of the originals; (ii) that 1950 is current with regard to the payment of the invoices; (iii) a certification by 1950's engineer that all the work for which invoices have been submitted has been completed; and (iv) the total and aggregate dollar amount of all of the invoices attached to the Certificate of Payment. This

Agreement is retroactive as to the costs of design of the BRIDGE, and the Agreement specifically covers invoices for design of the BRIDGE dated after August 1, 2006.

ARTICLE 3. COUNTY RESPONSIBILITIES

3.1. The COUNTY shall be responsible for funding up to \$1,000,000 towards the BRIDGE, including design, survey, contract preparation, bidding, award, construction, utility relocation, contract administration, and inspection pursuant to all applicable state and local laws and regulations. The COUNTY shall reimburse 1950 for the actual costs of the above components of the BRIDGE project, up to a limit of \$1,000,000.00, as set forth in the COUNTY'S September 11, 2007 Five-Year Road Program.

3.2. The COUNTY shall make payment of the cost of the total invoice toward the BRIDGE as submitted pursuant to Paragraph 2 of this Agreement. The COUNTY Engineer shall have the right, but not the obligation, to inspect the construction for compliance with the construction documents. Invoices received from 1950 will be reviewed and approved by COUNTY pursuant to the requirements of this Agreement. Thereafter, they will be sent to COUNTY'S Finance Department for final approval and payment within thirty (30) days following receipt of an acceptable Contract Payment Request Form and a Contractual Services Purchase Schedule Form. Except as provided in Paragraph 9 below, the COUNTY shall not have any payment obligation to any other entity or person.

ARTICLE 4. DEFAULT The parties agree that in the event either party fails to meet the necessary requirements outlined in this Agreement, the defaulting party shall reimburse the other party for expenses incurred to that point, with the County liability under this provision limited to the \$1,000,000 payment amount pursuant to Paragraph 3.1. above.

ARTICLE 5. NOTICE All notices, requests, consents and other communications required and permitted under this Agreement shall be in writing and shall be sent by either registered or certified mail or overnight delivery service that provides a record of delivery to the following:

As to COUNTY: Daniel Weisberg, P.E.
Director, Traffic Division
Palm Beach County Engineering
2300 North Jog Road
West Palm Beach, Fl. 33411
Phone: (561) 684-4030
Fax: (561) 478-5770

With a Copy to: Marlene Everitt, Assistant County Attorney
County Attorney's Office
301 N. Olive Avenue
West Palm Beach, Fl. 33401
Phone: (561) 355-2225
Fax: (561) 355-4398

As to 1950: Mr. Jeff Fuqua, President
The Sembler Company
1450 South Johnson Ferry Road
Suite 100
Atlanta, Ga. 30319
Phone: (404) 847-1800
Fax: (404) 255-4187

With a Copy to: John Corbett, Esq.
Corbett and White, P.A.
1111 Hypoluxo Road
Suite 207
Lantana, Fl. 33462
Phone: (561) 586-7116
Fax: (561) 586-9611

ARTICLE 6. MISCELLANEOUS

6.1. The effective date of this Agreement shall be the date of full execution by all parties.

6.2. The COUNTY and 1950 recognize that each is an independent contractor and not an agent or servant of the other. No person employed by any party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other

employee rights or privileges granted by operation of law or otherwise, except through and against the entity by whom they are employed.

6.3. The parties to the Agreement shall not be deemed to assume any liability for the negligent or wrongful acts or omissions of the other party. Nothing contained herein shall be construed as a waiver by COUNTY of the liability limits established in Section 768.28, Florida Statutes.

6.4. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective legal representative, successors and assigns.

6.5. The parties expressly covenant and agree that in the event either party is in default of its obligations under this Agreement, the party not in default shall provide to the defaulting party thirty (30) days written notice exercising any of its rights.

6.6. Any costs or expenses (including attorney's fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties; provided, however, that this clause pertains only to the parties to the Agreement.

6.7. This Agreement shall be construed by and governed by the laws for the State of Florida. Any and all legal action necessary to enforce this Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other of further exercise thereof.

6.8. The preparation of the Agreement has been a joint effort of the parties, and the resulting document shall not, solely as matter of judicial constraint, be construed more severely against one of the parties than the other.

6.9. In the event that any section, paragraph, sentence, clause or provision hereof is held invalid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

6.10. This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreements, either written or oral, relating to the Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year indicated:

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

BY: _____
Addie L. Greene, Chairperson

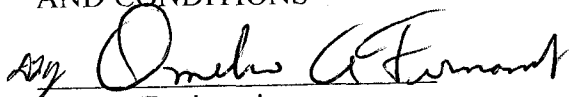
SHARON R. BOCK,
CLERK & COMPTROLLER
CIRCUIT COURT

BY: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS


County Engineering
April 7, 2008

1950 CONGRESS AVENUE, LLC,
a Florida limited liability company

By: Sembler Family Partnership
#35, Ltd., a Florida limited
partnership, its Manager

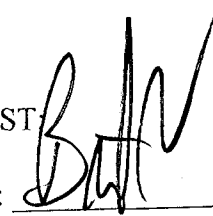
By: Sembler Retail, Inc. a Florida
corporation, its general partner

By: _____

Name: Jeffrey S. Fuqua
Title: Vice President

Date: 4.16.08

ATTEST

Name: 
Secretary

(Seal)