

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	May 19, 2009	(X) Consent	() Regular
		() Workshop	() Public Hearing

Department

Submitted By: Environmental Resources Management

Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve a Joint Partnership Agreement with the Florida Department of Transportation (FDOT) in the amount not to exceed \$4,850,000 to cover staff time and construction costs for creating a seagrass and mangrove mitigation project at Snook Islands Natural Area expiring on June 30, 2012;

B) adopt a Resolution to authorize entering into an agreement as a requirement of FDOT;

C) approve a Budget Amendment of \$4,850,000 in the Environmental Resources Capital Fund to recognize the revenues from the Agreement; and

D) authorize the County Administrator, or his designee, to sign all future time extensions, task assignments, certifications and other documents associated with this Agreement and any necessary minor amendments to those documents that do not change the scope of work or terms and conditions of this Agreement.

Summary: This Agreement will provide the necessary funding to create an approximate seven (7) acre seagrass and mangrove mitigation project located within the Snook Islands Natural Area. FDOT funding, estimated to be \$4,850,000, will cover all staff costs in the planning, permitting, bidding and construction oversight. There are no matching requirements. In addition, all costs associated with the construction work will be the responsibility of FDOT. An additional agreement with FDOT may be necessary if the funding exceeds the cost estimates. District 3 (SF)

Background and Justification: As a result of the replacement of five (5) bridges within Palm Beach County, namely, the Flagler Memorial, Southern Boulevard, Little Blue Heron, Little Lake Worth and Jupiter Bridges, the environmental regulatory agencies will require seagrass and mangrove mitigation. FDOT staff have requested assistance from the County in designing, permitting and constructing project(s) to satisfy those mitigation requirements. All costs for this effort will be the responsibility of FDOT. (Continued on Page 3)

Attachments:

1. Joint Partnership Agreement
2. Resolution
3. Budget Amendment (3654)

Recommended by:	<u>Richard E. Welsby</u>	<u>5/6/09</u>
	Department Director	Date
Approved by:	<u>[Signature]</u>	<u>5/15/09</u>
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	<u>4,850,000</u>	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u><4,850,000></u>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>-0-</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X
Budget Account No.: Fund _____ Department _____ Unit _____ Object _____
Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact: Florida Department of Transportation

C. Department Fiscal Review:

[Signature]

III. REVIEW COMMENTS

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

[Signature] 5-11-09
OFMB (ND) 5/11/09
5/11/09 5/11/09 5/11/09

[Signature] 5/13/09
Contract Development and Control
Exam 5/13/09

B. Legal Sufficiency:

This Contract complies with our
contract review requirements.

[Signature]
Assistant County Attorney

C. Other Department Review:

Department Director

Background and Justification (Continued from Page 1)

The first mitigation project, estimated to be seven (7) acres in size, is located within the Snook Islands Natural Area and considered the final phase of a 100-acre environmental restoration effort that was initiated in 2005. Similar to the earlier phase, the planned work shall consist of filling the remaining portion of an anoxic dredge hole to provide for potential seagrass recruitment, as well as a mangrove island and oyster reefs.

Additional mitigation project(s) will likely be necessary to satisfy the remaining mitigation for the five proposed FDOT bridges. County staff will address these additional mitigation project(s) in subsequent agreements with FDOT.

Attachment 1

Contract No.: _____
FM Nos.: 412489-2-C2-01,
419013-1-C2-01, 419022-1-C2-01,
421297-1-C2-01, 417506-1-C2-01,
FEID No.: VF-596-000-743

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
JOINT PARTICIPATION AGREEMENT**

THIS Joint Participation Agreement (hereinafter referred to as "AGREEMENT"), entered into this _____ day of _____, 200____, by and between the State of Florida Department of Transportation hereinafter called the DEPARTMENT, and PALM BEACH COUNTY located at 2300 N. JOG ROAD, WEST PALM BEACH, FLORIDA 33411-2745, hereinafter called the COUNTY .

WITNESSETH

WHEREAS, the DEPARTMENT and the COUNTY are desirous of having the COUNTY make certain improvements in connection with Financial Management (FM) Number(s): 412489-2-C2-01, 419013-1-C2-01, 419022-1-C2-01, 421297-1-C2-01, and 417506-1-C2-01 (Funded in Fiscal Year 2008/2009- 2010/2011) for:

1. The design, permitting and construction of Snook Island Phase II for seagrass and mangrove mitigation to offset impacts caused by the Replacement of the Flagler Memorial Bridge in the Lake Worth Lagoon in Palm Beach County, Florida, for FM Number **412489-2-C2-01;**
2. The design, permitting and construction of Snook Island Phase II for seagrass and mangrove mitigation to offset impacts caused by the Replacement of the Southern Boulevard Bridge in the Lake Worth Lagoon in Palm Beach County, Florida, for FM Number **419013-1-C2-01;**
3. The design, permitting and construction of Snook Island Phase II for seagrass and mangrove mitigation to offset impacts caused by the Replacement of the Little Blue Heron Bridge in the Lake Worth Lagoon, in Palm Beach County, Florida, for FM Number **419022-1-C2-01;**
4. The design, permitting and construction of Snook Island Phase II for seagrass and mangrove mitigation to offset impacts caused by the Replacement of the Little Lake Worth Bridge in the Lake Worth Lagoon in Palm Beach County, Florida, for FM Number **421297-1-C2-01;**
5. The design, permitting and construction of Snook Island Phase II for seagrass and mangrove mitigation to offset impacts caused by the Replacement of the SR-5/US-1 Jupiter Bridge in Palm Beach County, Florida, for FM Number **417506-1-C2-01;**

Refer to Exhibit "A" of this Agreement for a detailed Scope of Services for items 1 through 5 above.

WHEREAS, for purposes of this Agreement, enhancements to be made to item numbers 1 through 5 above are hereinafter referred to collectively as the PROJECTS; and,

WHEREAS, said Projects are on the State Highway System, are not revenue producing and are contained in the DEPARTMENT'S Adopted Work Program; and,

WHEREAS, the improvements are in the interest of both the **COUNTY** and the **DEPARTMENT** and it would be more practical, expeditious, and economical for the **COUNTY** to perform such activities; and,

WHEREAS, the **COUNTY** by Resolution No. _____ adopted on _____, 200____, a copy of which is attached hereto and made a part hereof, authorizes the proper officials to enter into this AGREEMENT.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the **PROJECT**, the parties agree to the following:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. The **COUNTY** shall be responsible for assuring that the Projects comply with all applicable Federal, State and Local laws, rules, regulations, guidelines and standards.

The **COUNTY's** Environmental Resource Management (**ERM**) will apply for the Environmental Resource Permit (**ERP**) to perform mitigation services as needed. The South Florida Water Management District (**SFWMD**) will receive, process, and issue the **ERP** to the **COUNTY**.

The Environmental Resource Permit shall be defined as a document giving permission to an Agency or other entity to perform activities and/or services that could affect wetlands, alter surface water flows, or contribute to water pollution.

3. The **DEPARTMENT** agrees to make all previous studies, maps, drawings, surveys and other data and information pertaining to the Project available to the **COUNTY** at no extra cost.
4. The **COUNTY** shall have the sole responsibility for resolving claims and requests for additional work for the Projects. The **COUNTY** will make best efforts to obtain the **DEPARTMENT** input in its decisions.
5. The **DEPARTMENT** agrees to pay the **COUNTY** for the work described in Exhibit A of this Agreement. The cost of the work is estimated to be **FOUR MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$4,850,000.00)**. The **DEPARTMENT** will pay the **COUNTY** an amount not to exceed **FOUR MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$4,850,000.00)** for actual costs incurred, as detailed in progress reports. The **COUNTY** will invoice the **DEPARTMENT** in accordance with the provisions set forth in Exhibit A. The Projects cost shall be allocated and expended in accordance with the Method of Compensation as set forth in the attached Exhibit B. Any Project cost in excess of **FOUR MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$4,850,000.00)** that does not result in seagrass, mangrove or other regulatory permit required mitigation credit, shall be the sole responsibility of and shall be paid by the **COUNTY**.

The **COUNTY** will comply with the Federal and State Audit provisions and the Single Audit Compliance Requirements set forth in Exhibit C and Exhibit D, respectively which are attached hereto and made part of this Agreement.

6. 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 days time period will not be paid.

7. The **DEPARTMENT'S** obligation to pay any sum set forth in this Agreement is contingent upon an annual appropriation by the Florida Legislature in the fiscal year that any such sum is due to be paid.
8. In the event the **PROJECTS'** costs or **PROJECTS'** modifications increase or exceed the amount authorized in paragraph 5, the **DEPARTMENT** and the **COUNTY** shall meet and attempt to mutually agree to the amount and distribution of the additional funding needed to complete the **PROJECTS**. Any funding increase or modifications to the **PROJECTS** shall be added by means of an Amendment to the Agreement to be signed by both parties before work is undertaken. However, in the event the **COUNTY** and the **DEPARTMENT** fail to negotiate an Amendment for any reason whatsoever, then the increase in the **PROJECTS'** costs will be the sole responsibility of the **COUNTY**. In the event the **PROJECTS'** bid exceeds the **DEPARTMENT'S** official estimate of **FOUR MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$4,850,000.00)**, and the **DEPARTMENT** and the **COUNTY** cannot mutually agree to the amount and distribution of the additional funding needed to award the contract, then the **COUNTY** shall have the option to either accept or reject all bids. The **COUNTY** must notify the **DEPARTMENT** of its intentions within five (5) business days of bid opening. If all bids are accepted, the **COUNTY** shall continue to perform the necessary services required to complete the **PROJECTS**. However, if all bids are rejected by the **COUNTY**, both parties hereby agree that this Agreement shall be terminated.
9. In the event it becomes necessary for the **DEPARTMENT** or the **COUNTY** to institute suit for the enforcement of the provisions of this AGREEMENT, each party shall be responsible to pay their own attorney fees and court costs.
10. Should the **DEPARTMENT** and the **COUNTY** decide to proceed with subsequent phases of the Projects, the AGREEMENT may be amended to identify the respective responsibilities and the financial arrangements between the parties.
11. This AGREEMENT and any interest herein shall not be assigned, transferred or otherwise encumbered by the **COUNTY** under any circumstances without the prior written consent of the **DEPARTMENT**. However, this AGREEMENT shall run to the **DEPARTMENT** and its successors.
12. Except as otherwise set forth herein, this AGREEMENT shall continue in effect and be binding to both the **COUNTY** and the **DEPARTMENT** until the South Florida Water Management District issues the as-built certification letter for the Project or **June 30, 2012**, whichever occurs first.
13. If this AGREEMENT involves units of deliverables, then such units must be received and accepted in writing by the Project Manager prior to payments. The **DEPARTMENT** will render a decision on the acceptability of services within 10 working days of receipt of a progress report. The **DEPARTMENT** reserves the right to withhold payments for work not completed, or work completed unsatisfactorily, or work that is deemed inadequate or untimely by the **DEPARTMENT**. Any payment withheld will be released and paid to the **COUNTY** promptly when work is subsequently performed.

14. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
15. The **COUNTY** providing goods and services to the **DEPARTMENT** should be aware of the following time frames. Upon receipt, the **DEPARTMENT** has (10) ten 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.
16. If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, 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 errors 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**.
17. 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 payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Department of Financial Services' Hotline, at 1-877-693-5236.
18. Records of costs incurred under the 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 Projects records, together with supporting documents and records, of the contractor and all subcontractors performing work on the Projects, and all other records of the Contractor and subcontractors considered necessary by the **DEPARTMENT** for a proper audit of costs.
19. In the event this contract is for services in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"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 such 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."

20. The **COUNTY** warrants that it has not employed or obtained any company or person, other than bona fide employees of the **COUNTY**, to solicit or secure this AGREEMENT, and it has not paid or agreed to pay any company, corporation, individual or firm, other than a bona fide employee employed by the **COUNTY**. For breach or violation of this provision, the **DEPARTMENT** shall have the right to terminate the AGREEMENT without liability.
21. With respect to any of the **COUNTY'S** agents, consultants, subconsultants, contractors, and/or sub-contractors, such party in any contract for the Projects 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.
22. This AGREEMENT is governed by and construed in accordance with the laws of the State of Florida. Venue with respect to any litigation shall be in Broward County.
23. The **COUNTY** shall comply with all federal, state, and local laws and ordinances applicable to the work or payment of work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
24. The **DEPARTMENT** encourages the **COUNTY** to use its best efforts to obtain Disadvantage Business Enterprise (**DBE**) services during the construction of the **PROJECTS**.
25. 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 and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
26. Any or all notices (except invoices) given or required under this AGREEMENT shall be in writing and either personally delivered with receipt acknowledged or sent by certified mail, return receipt requested. All notices delivered shall be sent to the following addresses:

If to the DEPARTMENT:

Florida Department of Transportation - District Four
3400 West Commercial Blvd.
Fort Lauderdale, Florida 33309-3421
Attn: **Leos A. Kennedy, Jr.**
With a copy to: **Ann Broadwell**
A second copy to: District General Counsel

If to the COUNTY:

Palm Beach County
2300 N. Jog Road, 4th Floor West
West Palm Beach, FL 33411-2745
Attn: Richard Walesky
With a copy to: Attorney

IN WITNESS WHEREOF, this Agreement is to be executed by the parties below for the purposes specified herein. Authorization has been given to enter into and execute this Agreement by Resolution No. _____, hereto attached.

PALM BEACH COUNTY, Florida, A
Political Subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: _____
NAME: JOHN F. KOONS
TITLE: CHAIRMAN
_____ day of _____, 20__

BY: _____
ROSIELYN QUIROZ
DIRECTOR OF TRANSPORTATION SUPPORT

ATTEST:
SHARON R. BOCK

APPROVED: (AS TO FORM)

CLERK & COMPTROLLER (SEAL)

BY: _____
DISTRICT GENERAL COUNSEL

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

APPROVED:

BY: _____
COUNTY ATTORNEY

BY: _____
PROFESSIONAL SERVICES ADMINISTRATOR

APPROVED AS TO TERMS AND CONDITIONS:

BY: Richard E. Walesky
DIRECTOR, ENVIRONMENTAL RESOURCES MANAGEMENT

EXHIBIT A

SCOPE OF SERVICES

These Projects provides the seagrass and mangrove mitigation, within the Snook Islands Natural Area (SINA), needed for the State of Florida Department of Transportation, hereinafter called the **DEPARTMENT**, bridge repair/replacement projects in Palm Beach County:

Project	FM#	Fiscal Year	Amount
Little Blue Heron Bridge	419022-1	08/09	\$25,000
Little Lake Worth Bridge	421297-1	08/09	\$25,000
Flagler Memorial Bridge	412489-2	08/09	\$1,875,000
US-1 Jupiter Bridges	417506-1	09/10	\$1,250,000
Southern Boulevard Bridge	419013-1	10/11	\$1,675,000
	** 419013-1-C2-02	10/11	\$200,000

The work to be performed pursuant to this AGREEMENT is hereinafter referred to as a "Milestone."

MILESTONE 1: CONCEPTUAL DESIGN AND SURVEYS

The **COUNTY** shall perform the following services which include:

1. Project conceptual design
2. Muck, bathymetric, seagrass surveys
3. Inter-local agreement(s) and necessary easements with the City of Lake Worth
4. Conceptual plans for permit submission
5. Water quality analysis

Prior to any request for payment for the work set forth in Milestone 1, the **COUNTY** must first deliver to the **DEPARTMENT** the following documents in form satisfactory to the **DEPARTMENT**: applications for Environmental permits from the South Florida Water Management District (**SFWMD**) and the Army Corps of Engineers (**ACOE**).

MILESTONE 2: ENVIRONMENTAL PERMITTING

The **COUNTY** shall perform the following services which include:

1. Request for additional information responses
2. Field visits with regulatory staff and coordination with City staff
3. Attending meetings as necessary
4. Obtain approved federal and state permits for the Project

Prior to any request for payment for the work set forth in Milestone 2, the **COUNTY** must first deliver to the **DEPARTMENT** the following documents in form satisfactory to the **DEPARTMENT**: copies of approved permits from the **SFWMD** and **ACOE**.

MILESTONE 3: FINAL DESIGN & DOCUMENTATION

The COUNTY shall perform the following services which include:

1. Hydrographic and geotechnical surveys
2. Identification of suitable sediments and detailed analysis of sediments for possible contamination of heavy metals
3. Construction feasibility and methodology
4. Project final design
5. Construction plans and specifications documents

Prior to any request for payment for the work set forth in Milestone 3, the COUNTY must first deliver to the DEPARTMENT the following documents in form satisfactory to the DEPARTMENT: 100% design plans, specifications and cost estimates.

MILESTONE 4: CONSTRUCTION

The COUNTY shall perform the following services which include,

1. Cooperative bid process
2. Contract initiation
3. Construction oversight and contract administration
4. Coordinate with the City of Lake Worth
5. Compliance with Environmental permitting
6. Creation of habitat as detailed in the final contract plans and specifications
7. Completion and acceptance of federal and state time-zero monitoring reports

Prior to any request for payment for the work set forth in Milestone 4, the COUNTY must first deliver to the DEPARTMENT the following documents in form satisfactory to the DEPARTMENT: monthly progress reports and monthly invoices for the construction project. A final invoice must include signed and sealed as built construction plans approved by the SFWMD.

**** Milestone 5: FIVE YEAR POST CONSTRUCTION MONITORING AND MAINTENANCE OF THE SNOOK ISLAND SEAGRASS AND MANGROVE MITIGATION PROJECT**

The COUNTY shall perform the Wetland Monitoring Program as per permit conditions set forth by SFWMD at the time the parties enter into a subsequent Joint Participation Agreement (JPA). The JPA will provide for, among other terms, the necessary Wetland Monitoring Program as well as the payment for said service by the DEPARTMENT in an amount not to exceed Two Hundred Thousand Dollars (\$200,000.00). Said payment will be subject to the execution by the parties of the aforescribed JPA and shall also be subject to an annual appropriation by the Florida Legislature.

Exhibit "B"
METHOD OF COMPENSATION

The Department's total contribution for the design, permitting, and construction of Snook Island for seagrass and mangrove mitigation is an amount not to exceed **Four Million Eight Hundred Fifty Thousand Dollars (\$4,850,000.00)** as subject to the provisions of this Agreement as follows:

MILESTONE 1: CONCEPTUAL DESIGN AND SURVEYS

The total Projects cost for this milestone will be in an amount of **One Hundred Twenty Thousand Dollars (\$120,000.00)**.

MILESTONE #1
Breakdown of Funding is as follows:

FM# 419022-1-C2-01 = \$ 25,000.00
FM# 421297-1-C2-01 = \$ 25,000.00
FM# 412489-2-C2-01 = \$ 70,000.00

DEPARTMENTS's participation for milestone #1: \$120,000.00

MILESTONE 2: ENVIRONMENTAL PERMITTING

The total Projects' costs for this Milestone will be in the amount of Sixty Thousand Dollars (\$60,000.00).

MILESTONE #2
Breakdown of Funding is as follows:

FM# 412489-2-C2-01 = \$60,000.00

DEPARTMENTS's participation for milestone #2: \$60,000.00

MILESTONE 3: FINAL DESIGN & DOCUMENTATION

The total Projects' cost for this Milestone will be in the amount of **One Hundred Seventy Five Thousand Dollars (\$175,000.00)**.

Breakdown of Funding is as follows:

FM# 412489-2-C2-01 = \$175,000.00

DEPARTMENT's participation for milestone #3: \$175,000.00

MILESTONE 4: CONSTRUCTION

The total Projects' costs for this Milestone will not exceed **Four Million Four Hundred Ninety Five Thousand Dollars (\$4,495,000.00)** unless the parties hereto agree to amend this Agreement+.

MILESTONE #4

Breakdown of Estimated Funding is as follows:

FM# 412489-2-C2-01 = \$1,570,000.00

FM# 419013-1-C2-01 = \$1,675,000.00

FM# 417506-1-C2-01 = \$1,250,000.00

DEPARTMENT's participation for Milestone #4: \$4,495,000.00

EXHIBIT "C"
FEDERAL AND/OR STATE FUNDED CONTRACTS

The administration of resources awarded by the Department to PALM BEACH COUNTY may be subject to audits and/or monitoring by the Department, as described in this section.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department staff to PALM BEACH COUNTY regarding such audit. PALM BEACH COUNTY further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the FDOT's Office of Inspector General (OIG) and Florida's Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

Recipients of federal funds (i.e. state, local government, or non-profit organizations as defined in OMB Circular A-133, as revised) are to have audits done annually using the following criteria:

1. In the event that the recipient expends \$500,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. This agreement indicates Federal resources awarded through the Department by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1., the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.
3. If the recipient expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. However, if the recipient elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).
4. Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency.

PART II: STATE FUNDED

Recipients of state funds (i.e. a nonstate entity as defined by Section 215.97(2)(l), Florida Statutes) are to have audits done annually using the following criteria:

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year, 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 Department of Financial Services and the CFO; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. This agreement indicates state financial assistance awarded through the Department by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the

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Department, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(d), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. However, if the recipient 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 the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

PART III: OTHER AUDIT REQUIREMENTS

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

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 work papers shall be given to the FDOT, the Department of Financial Services, and the Auditor General. This section does not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:
 - A. The Department at each of the following address:

**Florida Department of Transportation,
3400 W. Commercial Blvd.
Ft. Lauderdale, FL 33309
Karen Maxon, District Single Audit Liaison**
 - B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

**Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132**
 - C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.
2. In the event that a copy of the reporting package for an audit required by PART I of this agreement and conducted in accordance with OMB Circular A-133, as revised, is not required to be submitted to the Department for reasons pursuant to section .320 (e)(2), OMB Circular A-133, as revised, the recipient shall submit the required written notification pursuant to Section .320 (e)(2) and a copy of the recipient's audited schedule of expenditures of Federal awards directly to each of the following:

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Florida Department of Transportation,
3400 W. Commercial Blvd.
Ft. Lauderdale, FL 33309
Karen Maxon, District Single Audit Liaison

In addition, pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department at each of the following addresses:

Florida Department of Transportation,
3400 W. Commercial Blvd.
Ft. Lauderdale, FL 33309
Karen Maxon, District Single Audit Liaison

3. Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:

A. The Department at the following address:

Florida Department of Transportation,
3400 W. Commercial Blvd.
Ft. Lauderdale, FL 33309
Karen Maxon, District Single Audit Liaison

B. The Auditor General's Office at the following address:

Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

4. Copies of reports or the management letter required by PART III of this agreement shall be submitted by or on behalf of the recipient directly to:

A. The Department at the following address:

Florida Department of Transportation,
3400 W. Commercial Blvd.
Ft. Lauderdale, FL 33309
Karen Maxon, District Single Audit Liaison

Any reports, management letter, or other information required to be submitted to the Department pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

5. Recipients, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

1. The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of at least five years from the date the audit report is issued, and shall allow the Department, or its designee, CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department, or its designee, CFO, or Auditor General upon request for a period of at least five years from the date the audit report is issued, unless extended in writing by the Department.

EXHIBIT "D"

SINGLE AUDIT COMPLIANCE REQUIREMENTS

FEDERAL and/or STATE resources awarded to the recipient pursuant to this agreement should be listed below. If the resources awarded to the recipient represent more than one Federal or State program, provide the same information for each program and the total resources awarded. **Compliance Requirements** applicable to each State program should also be listed below. If the resources awarded to the recipient represent more than one program, list applicable compliance requirements for each program in the same manner as shown here:

STATE RESOURCES

<u>State Agency</u>	<u>Catalog of State Financial Assistance (Number & Title)</u>	<u>Amount</u>
DOT	55.023 State Highway Project Reimbursement	\$4,850,000.00

(Department of Transportation)

Activities Allowed: Project costs must be incurred subsequent to agreement execution (contract provision). Project scope of services identifies the types of work that are eligible for reimbursement (contract provision).

Allowable Costs: Identified in the contract document up to a lump sum or maximum limiting amount.

Cash Management: Not applicable.

Eligibility: Project must be on the State Highway System.

Equipment / Real Property Management: Not applicable.

Matching: Not applicable.

Period of Availability: State Fiscal Year: July 1 to June 30. The contract must be executed during the fiscal year for which state funds are programmed. Once committed, the funds certify forward across fiscal years for the life of the contract.

Reporting: Project costs are reviewed and approved upon receipt of an invoice from the county of municipality.

Subrecipient Monitoring: The county or municipality is responsible for monitoring the work of subrecipients. Subrecipient invoices are reviewed, verified and paid by the county of municipality. County or municipality invoices are then reviewed and approved for payment by FDOT. Subrecipients do not invoice FDOT directly.

Special Tests Provisions: Not applicable.

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RESOLUTION NO. R-2009_____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA APPROVING A JOINT PARTICIPATION AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION OF A SEAGRASS AND MANGROVE MITIGATION PROJECT.

WHEREAS, the Florida Department of Transportation (FDOT) and Palm Beach County (County) are desirous to enter into a Joint Participation Agreement (JPA) for the proposed mitigation area at Snook Island Phase II; and

WHEREAS, the Project is a continuation of the existing Snook Island Natural Area that was initiated in 2005; and

WHEREAS, through this Agreement, the County will accomplish the Project including designs, planning, permitting, engineering, bidding and construction; and

WHEREAS, the improvements are in the best interest of both the County and FDOT and it would be more practical, expeditious, and economical for the County to perform such activities.

(Intentionally Left Blank)

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY FLORIDA, that the following be established:

1. The recitations set forth herein above are true, accurate and correct, and are incorporated herein.

2. The Board of County Commissioners approves the JPA with FDOT and authorizes the Chairman to sign on behalf of the Board.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, was as follows:

COMMISSIONER JOHN F. KOONS, CHAIRMAN _____

COMMISSIONER BURT AARONSON, VICE CHAIRMAN _____

COMMISSIONER KAREN T. MARCUS _____

COMMISSIONER SHELLEY VANA _____

COMMISSIONER STEVEN L. ABRAMS _____

COMMISSIONER JESS R. SANTAMARIA _____

The Chairman thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2009.

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

By _____
Assistant County Attorney

By _____
Deputy Clerk

2009 - 1025

BGEX - 380 - 043009*1660

BGRV - 380 - 043009*650

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA

BUDGET AMENDMENT

Fund 3654 Environmental Capital Projects Fund

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENCUMBERED / Expended 5/8/2009	REMAINING BALANCE
<u>REVENUES</u>							
381-E459 - Snook Isld Mangrove Mitigation 3439 - State Grant - Phys Environ	0	0	4,850,000	0	4,850,000		
TOTAL RECEIPTS & BALANCES	0	15,686,307	4,850,000	0	20,536,307		
<u>EXPENDITURES</u>							
381-E459 - Snook Isld Mangrove Mitigation 6505- Design/Eng/Mgmt	0	0	850,000	0	850,000	0	850,000
381-E459 - Snook Isld Mangrove Mitigation 6504 - IOTB Non Infrastructure	0	0	4,000,000	0	4,000,000	0	4,000,000
TOTAL APPROPRIATIONS & EXPENDITURES	0	15,686,307	4,850,000	0	20,536,307		

Environmental Resources
Management

INITIATING DEPARTMENT/DIVISION
Administration/Budget Department Approval
OFMB Department - Posted

Signatures & Dates

Richard E. Mobley 5/5/09
John R. [Signature] 5-11-09
5/11/09 (NO) 5/11/09

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF

May 19, 2009

Deputy Clerk to the
Board of County Commissioners