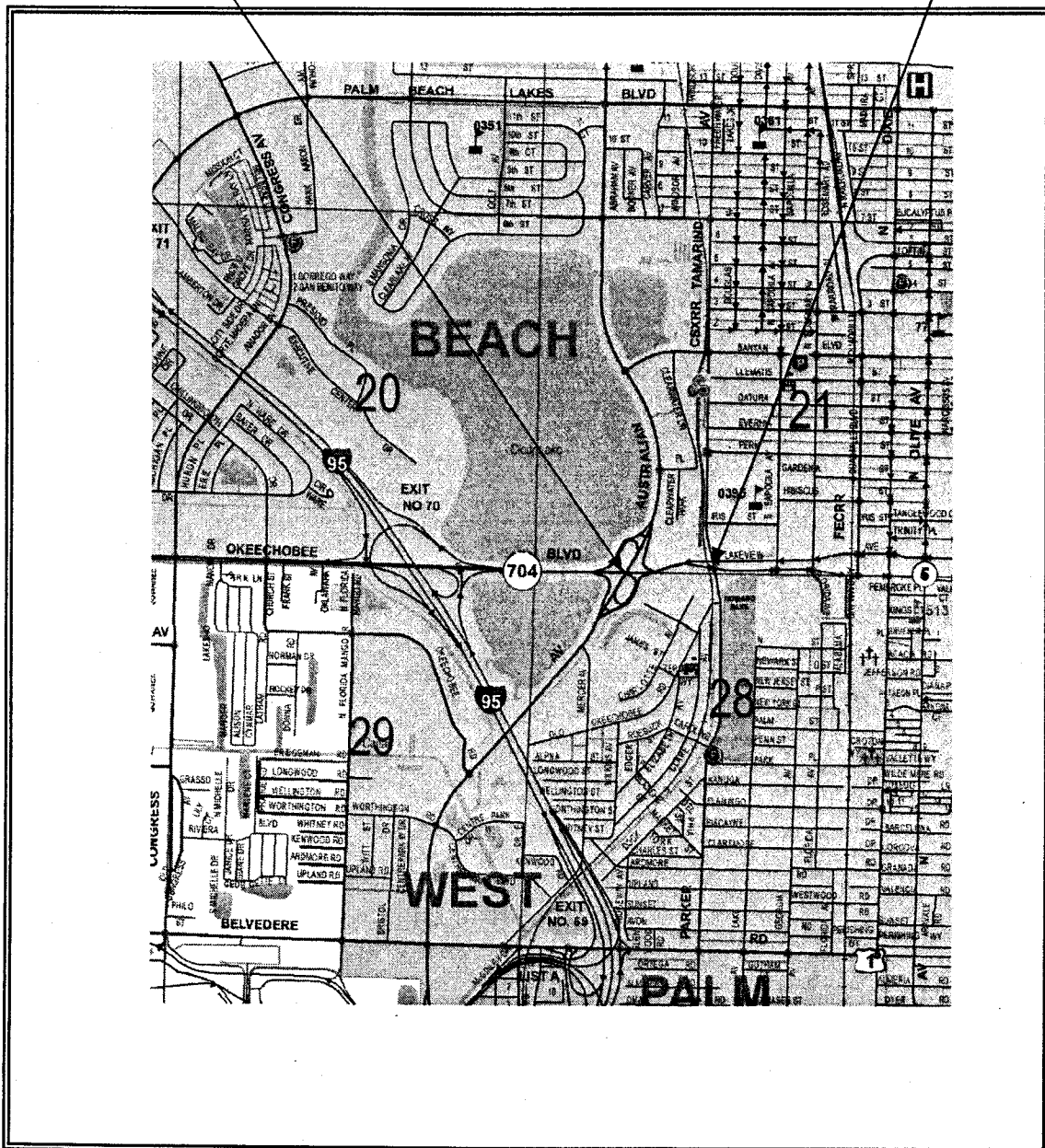






LOCATION MAP

OKEECHOBEE BLVD. – AUSTRALIAN AVE. TO TAMARIND AVE./PARKER AVE.



Res. 177-09

**AGREEMENT BETWEEN  
PALM BEACH COUNTY, FLORIDA  
AND  
THE CITY OF WEST PALM BEACH  
FOR  
DESIGN AND CONSTRUCTION OF STREET LIGHTING IMPROVEMENTS  
FOR  
OKEECHOBEE BOULEVARD (SR 704) FROM AUSTRALIAN AVENUE TO  
TAMARIND AVENUE/PARKER AVENUE.  
  
PALM BEACH COUNTY, FLORIDA  
  
PALM BEACH COUNTY PROJECT NO. 2002111**

THIS AGREEMENT, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between Palm Beach County, a political subdivision in the State of Florida, (the "COUNTY") and the City of West Palm Beach, a municipal corporation of the State of Florida (the "CITY").

**WITNESSETH:**

**WHEREAS**, the COUNTY intends to make roadway improvements to Okeechobee Blvd. (SR 704) from Australian Ave. to Tamarind Ave./Parker Ave. (collectively, the "PROJECT"); and

**WHEREAS**, the City desires to replace the existing street lighting system (the "IMPROVEMENT") within the PROJECT area in which they currently operate and maintain on this State Road facility; and

**WHEREAS**, the CITY will operate and maintain the new proposed overhead street lights to be part of the lighting circuitry; and

**WHEREAS**, the COUNTY and the CITY (collectively, the "PARTIES") desire to jointly participate in the design and construction of the IMPROVEMENT and the PROJECT in order to make the best use of their resources and to minimize disruption to the traveling public; and

**WHEREAS**, Section 163.01 of the Florida Statutes allows governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs

and development of local communities; and

**WHEREAS**, both the COUNTY and the CITY declare it to be in the public interest that the IMPROVEMENT be constructed in conjunction with the PROJECT; and

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, the PARTIES agree as follows:

1. The above recitals are true and correct and are incorporated herein.
2. The purpose of this Agreement is to clarify the PARTIES' respective roles and obligations regarding design, procurement, construction, funding and maintenance of the IMPROVEMENT to be constructed in conjunction with the PROJECT.
3. The CITY agrees to fund and pay directly to the COUNTY those costs attributable to the design and construction of the " IMPROVEMENT " within the limits of the PROJECT, as outlined and shown in the Bid Documents for Palm Beach County Project # 2002111.
4. The cost for the IMPROVEMENT is expected not to exceed three hundred twenty five thousand dollars (\$325,000.00). Any costs exceeding this amount shall be paid by the CITY.
5. The CITY agrees to remit payment as set forth in Paragraphs 3 and 4 above within thirty (30) days of receiving written notice from the COUNTY that payment is required.
6. Construction costs assessed under this Agreement shall be adjusted based upon actual contract costs at completion of the PROJECT using contract unit prices and actual constructed quantities, which quantities shall be measured by the COUNTY in conjunction with the CITY.
7. The COUNTY shall obtain the CITY's approval for any change orders which increase costs attributable to the design and construction of IMPROVEMENT beyond the amount stated in Paragraph 4 herein. The CITY shall notify the COUNTY of its intent to approve or deny the change order within ten (10) working days of receiving the COUNTY's notice of the necessity for same. The CITY shall be responsible for any

costs caused by its own delays, including but not limited to PROJECT delays.

The COUNTY shall notify the CITY, in writing, of any change orders which increase the cost attributable to the design and construction of the CITY's portion of the PROJECT to an amount greater than the contract amount. The CITY shall have 10 days to provide the COUNTY with written notice of its approval or disapproval of the change order. CITY approval is not to be unduly withheld. Any delay cost associated with the CITY's failure to respond in writing, within the proscribed number of days set forth above, shall be the responsibility of the CITY.

8. In the event additional IMPROVEMENT and/or funding is required to complete the IMPROVEMENT, the CITY shall be responsible for whatever additional cost is attributable to the design and construction of the IMPROVEMENT, again contingent upon approval by the CITY. Likewise, in the event of an under run attributable to design and construction of the IMPROVEMENT, the CITY will be credited the excess amount.

9. The COUNTY shall be responsible for administering those funds in accordance with this Agreement.

10. The CITY shall be responsible for, and agrees to provide or cause to be performed, all inspection services during construction of the IMPROVEMENT.

11. The CITY will be responsible for all future operation and maintenance of the newly constructed street lighting circuitry.

12. The CITY shall be responsible for, and agrees to provide or cause to be performed, all maintenance following construction of the IMPROVEMENT.

13. Neither Party shall 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 either Party of the liability limits established in Section 768.28 of the Florida Statutes. Liability for injury to personnel and the loss or damage of equipment shall be borne by the Party employing such personnel or owning such equipment.

14. In the event a claim or lawsuit is brought against the COUNTY, its officers, employees, servants, or agents, the CITY agrees, without waiving the limitations set forth in Florida Statute Section 768.28 and to the extent permitted by law, to indemnify and hold harmless the COUNTY, its officers, employees, servants or agents from and against any claims, losses, demands, damages, liabilities or causes of action of whatsoever kind or nature that the COUNTY, its officers, employees, servants or agents may or could sustain arising out of any act, omission or fault of the CITY or anyone acting under its direction or control, or on its behalf in conjunction with performance under this Agreement.

15. The COUNTY agrees to require the contractor to include the CITY as an additional insured under the insurance coverage provided by the contractor for construction of the IMPROVEMENTS.

16. In the event a claim or lawsuit is brought against the CITY, its officers, employees, servants, or agents, the COUNTY agrees, without waiving the limitations set forth in Florida Statute Section 768.28 and to the extent permitted by law, to indemnify and hold harmless the CITY, its officers, employees, servants or agents from and against any claims, losses, demands, damages, liabilities or causes of action of whatsoever kind or nature that the CITY, its officers, employees, servants or agents may or could sustain arising out of any act, omission or fault of the COUNTY or anyone acting under its direction or control, or on its behalf in conjunction with performance under this Agreement.

17. All provisions of this Agreement calling for the expenditure of ad valorem tax money by either the COUNTY or the CITY, to the time actual construction of the IMPROVEMENT begins, are subject to annual budgetary funding and should either Party involuntarily fail to fund any of their respective obligations pursuant to this Agreement, this Agreement may be terminated. Once construction of the IMPROVEMENT commences, performance under this Agreement shall no longer be contingent upon availability of funds for same. Further, once the COUNTY commences

construction of IMPROVEMENT, the IMPROVEMENT shall be prosecuted to completion, unless the CITY notifies the COUNTY in writing that further work on the IMPROVEMENT shall cease. In that event the CITY shall be responsible for all costs incurred relating to the IMPROVEMENT.

18. Any and all notices required or permitted hereunder shall be by Certified Mail, return receipt requested.

To the CITY:

City of West Palm Beach  
Attn: City Administrator  
Post Office Box 3366  
200 2nd Street  
West Palm Beach, FL 33402-3366

*Also copy the City Attorney*

To the COUNTY:

George T. Webb, P.E., County Engineer  
Engineering and Public Works Department  
P.O. Box 21229  
West Palm Beach, FL 33416-1229  
Attn: Roadway Production

*Also copy the County Attorney*

19. The PARTIES shall bear their own costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms and conditions of this Agreement.

20. Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless agreed to in writing and executed in the same manner as was this Agreement.

21. This Agreement shall be construed and governed by the laws of the State of Florida. Venue for any and all legal action necessary to enforce this Agreement shall be the COUNTY. No remedy conferred upon either Party by this Agreement is intended to be exclusive of any other remedy existing at law, in equity or otherwise. No single or partial exercise by either Party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

22. Preparation of this Agreement was a joint effort of the PARTIES and should not be construed more severely against one Party than the other.



23. The PARTIES agree no person shall on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status or sexual orientation be excluded from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

24. In the event any provision hereof is held invalid by a court of competent jurisdiction, the remaining portions of the Agreement shall remain in full force and effect.

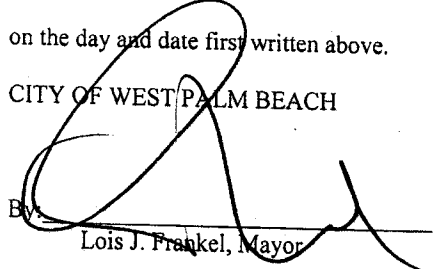
25. This Agreement represents the entire understanding of the PARTIES and supersedes all other negotiations, representations or agreements, written or oral, relating to this Agreement.

**AGREEMENT WITH THE CITY OF WEST PALM BEACH**

IN WITNESS WHEREOF, the PARTIES hereto have set their hands and seals  
on the day and date first written above.

CITY OF WEST PALM BEACH

PALM BEACH COUNTY, BY ITS  
BOARD OF COUNTY COMMISSIONERS

By:   
Lois J. Frankel, Mayor

By: \_\_\_\_\_  
John F. Koons, Chairman

ATTEST:

ATTEST:

BLANE KAUTHEN  
CITY CLERK

SHARON R. BOCK  
CLERK & COMPTROLLER

By: 

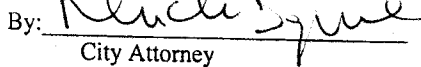
By: \_\_\_\_\_  
(Deputy Clerk)

(DATE) 6/1/09

(DATE)

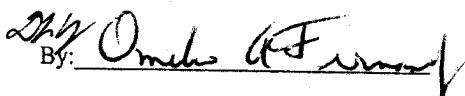
APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By:   
City Attorney

By: \_\_\_\_\_  
Assistant County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS

By: 

**BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY  
BUDGET Amendment**

FUND Transportation Improvement

BGRV 070809-725  
BGEX 070809-2048

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 07/08/09	REMAINING BALANCE
<b>REVENUES</b>								
<b><u>OKEECHOBEE BLVD &amp; TAMARIND AVE</u></b>								
3500-361-0947-6994	Municipal Participation Prot	<u>0</u>	<u>0</u>	<u>325,000</u>	<u>0</u>	<u>325,000</u>		
<b>TOTAL RECEIPTS &amp; BALANCES</b>		277,171,871	262,491,889	325,000	0	262,816,889		
<b><u>EXPENDITURES</u></b>								
<b><u>OKEECHOBEE BLVD &amp; TAMARIND AVE</u></b>								
3500-361-0947-8101	Contributions Othr Govtl Agency	<u>0</u>	<u>0</u>	<u>325,000</u>	<u>0</u>	<u>325,000</u>	0	325,000
<b>TOTAL APPROPRIATIONS &amp; EXPENDITURES</b>		277,171,871	262,491,889	325,000	0	262,816,889		

	<b>SIGNATURE</b>	<b>DATE</b>	<b>By Board of County Commissioners At Meeting of <u>08/18/09</u></b>
<b>Engineering &amp; Public Works</b>	<u>atwillhite</u>	<u>7/9/09</u>	
<b>Administration / Budget Approval</b>	_____	_____	_____
<b>OFMB Department – Posted</b>	_____	_____	<b>Deputy Clerk to the Board of County Commissioners</b>