

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: January 12, 2010

☒ Consent
☐ Workshop

☐ Regular
☐ Public Hearing

Department:

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

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: A Resolution approving Amendment Number Three to the Joint Participation Agreement (JPA) with the State of Florida Department of Transportation (FDOT), approved on June 7, 2005 (R2005-1064), to allow for interim invoicing for the Blue Heron Boulevard and Congress Avenue intersection improvements project.

SUMMARY: Approval of Amendment Number Three to the JPA will allow Palm Beach County to submit interim invoices to FDOT rather than one final invoice after construction is complete.

District 7 (MRE)

Background and Justification: On June 7, 2005, the Board of County Commissioners (Board) approved a JPA with FDOT. The Agreement was approved by FDOT on June 22, 2005. This Agreement provides Palm Beach County (County) with financial assistance for the intersection improvements at SR-708/Blue Heron Boulevard and Congress Avenue. Amendment Number One (R2008-0018) was approved by the Board on January 15, 2008, to add the State Audit Provisions. Amendment Number Two (R2008-0726) was approved by the Board on May 6, 2008 to modify the required begin construction date to no later than June 15, 2009. This Third Amendment is in the best interest of the County as it modifies the invoicing procedures to allow for interim invoicing as opposed to one final invoice at the end of the project's construction.

Attachments:

1. Location Sketch
2. Amendment Three (7 originals)
3. Amendment Two
4. Amendment One
5. JPA Agreement
6. Resolution (7 originals)

Recommended by: HBK

Ornelis G. Fernandez
Division Director

12/7/09
Date

Approved By: S. J. Webb

T. Webb
County Engineer

12/17/09
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2010 | 2011 | 2012 | 2013 | 2014 |
|-------------------------|--------|------|------|------|------|
| Capital Expenditures | \$ -0- | -0- | -0- | -0- | -0- |
| Operating Costs | -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- | -0- | -0- | -0- | -0- |

ADDITIONAL FTE
POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No ____
Budget Acct No.: Fund____ Dept.____ Unit____ Object____
Program

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

* This item has no fiscal impact. The amendment to the agreement only changes the manner in which the reimbursement will be made.

C. Departmental Fiscal Review: Atwellhite

III. REVIEW COMMENTS

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

Jim D. [Signature] 12-22-09
OFMB
12/22/09
WD 12/22/09
DM 12-22-09

John J. [Signature] 12-23-09
Contract Dev. and Control

B. Approved as to Form and Legal Sufficiency:

This amendment complies with
our review requirements.

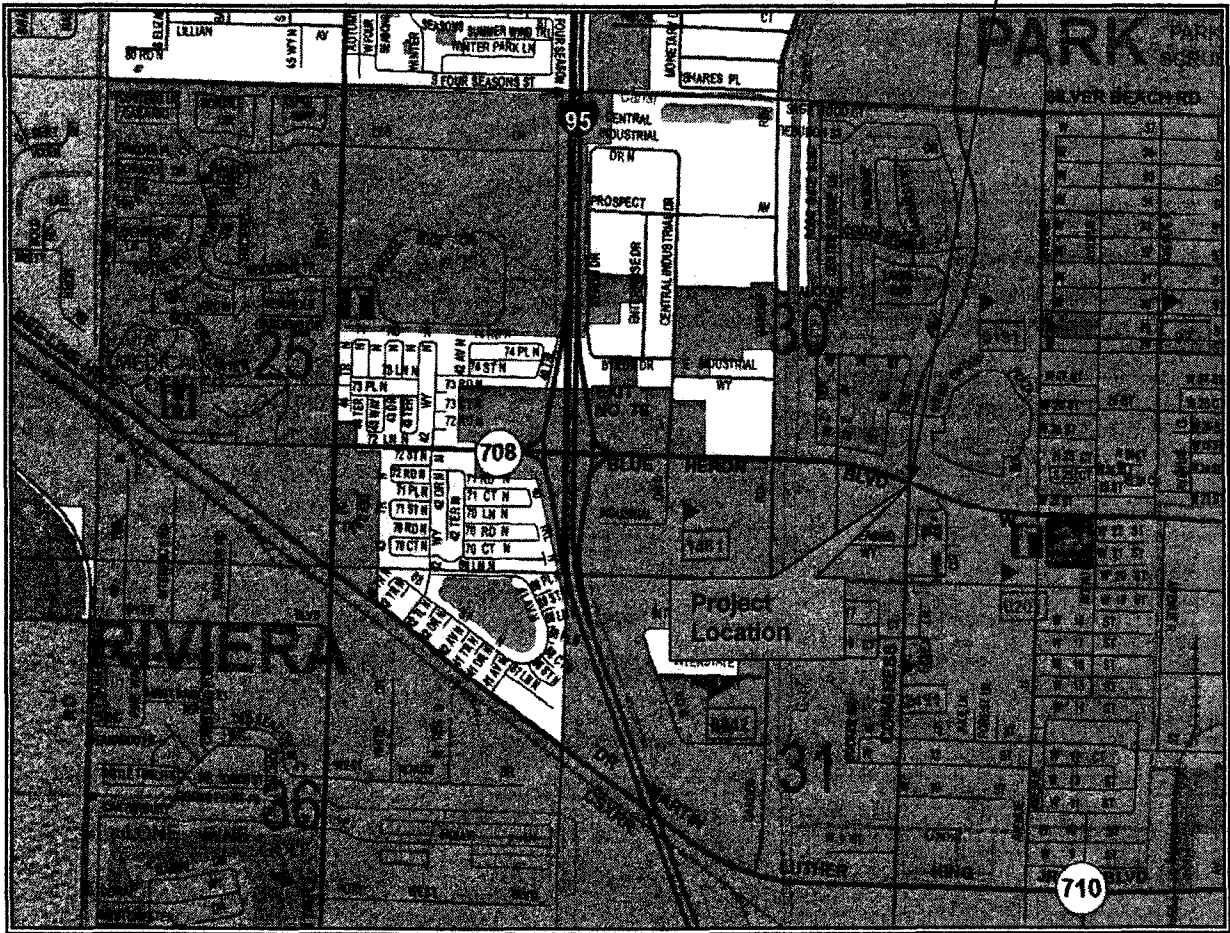
Marlene R. [Signature] 1/6/10
Assistant County Attorney

C. Other Department Review:

Department Director

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

LOCATION MAP
CONGRESS AVENUE AT SR-708/BLUE HERON BOULEVARD
PALM BEACH COUNTY PROJECTS
#2005102



LOCATION MAP

Contract No.: AO-364
FM No: 417062-1-58-01
Vendor No: VF 596-000-785

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
PALM BEACH COUNTY
JOINT PARTICIPATION AGREEMENT
AMENDMENT NUMBER THREE

This Amendment, made and 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 North Jog Road, West Palm Beach, Florida 33406, hereinafter called the COUNTY.

WITNESSETH

WHEREAS, on June 22, 2005, the parties entered into a Joint Participation Agreement, hereinafter referred to as the AGREEMENT, wherein the COUNTY agreed to provide certain improvements in connection with Financial Management (FM) No. 417062-1-58-01 for the Design and Construction of adding Southbound and Northbound left turn lanes, and reconstruction a 6' wide sidewalk behind the curb and gutter on Congress Avenue, at the intersection of SR-708/Blue Heron Boulevard in Palm Beach County, Florida for and hereinafter referred to as the PROJECT; and,

WHEREAS, the parties amended the AGREEMENT on February 9th, 2008 (AMENDMENT NUMBER ONE) and on May 23, 2008 (AMENDMENT NUMBER TWO); and,

WHEREAS, the parties desire to further amend the Agreement; and,

WHEREAS, the parties hereto mutually agree that this Amendment is in their best interest;

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree to amend that certain Joint Participation Agreement dated June 22, 2005, as follows:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. Paragraph 6, page 2 of 5, of the Agreement is amended to read as follows:

The DEPARTMENT agrees to pay the COUNTY for satisfactory completion and upon written approval and acceptance of all services described in Exhibit "A" of this Agreement. The total DEPARTMENT's share toward the PROJECT shall not exceed Three Hundred Fifty Thousand Dollars (\$350,000.00). The COUNTY shall deliver written invoices, for actual costs incurred as detailed in progress reports. Any cost overruns or cost increase for the PROJECT in excess of the DEPARTMENT's share of Three Hundred Fifty Thousand Dollars (\$350,000.00) shall be the sole responsibility of the COUNTY.

All provisions, covenants, terms and conditions of the AGREEMENT between the parties theretofore entered into on June 22, 2005 and amended on February 9, 2008 and May 23, 2008, as originally

set forth therein, which are not hereby expressly amended or modified and not in conflict with the terms hereof, are hereby ratified and confirmed and shall remain the same and be unaffected by these presents.

IN WITNESS WHEREOF, this AMENDMENT to be executed by the parties below for the purposes specified herein. Authorization has been give to enter into and execute this Amendment by Resolution No. _____ on. _____, 200____, 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: _____
TITLE: _____ CHAIR _____
_____ day of _____, 20____

BY: _____
GERRY O'REILLY, P.E.
DIRECTOR OF TRANSPORTATION DEVELOPMENT

ATTEST:
SHARON R. BOCK

LEGAL REVIEW:

CLERK & COMPTROLLER (SEAL)
CIRCUIT COURT

BY: _____
OFFICE OF THE GENERAL COUNSEL

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED:

BY: _____
COUNTY ATTORNEY

BY: _____
PROFESSIONAL SERVICES ADMINISTRATOR

APPROVED AS TO TERMS AND CONDITIONS:

BY: 181 [Signature] AT [Signature]

R2008 0726
MAY 06 2008

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
PALM BEACH COUNTY
JOINT PARTICIPATION AGREEMENT
AMENDMENT NUMBER TWO

THIS AMENDMENT, made and entered into this 23rd day of May, 2008, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter called the **DEPARTMENT**, and **PALM BEACH COUNTY**, located at 2300 NORTH JOG ROAD, WEST PALM BEACH, FLORIDA 33406, hereinafter called the **PARTICIPANT**.

WITNESSETH

WHEREAS, on June 22th, 2005, the parties entered into a Joint Participation Agreement, hereinafter referred to as the **AGREEMENT**, wherein the **PARTICIPANT** agreed to provide certain improvements in connection with the Design and Construction of adding Southbound and Northbound left turn lanes, and reconstruction a 6' wide sidewalk behind the curb and gutter on Congress Avenue, at the intersection of SR-708/Blue Heron Boulevard in Palm Beach County, Florida for FM# 417062-1-58-01 and hereinafter referred to as the **PROJECT**, and,

WHEREAS, the Agreement was amended on February 9th, 2008 (**AMENDMENT NUMBER ONE**); and

WHEREAS, the parties desire to further amend the Agreement; and

WHEREAS, the parties hereto mutually agree that this Amendment is in their best interest;

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree to amend that certain Joint Participation Agreement dated June 22th, 2005, as follows:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. Paragraph 9, page 2 of 5, of the Agreement is amended to read as follows:

The **PARTICIPANT** agrees to begin construction on or before, but not later than June 15, 2009.

All provisions, covenants, terms and conditions of the **AGREEMENT** between the parties theretofore entered into on June 22th, 2005 and amended on February 9th, 2008, as originally set forth therein, which are not hereby expressly amended or modified and not in conflict with the terms hereof, are hereby ratified and confirmed and shall remain the same and be unaffected by these presents.

IN WITNESS WHEREOF, this AMENDMENT to be executed by the parties below for the purposes specified herein. Authorization has been give to enter into and execute this Amendment by Resolution No. _____, on. _____, 2008, hereto attached

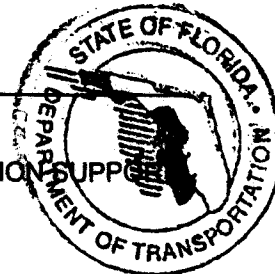
R2008 0726 MAY 06 2008

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

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: Addie L. Greene
NAME: ADDIE L. GREENE
TITLE: CHAIRPERSON
____ day of MAY 06 2008, 20____

BY: Rosielyn Quiroz
ROSIELYN QUIROZ
DIRECTOR OF TRANSPORTATION SUPPORT



ATTEST:
SHARON R. BOCK

APPROVED: (AS TO FORM)

Sharon R. Bock
CLERK & COMPTROLLER
CIRCUIT COURT Deputy Clerk
The seal of Palm Beach County Commissioners is circular. It features the words "PALM BEACH COUNTY COMMISSIONERS" around the perimeter and "FLORIDA" at the bottom.

BY: [Signature]
DISTRICT GENERAL COUNSEL

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED:

BY: Paul F. [Signature]
COUNTY ATTORNEY

BY: Luz Holmes
for PROFESSIONAL SERVICES ADMINISTRATOR

APPROVED AS TO TERMS AND CONDITIONS:

BY: [Signature]

R2008 0018 JAN 15 2008

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
PALM BEACH COUNTY
JOINT PARTICIPATION AGREEMENT
AMENDMENT NUMBER ONE

THIS AMENDMENT, made and entered into this 9th day of FEBRUARY, 2008, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the DEPARTMENT, and PALM BEACH COUNTY, located at 2300 NORTH JOG ROAD, WEST PALM BEACH, FLORIDA 33406, hereinafter called the PARTICIPANT.

WITNESSETH

WHEREAS, on June 22, 2005, the parties entered into a Joint Participation Agreement, hereinafter referred to as the AGREEMENT, wherein the PARTICIPANT agreed to provide certain improvements in connection with the Design and Construction of adding Southbound and Northbound left turn lanes, and reconstruction a 6' wide sidewalk behind the curb and gutter on Congress Avenue, at the intersection of SR-708/Blue Heron Boulevard in Palm Beach County, Florida for FM# 417062-1-58-01 and hereinafter referred to as the PROJECT, and,

WHEREAS, the parties desire to amend the AGREEMENT; and

WHEREAS, the parties hereto mutually agree that this Amendment is in their best interest;

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree to amend that certain Joint Participation Agreement dated June 22, 2005, as follows:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. The AGREEMENT is further amended to include the Federal and State Audit provisions set forth in Attachment "A", annexed hereto and made part hereof.

All provisions, covenants, terms and conditions of the AGREEMENT between the parties theretofore entered into on June 22, 2005, as originally set forth therein, which are not hereby expressly amended or modified and not in conflict with the terms hereof, are hereby ratified and confirmed and shall remain the same and be unaffected by these presents.

IN WITNESS WHEREOF, this AMENDMENT to be executed by the parties below for the purposes specified herein. Authorization has been given to enter into and execute this Amendment by Resolution No. 2008-0018 on January 15th, 2008, herein attached.

JAN 15 2008

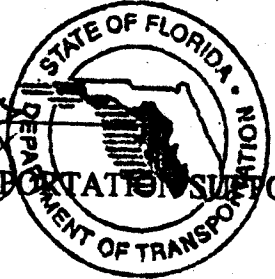
R2008-0018

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD COUNTY
COMMISSIONERS

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: Addie L. Greene
Addie L. Greene, Chairperson

By: Roselyn Quiroz
ROSIELYN QUIROZ
DIRECTOR OF TRANSPORTATION SUPPORT



ATTEST:
SHARON R. BOCK,
CLERK & COMPTROLLER
CIRCUIT COURT

APPROVED: (AS TO FORM)

BY: Nancy Packer
Deputy Clerk
PALM BEACH COUNTY COMMISSIONERS
FLORIDA

BY: [Signature]
DISTRICT GENERAL COUNSEL

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: Mark R. [Signature]
Assistant County Attorney

APPROVED:

BY: Antoinette P. [Signature]
PROFESSIONAL SERVICES ADMINISTRATOR

APPROVED AS TO TERMS
AND CONDITIONS

Dan [Signature]
County Engineering

Attachment "A"

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 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 addresses:

**Florida Department of Transportation,
3400 W. Commercial Blvd.
Ft. Lauderdale, FL 33309
Antonette P. Adams, Professional Services Administrator
John Thompson, Project Manager**

- 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:

**Florida Department of Transportation,
3400 W. Commercial Blvd.
Ft. Lauderdale, FL 33309
Antonette P. Adams, Professional Services Administrator
John Thompson, Project Manager**

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
Antonette P. Adams, Professional Services Administrator
John Thompson, Project Manager**

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 each of the following addresses:

**Florida Department of Transportation,
3400 W. Commercial Blvd.
Ft. Lauderdale, FL 33309
Antonette P. Adams, Professional Services Administrator
John Thompson, Project Manager**

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 each of the following addresses:

**Florida Department of Transportation,
3400 W. Commercial Blvd.
Ft. Lauderdale, FL 33309
Antonette P. Adams, Professional Services Administrator
John Thompson, Project Manager**

5. 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.
6. 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.

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 (Department of Transportation) | 55.023 State Highway Project Reimbursement | \$350,000.00 |

Compliance Requirements

1. *Exhibit "A" Scope of Services*
2. a) *Most projects are administered by or through State Transportation Departments or Federal agencies*
b) *The Participant must follow specific laws, guidelines or regulations regarding allowable program expenditures.*

R2005 1064

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

THIS AGREEMENT, entered into this 22nd day of June, 2005, by and between the State of Florida Department of Transportation hereinafter called the **DEPARTMENT**, and the **PALM BEACH COUNTY**, at 160 AUSTRALIAN AVENUE, WEST PALM BEACH, FLORIDA 33406, hereinafter referred to as the **COUNTY**.

WITNESSETH

WHEREAS, the **DEPARTMENT** and the **COUNTY** are desirous of having the **COUNTY** make certain improvements in connection with Financial Management (FM) Numbers 417062-1-58-01 for:

1. The design and construction of adding Southbound and Northbound left turn lanes, and reconstructing a 6' wide sidewalk behind the curb and gutter on Congress Avenue, at the intersection of SR-708/Blue Heron Boulevard, in Palm Beach County, Florida. Refer to Exhibit "A" for a detailed Scope of Services; and,

WHEREAS, for purposes of this Agreement, improvements to be made as stated above are hereinafter referred to as the **PROJECT**; and,

WHEREAS, said **PROJECT** is on the State Highway System, is not revenue producing and is 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** shall act as an agent of the **DEPARTMENT** for the limited purpose of utility relocation and permit application, and,

WHEREAS, the **COUNTY** by Resolution No. R-2005-1064 adopted on June 7th, 2005, a copy of which is attached hereto and made a part hereof, authorizes the **COUNTY** 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 have the responsibility to complete the **PROJECT** in accordance with the Scope of Services set forth in Exhibit "A", attached hereto and made a part hereof.
3. The **COUNTY** shall be responsible for assuring that the **PROJECT** complies with all applicable Federal, State and Local laws, rules, regulations, guidelines and standards.
4. 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 cost.

5. The COUNTY shall have the sole responsibility for resolving claims and requests for additional work for the PROJECT. The COUNTY will make best efforts to obtain the DEPARTMENT input in its decisions.
6. For satisfactory completion and upon written approval and acceptance of all services detailed in Exhibit "A" (Scope of Services) of this Agreement, the DEPARTMENT will pay the COUNTY a total amount not to exceed THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00), which will be invoiced and paid based on the percentage of completion of the PROJECT for actual cost incurred, as detailed in progress reports.
7. The COUNTY acknowledges and agrees that the DEPARTMENT'S obligation to pay the sum set forth herein is contingent upon an annual appropriation by the Florida Legislature.
8. The COUNTY will be responsible to design, bid, and select a contractor using a competitive process and construct improvements to the previously listed intersections in the PROJECT.
9. The COUNTY agrees to begin construction within three years from the date of execution of this agreement.

In the event the COUNTY is unable to begin construction, within three years after execution of the Joint Participation Agreement, this Agreement will be terminated unless a time extension is issued and granted in writing by the DEPARTMENT.
10. In the event it becomes necessary for the DEPARTMENT 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. Venue with respect to any such litigation shall be in Broward County.
11. Should the DEPARTMENT and the COUNTY decide to proceed with subsequent phases of the PROJECT, the Agreement may be amended to identify the respective responsibilities and the financial arrangement between the parties.
12. 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.
13. 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, 2010, whichever occurs first.
14. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Department of Financial Services under Section 215.422(14), Florida Statutes, or by the DEPARTMENT'S Comptroller under Section 334.044(29), Florida Statutes.
15. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the DEPARTMENT'S 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.

16. Bills for fees or other compensation for services for expenses shall be submitted in detail sufficient for proper preaudit and postaudit thereof.
17. COUNTY providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt of an invoice from the COUNTY, the DEPARTMENT has (10) ten working days to inspect and approve the goods and services where working day is defined as any day of the week excluding Saturday, Sunday and any legal holiday as designated in Section 110.117, Florida Statutes. Please note that each invoice must be broken down by financial project number as described on Page 1 of this Agreement. The DEPARTMENT has 20 calendar days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 calendar days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
18. If payment is not available within 40 calendar 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. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.
19. 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)410-9724 or by calling the Department of Financial Services' Hotline, 1-800-848-3792.
20. 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."
21. 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.
22. To the extent allowed by the Laws of Florida, the COUNTY hereby agrees 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 the COUNTY, and/or its employees. In addition, with respect to any of the COUNTY'S agents, consultants, 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 suites 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, contractors, and/or sub-contractors. 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.

23. 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 project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of cost.
24. This Agreement is governed by and construed in accordance with the laws of the United States, State of Florida.
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 Boulevard
Fort Lauderdale, Florida 33309-3421
Attn: Leos A. Kennedy, Jr.
With a copy to: John Thompson
A second copy to: District General Counsel

If to the COUNTY:

Palm Beach County
Dept. of Engineering and Public Works
160 Australian Avenue
West Palm Beach, Florida 33406
Attn: Ms. Amy Harris
With A Copy to: Ms. Marlene Everitt,
Assistant County Attorney

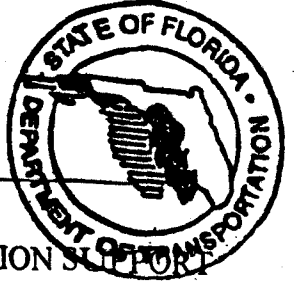
IN WITNESS WHEREOF, this Agreement is to be executed by the parties below for the purposes specified herein. Authorization has been given to enter into and execute this Agreement by Resolution No. _____ hereto attached.

R2005 1064

JUN 07 2005

PALM BEACH COUNTY, FLORIDA
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA
BOARD OF COUNTY COMMISSIONERS

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION



BY: Tony Masiotti
NAME: Tony Masiotti, Chairman
TITLE: _____

BY: Rosilyn Quiroz
ROSILYN QUIROZ
DIRECTOR OF TRANSPORTATION SUPPORT

ATTEST:

SHARON R. BROCK, CLERK
& Comptroller

Judith Crawford
CLERK OR DEPUTY CLERK
The seal of the Palm Beach County Commissioners is circular. It features the words "PALM BEACH COUNTY COMMISSIONERS" around the top and "PALM BEACH COUNTY FLORIDA" around the bottom, with a star in the center.

APPROVED: (AS TO FORM)

BY: Linnie C. Meyer
DISTRICT GENERAL COUNSEL

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: Mark R. Hunt
COUNTY ATTORNEY

APPROVED:

BY: Liz Holmes
PROFESSIONAL SERVICES ADMINISTRATOR

for

APPROVED AS TO TERMS AND CONDITIONS:

BY: Dan Mearns
DIRECTOR, TRAFFIC ENGINEERING

EXHIBIT "A"
SCOPE OF SERVICES

The COUNTY will provide a complete Roadway Contract Plan Set for the PROJECT (FM# 417062-1-58-01). The scope of the project will include, but not be limited to drainage system, signal system, lighting, and landscaping (as needed).

The COUNTY will submit plan sets to the DEPARTMENT for review at Initial Engineering, Final Engineering, and Production Complete. The plans shall be produced to DEPARTMENT standards using the current editions of the Standard Index and Plans Preparation Manual. Said PROJECT shall be certified to be in conformance with the approved plans and specifications by a responsible Project Engineer.

The COUNTY is responsible for obtaining all necessary permits from the DEPARTMENT, local governments, and permitting agencies and utility relocation schedules and agreements.

The COUNTY shall be responsible for coordinating, preparing, holding all project public involvement per DEPARTMENT guidelines and procedures.

The COUNTY shall design the project to lie within existing right-of-way. If the COUNTY expands the PROJECT to include features outside the existing right-of-way, it shall be the COUNTY'S responsibility to acquire according to the DEPARTMENT'S policies and procedures, at no cost to the DEPARTMENT.

The COUNTY must submit, for each of the proposed improvements listed in the PROJECT, the following for DEPARTMENT approval prior to initial engineering:

- a) Community Awareness Plan (Level I)
- b) Typical Section Package
- c) Pavement Design
- d) FDOT General Permit
- e) Permits Package
- f) Drainage Report and Calculations
- g) Conceptual Traffic Control Plans

The COUNTY shall provide the following items/documents prior to construction of the Project:

- a) Copies of all permits from applicable agencies.
- b) Signed maintenance agreements for lighting.
- c) Perpetual Drainage easements (if required) will be provided in favor of the DEPARTMENT, based upon the COUNTY'S Engineer's final roadway design plans.
- d) Signed Utility Relocation Schedules and Agreements.
- e) Level II Contamination Assessments (if required).
- f) Signed and sealed plans and Specification Packages.

The COUNTY will advertise the project, select a contractor, and let the project to contract, for each of the proposed improvements listed in the PROJECT. The COUNTY will provide construction engineering inspection prior to the beginning of construction, until the DEPARTMENT accepts the completed construction project, for each of the proposed improvements listed in the PROJECT. The road and proposed improvements shall be constructed and delivered in accordance with the DEPARTMENT'S current Standards Specification for Road and Bridge Construction.

The COUNTY shall provide the following items/documents after construction of the Project.

- a) Signed and Sealed copies of as-built plans.
- b) Certification from the Construction Engineering Inspection Project Engineer or COUNTY'S representative that the road was built in accordance with plans and specifications.
- c) The PARTICIPANT shall provide title to roadway PROPERTY if the PARTICIPANT expands the project to included features outside the existing right-of-way.