

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

**Meeting Date:** March 9, 2010

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 receive and file: Two (2) original documents for the Department of Environmental Resources Management:

**A)** Amendment No. 1 to the Interlocal Agreement (R2008-2215) for Law Enforcement Services with the City of Delray Beach to increase by one (1) the number of law enforcement officer(s) funded to patrol the waters of Delray Beach for boater violations associated with the Manatee Protection Plan; and

**B)** A fully executed Local Agency Program Agreement with the State of Florida Department of Transportation for reimbursement of construction costs of Historic Jupiter-Indiantown Trail from Mack Dairy Road to Indiantown Road.

**Summary:** **A)** On December 18, 2007, as part of the Manatee Protection Plan, the Board of County Commissioners approved a Resolution (R2007-2277) with a standard form Interlocal Agreement with law enforcement agencies for an increased law enforcement presence in estuarine waters of Palm Beach County. Delegation of the authority to execute these standard form Interlocal Agreements was approved on December 31, 2007, pursuant to PPM No. CW-O-051. This Amendment increases the number of officers funded from one (1) to two (2). **B)** Due to time constraints on receipt of the executed document by the State, authorization for the Chairman of the Board of County Commissioners to execute this document was delegated on November 17, 2009 by the Board of County Commissioners. The Trail is a segment of the NENA system being funded entirely by Florida Stimulus Scenic Enhancement Funds from the American Recovery and Reinvestment Act. Districts 1 & 4 (SF)

**Background and Justification:** N/A

**Attachments:**

1. Amendment No. 1 to Interlocal Agreement for Law Enforcement Services
2. Local Agency Program Agreement with Florida Department of Transportation

Recommended by: Richard E. Walters 2/16/2010  
 Department Director Date

Approved by: [Signature] 3/1/10  
 County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

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

<b>Fiscal Years</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Capital Expenditures</b>	_____	_____	_____	_____	_____
<b>Operating Costs</b>	_____	_____	_____	_____	_____
<b>External Revenues</b>	_____	_____	_____	_____	_____
<b>Program Income (County)</b>	_____	_____	_____	_____	_____
<b>In-Kind Match (County)</b>	_____	_____	_____	_____	_____
 <b>NET FISCAL IMPACT</b>	_____	_____	_____	_____	_____
 <b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

**Is Item Included in Current Budget?** Yes \_\_\_\_\_ No \_\_\_\_\_  
**Budget Account No.:** Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_  
 Program \_\_\_\_\_

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

*NA*

**C. Department Fiscal Review:**

*JP*

**III. REVIEW COMMENTS**

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

*[Signature]*  
 \_\_\_\_\_  
 OEMB

*[Signature]* 2126110  
 \_\_\_\_\_  
 Contract Development and Control

**B. Legal Sufficiency:**

*[Signature]*  
 \_\_\_\_\_  
 Assistant County Attorney

**C. Other Department Review:**

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

**AMENDMENT NO. 1 TO**  
**INTERLOCAL AGREEMENT FOR**  
**LAW ENFORCEMENT SERVICES**  
**BETWEEN PALM BEACH COUNTY**  
**AND THE CITY OF DELRAY BEACH**  
**AGREEMENT #R2008-2215**

**CONTRACTOR**

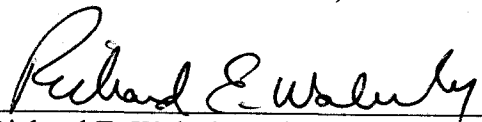
The City of Delray Beach  
300 West Atlantic Avenue  
Delray Beach, Florida 33444

THIS AGREEMENT, entered into on the 5th day of August, 2008, is hereby amended as follows:

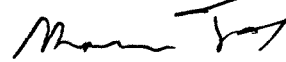
1. Article 4 paragraph B. is hereby replaced with the following: During the term of this Agreement, the Contractor shall provide two (2) law enforcement officer(s) to patrol the waters of the Enforcement Area and to enforce all applicable laws. The law enforcement officer(s) shall provide services on Saturday and Sunday for 8 hours per day between the hours of 6 A.M. and 6 P.M. During the term of this Agreement, the Contractor shall provide law enforcement services on any day or times aside from a Saturday or Sunday, at the request of the County. Requests for the provision of law enforcement services on a day or days in addition to the regularly scheduled days or times shall be made at least five business days prior to the date when such services are needed.
2. All other terms and conditions of the Agreement shall remain unchanged, and in full force and effect. This Amendment No. 1 shall not be construed to increase the total amount of funding the County will pay the Contractor under the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 on the day and year written below.

PALM BEACH COUNTY, FLORIDA:

  
Richard E. Walesky, Director  
Department of Environmental Resource  
Management  
Date: 11/19/09

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

  
County Attorney

CITY OF DELRAY BEACH

By: 

Date: 10/20/2009

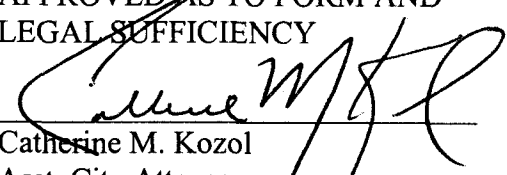
Attest: 

Deputy City Clerk

10/23/09

By: \_\_\_\_\_  
Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

  
Catherine M. Kozol  
Asst. City Attorney

**INTERLOCAL AGREEMENT FOR  
LAW ENFORCEMENT SERVICES  
BETWEEN PALM BEACH COUNTY  
AND THE CITY OF DELRAY BEACH**

THIS AGREEMENT is made this 5<sup>th</sup> day of August, 2008, between the City of Delray Beach of Palm Beach County, Florida, hereinafter referred to as "Contractor", and Palm Beach County, a political subdivision of the State of Florida, (hereinafter "County"), hereinafter referred to collectively as the "parties."

**WITNESSETH**

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governments 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 to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority that such agencies share in common and that each might exercise separately; and

WHEREAS, pursuant to Chapter 125.01, Florida Statutes, the Board of County Commissioners of Palm Beach County is empowered to establish and administer programs of conservation and to enter into agreements with other governmental agencies within or outside the boundaries of the County for joint performance, or performance of one unit on behalf of the other, of any of either governmental entity's authorized functions; and

WHEREAS, in October of 1989, the Florida Governor and Cabinet directed thirteen (13) "key" manatee counties, including Palm Beach County, to prepare a Manatee Protection Plan ("MPP"); and

WHEREAS, on August 21, 2007, the Board of County Commissioners approved a MPP that provides for increased law enforcement presence in the County's waterways, as one means to provide greater manatee protection; and

WHEREAS, studies performed by the Florida Fish and Wildlife Conservation Commission has demonstrated that the increased law enforcement presence is the most effective means to gain compliance with boater speed zones; and

WHEREAS, the County wishes to increase the hours of patrol and enforcement in estuarine waters of Palm Beach County which will improve compliance with boater and manatee protection speed zones, and reduce the risks to manatees and members of the public; and

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WHEREAS, the parties wish to enter into an agreement for the provision of an increased level of marine law enforcement services during manatee season, as provided herein.

NOW THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, the Contractor and the County agree as follows:

**1) Recitals**

The recitals set forth above are true and correct and form a part of this Agreement.

**2) Purpose.**

The purpose of this Interlocal Agreement (the "Agreement") is to provide for additional marine law enforcement services within estuarine waters of the County during manatee season, which begins November 15th and ends the following March 31st. The law enforcement services provided herein are intended to be in addition to the level of law enforcement services already provided by the Contractor and are not a replacement for said services.

**3) Location of Law Enforcement Services**

The "Contractor" shall provide marine law enforcement services, hereinafter referred to as "services", within the geographical area over which it has jurisdiction to enforce the law, such shall be hereafter referred to as the "Enforcement Area" and is included within the estuarine waters of Palm Beach County which are more specifically described in Exhibit "A".

**4) Responsibility of Contractor**

A. The Contractor shall enforce State statutes, administrative rules, local and County ordinances related to vessel control, marine resource protection, and manatee protection; assist in the investigation, apprehension, and prosecution of violators of existing boat and manatee protection speed zones; assist in the monitoring of waterway markings and regulatory signs in the Enforcement Area; and, assist in educating boaters about manatee and boater safety issues.

B. During the term of this Agreement, the Contractor shall provide ONE (1) law enforcement officer(s) to patrol the waters of the Enforcement Area and to enforce all applicable laws. The law enforcement officer(s) shall provide services on Saturday and Sunday for 8 hours per day between the hours of 6 A.M. and 6 P.M. During the term of this Agreement, the Contractor shall provide law enforcement services on any day or times aside from a Saturday or Sunday, at the request of the County. Requests for the provision of law enforcement services on a day or days in addition to the regularly scheduled days or times shall be made at least five business days prior to the date when such services are needed.

C. The Contractor shall furnish and supply all labor, supervision, equipment (including but not limited to a vessel), insurance, and supplies necessary to perform under this Agreement.

D. The Contractor shall provide the following information to the County on a monthly basis: Standard Marine Enforcement Monthly Report Form (form to be provided by the County); documentation of warnings and citations issued to violators by the Contractor, and monthly payroll

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documentation for hours worked by any officer who performs services under the terms of this Agreement.

E. In the event that during the term of this Agreement an officer issues a citation, which is challenged in the Palm Beach County Circuit Court, the Contractor shall immediately inform the County. The County will then determine whether the Contractor will be reimbursed under the terms of this Agreement for the time expended to attend such court proceeding.

F. The Contractor shall submit invoices for payment to the County on a monthly basis. Invoices shall include a reference to this Agreement, identify the amount due and payable to the Contractor, and include records sufficient to substantiate the costs incurred. Invoices shall be in sufficient detail for pre-audit and post-audit review.

#### **5) Responsibility of the County**

The County will reimburse the Contractor for law enforcement services as provided for herein at the rate of \$82.50 per hour for on-water enforcement activity, which includes the cost of salaries, fringe benefits, and all other services and expenses incurred by the Contractor in the fulfillment of this Agreement. The hourly rate for law enforcement services rendered pursuant to this Agreement will be annually increased on October 1st of each year in accordance with the Revised Consumer Price Index for Urban Wage Earners and Clerical Workers, but in no event more than 3% annually. The County will reimburse the Contractor on a monthly basis at the rate provided herein, provided that a proper invoice detailing such services is received and approved by the County. In no event shall the total amount paid to the Contractor by the County exceed a total amount set annually by the County by October 1st of each year.

#### **6) Effective Date and Term of the Agreement**

This Agreement shall take effect November 15th, 2008 and shall terminate on April 30<sup>th</sup>, 2011, unless such time has been extended by the County.

#### **7) Authorized Representative**

A. The County's authorized representative is Richard E. Walesky, Director, Department of Environmental Resources Management, (561) 233-2400, West Palm Beach, Florida, or his designee.

B. The Contractor's authorized representative is Officer Andrew Arena, Marine Safety Officer, (561) 243-7873, or his/her successor.

#### **8) Independent Contractor**

A. The parties shall be considered independent contractors, and no party shall be considered an employee or agent of any other party. Nothing in this Agreement shall be interpreted to establish any relationship other than that of independent contractor between the parties and their respective employees, agents, subcontractors, or assigns during or after the performance of this Agreement. No person employed by any party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment

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

B. All employees and agents of the Contractor who perform any act or service under the terms of this Agreement shall at all times be considered employees of the Contractor and not of the County. The Contractor will be responsible for supervising, disciplining, and setting policies pertaining to terms and conditions of employment for those employees performing Services as provided herein.

**9) Payment**

For reimbursement to occur, the Contractor shall submit invoices to the County that shall include a reference to this Agreement, identify the amount due and payable to the Contractor, and include records sufficient to substantiate the costs incurred. Invoices shall be itemized in sufficient detail for prepayment audit thereof. The Contractor shall provide additional documentation to support any invoice if requested by the County. Invoices received from the Contractor shall be reviewed by the Department of Environmental Resources Management and upon approval shall be sent to the County's Finance Department for final approval and payment. Invoices will normally be paid within forty-five (45) days of receipt. In the case of a dispute involving the amounts due to the Contractor, payment may be delayed.

**10) Compliance with Codes and Laws**

Each party agrees to abide by all applicable laws, orders, rules, and regulations in the performance of this Agreement.

**11) Access to Records and Audits**

The parties shall maintain, in accordance with generally accepted governmental auditing standards, all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this Agreement including supporting documentation. The parties shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this Agreement. Such examination may be made only upon reasonable notice, time and place. In the event that the parties should become involved in a legal dispute with a third party arising from performance under this Agreement, the parties shall extend the period of maintenance for all records relating to the Agreement until the final disposition of the legal dispute, and all such records shall be made readily available to the parties.

**12) Funding**

This Agreement is expressly contingent upon annual appropriations by the Palm Beach County Board of County Commissioners.

**13) Notice**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be hand delivered, faxed, or mailed (by certified mail, return receipt requested) to the respective addresses/recipients specified below:

As to the Contractor:

Officer Andrew Arena  
Delray Beach Police Department  
300 West Atlantic Avenue  
Delray Beach, Florida 33444  
Fax: (561) 243-7816

As to County:

Palm Beach County  
Department of Environmental Resources Management  
2300 N. Jog Road - 4th Floor  
West Palm Beach, FL 33411-2743  
Fax: (561) 233-2414

Copy to:

Palm Beach County  
Attn: County Attorney for ERM  
301 North Olive Avenue, Suite 601  
West Palm Beach, FL 33401

All notices required by this Agreement shall be considered delivered upon receipt. Should any party change its address, written notice of such new address shall promptly be sent to the other party.

#### **14) Default, Termination, Opportunity to Cure**

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

B. Either party may terminate this Agreement without cause by giving sixty (60) days prior written notice.

#### **15) Waiver or Breach**

It is hereby agreed to by the parties that no waiver or breach of any of the covenants or provisions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

#### **16) Indemnification**

Each party shall be liable for its own actions and negligence, and to the extent permitted by law, the County shall indemnify, defend, and hold harmless the Contractor against any actions, claims, or damages arising out of the County's negligence in connection with this Agreement, and the Contractor shall indemnify, defend, and hold harmless the County against any actions, claims, or damages arising out of the Contractor's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the



limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either party to be responsible for such other party's negligent, willful or intentional acts or omissions.

#### **17) Insurance**

A. Each party warrants and represents that it is self-insured for General Liability, Watercraft Liability, and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event a Party maintains third-party Commercial General Liability, Watercraft Liability, and Business Auto Liability in lieu of exclusive reliance on self-insurance under Section 768.28, Florida Statutes, that party shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage. The parties agree to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute 440.

B. The parties further agree that nothing contained herein shall be construed or interpreted as: (1) denying to any party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes; or (4) a waiver of sovereign immunity of the City of Delray Beach beyond the waiver provided in section 768.28, Florida Statutes.

C. When requested, each party shall provide any other party with an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which all parties agree to recognize as acceptable for the above mentioned coverages. Compliance with the foregoing requirements shall not relieve any party of its liability and obligations under this Agreement.

#### **18) Applicable Law**

Any litigation arising from or relating to this Agreement will be governed by the laws of the State of Florida and the venue in any such proceeding will be exclusively in Palm Beach County, Florida.

#### **19) Severability**

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

#### **20) Enforcement Costs**

Any costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms or conditions of this Agreement will be borne by the respective parties. This provision pertains only to the parties to the Agreement.

#### **21) Counterparts**

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This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, all of which together will constitute one (1) and the same instrument.

**22) Captions**

The captions and section designations set forth herein are for convenience only and have no substantive meaning.

**23) Exhibits**

The Exhibits referred to and attached to this Agreement are incorporated herein in full by this reference.

**24) Assignment**

This Agreement is not assignable by either party.

**25) Equal Opportunity**

The County and the Contractor agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, age, 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 the Agreement.

**26) Construction**

This Agreement shall not, solely as a matter of judicial construction, be constructed more severely against one of the parties than the other.

**27) Modification and Amendment**

Except as expressly permitted herein to the contrary, no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formalities used to execute this Agreement.

**28) Entirety of Agreement**

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

**29) Delegation of Authority to Execute this Agreement.**

The Board of County Commissioners of Palm Beach County, Florida delegated the authority to execute this Agreement to the County Administrator or his designee on December 18th, 2007 in Resolution R2007-2277.

**The remainder of this page is intentionally left blank.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

Signed in the presence of witnesses:

PALM BEACH COUNTY, FLORIDA:

Richard E. Walesky  
Richard E. Walesky, Director

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

Mark Joy  
County Attorney

WITNESS:  
[Signature]  
Signature  
Arslan Apena  
Print Name

CITY OF DELRAY BEACH

By: Rita Ellis  
Title

Date: 8-5-08

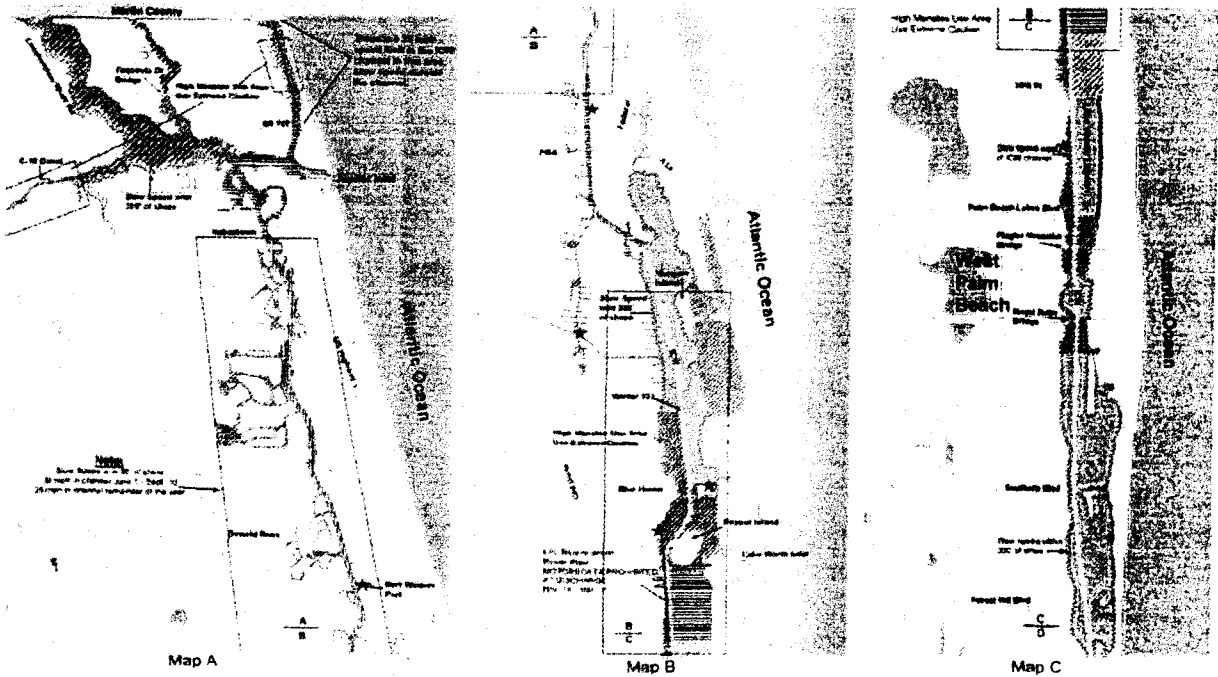
Attest:  
By: Chenell D. Nubari  
Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

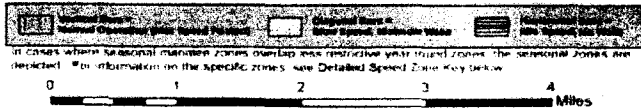
Catherine M. Kozol  
Catherine M. Kozol  
Asst. City Attorney

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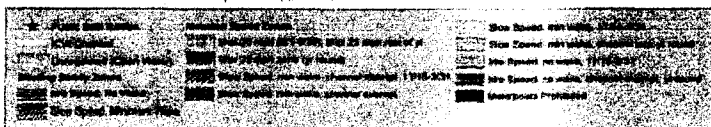
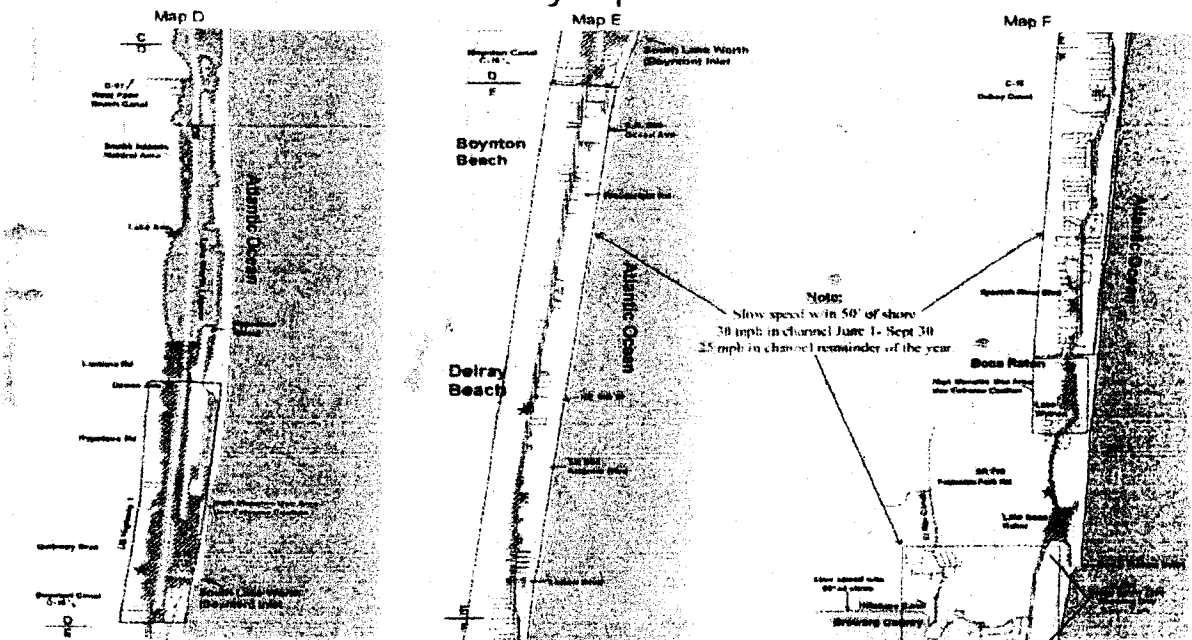
EXHIBIT 'A'



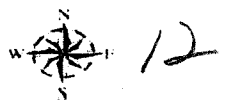
Quick Reference Guide



Palm Beach County  
Waterway Speed Zones



Note: Waterway speed zones were established by F.W.L. and defined in F.W.L. 2001-02 (Boater Safety Zones) and F.W.L. 2002-03 (Boater Safety Zones). For more information, contact F.W.L. at 561-995-8711.



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

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FPN: <u>425259-1-58-01</u>	Fund: <u>FSSE</u>	FLAIR Approp: _____
Federal No: <u>ARRA 016 B</u>	Org Code: <u>55043010404</u>	FLAIR Obj: _____
FPN: _____	Fund: _____	FLAIR Approp: _____
Federal No: _____	Org Code: _____	FLAIR Obj: _____
FPN: _____	Fund: _____	FLAIR Approp: _____
Federal No: _____	Org Code: _____	FLAIR Obj: _____
FPN: _____	Fund: _____	FLAIR Approp: _____
Federal No: _____	Org Code: _____	FLAIR Obj: _____
County No: <u>93</u>	Contract No: <u>APT 26</u>	Vendor No: <u>VF596000785043</u>

Data Universal Number System (DUNS) No: 80-939-7102  
Catalog of Federal Domestic Assistance (CFDA): 20.205 Highway Planning and Construction

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THIS AGREEMENT, made and entered into this 12 day of January, 2010 by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter called the Department, and Palm Beach County hereinafter called the Agency.

**WITNESSETH:**

WHEREAS, the Agency has the authority to enter into this Agreement and to undertake the project hereinafter described, and the Department has been granted the authority to function adequately in all areas of appropriate jurisdiction including the implementation of an integrated and balanced transportation system and is authorized under Section 339.12, Florida Statutes, to enter into this Agreement;

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

**1.00 Purpose of Agreement:** The purpose of this Agreement is to provide for the Department's participation in construction of the bike lane / sidewalk for the Historic Jupiter - Indiantown Road from Mack Dairy Rd. to Jupiter Farms Rd. and as further described in Exhibit "A" attached hereto and by this reference made a part hereof, hereinafter called the "project," and to provide Department financial assistance to the Agency and state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the project will be undertaken and completed.

**1.01 Attachments:** Exhibit(s) A+B+1+S+X are attached and made a part hereof.

**2.01 General Requirements:** The Agency shall complete the project as described in Exhibit "A" with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The project will be performed in accordance with all applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Agency Program Manual, which by this reference is made a part hereof as if fully set forth herein. Time is of the essence as to each and every obligation under this Agreement.

A full time employee of the Agency, qualified to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of this Agreement shall be in charge of each project.

**Removal of Any Unbilled Funds**

If Agency fails to timely perform its obligations in submitting invoices and documents necessary for the close out of the project, and said failure results in a loss of the remaining unbilled funding either by Federal withdrawal of funds or loss of State appropriation authority (which may include both federal funds and state funds, if any state funds are on the project), Agency will be responsible for the remaining unbilled funds on the project. No other funds will be provided by the Department. Agency waives the right to contest such removal of funds by the Department, if said removal is directly related to Federal (FHWA) withdrawal of funds or loss of State appropriation authority due to Local Agency's failure or nonperformance. In addition to loss of funding, the Department will consider de-certification of said Agency for future LAP projects.

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STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LOCAL AGENCY PROGRAM AGREEMENT**

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PRODUCTION SUPPORT  
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### Removal of All Funds

If all funds are removed from the project, including amounts previously billed to the Department and reimbursed to the Agency, and the project is off the state highway system, then the department will have to request repayment for the previously billed amounts from the Local Agency. No state funds can be used on off-system projects.

**2.02 Expiration of Agreement:** The Agency agrees to complete the project on or before December 31, 2010. If the Agency does not complete the project within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the project. The cost of any work performed after the expiration date of this Agreement will not be reimbursed by the Department.

**2.03 Pursuant to Federal, State, and Local Laws:** In the event that any election, referendum, approval, permit, notice or other proceeding or authorization is requisite under applicable law to enable the Agency to enter into this Agreement or to undertake the project hereunder or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters so requisite.

**2.04 Agency Funds:** The Agency shall initiate and prosecute to completion all proceedings necessary, including federal-aid requirements, to enable the Agency to provide the necessary funds for completion of the project.

**2.05 Submission of Proceedings, Contracts, and Other Documents:** The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the project as the Department and the Federal Highway Administration (FHWA) may require.

### 3.00 Project Cost:

**3.01 Total Cost:** The total cost of the project is \$ 750,000.00. This amount is based upon the schedule of funding in Exhibit "B." The Agency agrees to bear all expenses in excess of the total cost of the project and any deficits involved. The schedule of funding may be modified by mutual agreement as provided for in paragraph 4.00.

**3.02 Department Participation:** The Department agrees to participate, including contingencies, in the project cost to the extent provided in Exhibit "B." This amount includes federal-aid funds which are limited to the actual amount of federal-aid participation.

**3.03 Limits on Department Funds:** Project costs eligible for Department participation will be allowed only from the date of this Agreement. It is understood that Department participation in eligible project costs is subject to:

- a) Legislative approval of the Department's appropriation request in the work program year that the project is scheduled to be committed;
- b) Availability of funds as stated in paragraphs 3.04 and 3.05 of this Agreement;
- c) Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement; and
- d) Department approval of the project scope and budget at the time appropriation authority becomes available.

**3.04 Appropriation of Funds:** The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. See Exhibit "B" for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.

**3.05 Multi-Year Commitment:** In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

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"(a) The department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 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 \$25,000 and which have a term for a period of more than 1 year."

**3.06 Notice-to-Proceed:** No cost may be incurred under this Agreement until the Agency has received a written Notice-to-Proceed from the Department.

**3.07 Limits on Federal Participation:** Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State laws, the regulations in 23 Code of Federal Regulations (C.F.R.) and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of FHWA. Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the project or part thereof involving such cost (23 C.F.R. 1.9 (a)). If FHWA or the Department determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported and the Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, Federal funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA or the Department may deny participation in parcel or project costs in part or in total.

For any amounts determined to be ineligible for federal reimbursement for which the Department has advanced payment, the Agency shall promptly reimburse the Department for all such amounts within 90 days of written notice.

**4.00 Project Estimate and Disbursement Schedule:** Prior to the execution of this Agreement, a project schedule of funding shall be prepared by the Agency and approved by the Department. The Agency shall maintain said schedule of funding, carry out the project, and shall incur obligations against and make disbursements of project funds only in conformity with the latest approved schedule of funding for the project. The schedule of funding may be revised by mutual written agreement between the Department and the Agency. If revised, a copy of the revision should be forwarded to the Department's Comptroller and to the Department's Federal-aid Program Office. No increase or decrease shall be effective unless it complies with fund participation requirements of this Agreement and is approved by the Department's Comptroller.

**5.00 Records:**

**5.01 Establishment and Maintenance of Accounting Records:** 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 5 years after the final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the project records, together with supporting documents and records of the Agency and all subcontractors performing work on the project and all other records of the Agency and subcontractors considered necessary by the Department for a proper audit of costs. If any litigation, claim or audit is started before the expiration of the 5-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**5.02 Costs Incurred for Project:** The Agency shall charge to the project account all eligible costs of the project except costs agreed to be borne by the Agency or its contractors and subcontractors. Costs in excess of the programmed funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs.

**5.03 Documentation of Project Costs:** All costs charged to the project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.

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**5.04 Audit Reports:** Recipients of federal and state funds are to have audits done annually using the following criteria:

The administration of resources awarded by the Department to the Agency 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, Florida Statutes, 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 the Agency regarding such audit. The Agency 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 the 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. Exhibit "1" of 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 non-state 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 of such recipient, 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 Executive Office of the Governor and the CFO, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Exhibit "1" to 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 non-state entities. State financial assistance does not include federal direct or pass-through awards and resources received by a non-state 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



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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 audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state 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 Department, 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 financial 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(es):

Karen Maxon, Work Program Coordinator, Work Program Office, 3400 West Commercial Blvd., Ft. Lauderdale 33309-3421

- 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), at the following address:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 East 10<sup>th</sup> 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 financial reporting package 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:

Karen Maxon, Work Program Coordinator, Work Program Office, 3400 West Commercial Blvd., Ft. Lauderdale 33309-3421

In addition, pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the financial 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:

Karen Maxon, Work Program Coordinator, Work Program Office, 3400 West Commercial Blvd., Ft.

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3. Copies of the financial reporting package 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 address(es):

Karen Maxon, Work Program Coordinator, Work Program Office, 3400 West Commercial Blvd., Ft. Lauderdale 33309-3421
  - 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 address(es):

Karen Maxon, Work Program Coordinator, Work Program Office, 3400 West Commercial Blvd., Ft. Lauderdale 33309-3421
5. Any reports, Management Letters, or other information required to be submitted to the Department pursuant to this Agreement shall be submitted in a timely manner in accordance with OMB Circular A-133, as revised, 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, as revised, 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 financial reporting package was delivered to the recipient in correspondence accompanying the financial reporting package.

**Part V - Record Retention:** The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of at least 5 years from the date the audit report is issued and shall allow the Department or its designee, the state CFO or Auditor General access to such records upon request. The recipient shall ensure that the independent audit documentation is made available to the Department, or its designee, the state CFO or Auditor General upon request for a period of at least 5 years from the date the audit report is issued, unless extended in writing by the Department.

**5.05 Inspection:** The Agency shall permit, and shall require its contractors to permit, the Department's authorized representatives and authorized agents of FHWA to inspect all work, workmanship, materials, payrolls, and records and to audit the books, records, and accounts pertaining to the financing and development of the project.

The Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency or any contractor, sub-contractor or materials vendor to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement (Section 287.058(1) (c), Florida Statutes).

**5.06 Uniform Relocation Assistance and Real Property Statistical Report:** For any project requiring additional right-of-way, the Agency must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project. Activities shall be reported on a federal fiscal year basis, from October 1 through September 30. The report must be prepared using the format prescribed in 49 C.F.R. Part 24, Appendix B, and be submitted to the Department no later than October 15 of each year.

**6.00 Requisitions and Payments:** Requests for reimbursement for fees or other compensation for services or expenses

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incurred shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof (Section 287.058(1)(a), Florida Statutes).

All recipients of funds from this Agreement, including those contracted by the Agency, must submit bills for any travel expenses, when authorized by the terms of this Agreement, in accordance with Section 112.061, Florida Statutes, and Chapter 3-"Travel" of the Department's Disbursement Operations Manual, Topic 350-030-400 (Section 287.058(1)(b), Florida Statutes).

If, after project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.

**7.00 Department Obligations:** Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment if:

**7.01 Misrepresentation:** The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof or in or with respect to any document of data furnished therewith or pursuant hereto;

**7.02 Litigation:** There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the project, the Agreement or payments to the project;

**7.03 Approval by Department:** The Agency shall have taken any action pertaining to the project which, under this Agreement, requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

**7.04 Conflict of Interests:** There has been any violation of the conflict of interest provisions contained here in paragraph 12.06 or 12.07.

**7.05 Default:** The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

**7.06 Federal Participation:** The Department may suspend or terminate payment for that portion of the project which the FHWA, or the Department acting in lieu of FHWA, may designate as ineligible for federal-aid.

**7.07 Disallowed Costs:** In determining the amount of the payment, the Department will exclude all projects costs incurred by the Agency prior to the effective date of this Agreement or the date of authorization, costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding in Exhibit "B" for the project, costs agreed to be borne by the Agency or its contractors and subcontractors for not meeting the project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

**7.08 Final Invoices:** The Agency must submit the final invoice on the project to the Department within 120 days after the completion of the project. Invoices submitted after the 120-day time period may not be paid.

**8.00 Termination or Suspension of Project:**

**8.01 Termination or Suspension Generally:** The Department may, by written notice to the Agency, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected or the Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.

(a) If the Department determines that the performance of the Agency is not satisfactory, the Department shall notify the Agency of the deficiency in writing with a requirement that the deficiency be corrected within thirty (30) days of such

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notice. Such notice shall provide reasonable specificity to the Agency of the deficiency that requires correction. If the deficiency is not corrected within such time period, the Department may either (1) immediately terminate the Agreement as set forth in paragraph 8.(b) below, or (2) take whatever action is deemed appropriate by the Department to correct the deficiency. In the event the Department chooses to take action and not terminate the Agreement, the Agency shall, upon demand, promptly reimburse the Department for any and all costs and expenses incurred by the Department in correcting the deficiency.

(b) If the Department terminates the Agreement, the Department shall notify the Agency of such termination in writing, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

(c) If the Agreement is terminated before the project is completed, the Agency shall be paid only for the percentage of the project satisfactorily performed for which costs can be substantiated. Such payment, however, shall not exceed the equivalent percentage of the contract price. All work in progress will become the property of the Department and will be turned over promptly by the Agency.

**8.02 Action Subsequent to Notice-of-Termination or Suspension:** Upon receipt of any final termination or suspension notice under this paragraph, the Agency shall proceed promptly to carry out the actions required therein which may include any or all of the following: (a) necessary action to terminate or suspend, as the case may be, project activities and contracts and such other action as may be required or desirable to keep to a minimum the costs upon the basis of which the financing is to be computed; (b) furnish a statement of the project activities and contracts and other undertakings the cost of which are otherwise includable as project costs. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and cost as approved by the Department or upon the basis of terms and conditions imposed by the Department upon the failure of the Agency to furnish the schedule, plan, and estimate within a reasonable time. The closing out of federal financial participation in the project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

**9.00 Contracts of Agency:**

**9.01 Third Party Agreements:** Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same.

**9.02 Compliance with Consultants' Competitive Negotiation Act:** It is understood and agreed by the parties hereto that participation by the Department in a project with the Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency's complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. At the discretion of the Department, the Agency will involve the Department in the consultant selection process for all projects. In all cases, the Agency's attorney shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.

**10.00 Disadvantaged Business Enterprise (DBE) Policy and Obligation:** It is the policy of the Department that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement.

The Agency and its contractors agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement. Furthermore, the Agency agrees that:

(a) Each financial assistance agreement signed with a US-DOT operating administration (or a primary recipient) must include the following assurance:

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"The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. The recipient shall take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 C.F.R. Part 26 and as approved by Department, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)."

(b) Each contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

"The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

**11.00 Compliance with Conditions and Laws:** The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this project. Execution of this Agreement constitutes a certification that the Agency is in compliance with, and will require its contractors and subcontractors to comply with, all requirements imposed by applicable federal, state, and local laws and regulations, including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," in 49 C.F.R. Part 29, when applicable.

**12.00 Restrictions, Prohibitions, Controls, and Labor Provisions:**

**12.01 Equal Employment Opportunity:** In connection with the carrying out of any project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Agency shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development of operation of the project, except contracts for the standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves installation, construction, demolition, removal, site improvement or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

**12.02 Title VI - Civil Rights Act of 1964:** The Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, the regulations of the U.S. Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto.

The Agency shall include provisions in all contracts with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, and related statutes and regulations.

**12.03 Americans with Disabilities Act of 1990 (ADA):** The Agency will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and assurance by the Agency pursuant thereto.

**12.04 Public Entity Crime:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier,

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subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**12.05 Discrimination:** In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.

**12.06 Suspension, Revocation, Denial of Qualification or Determination of Contractor Non-Responsibility:** An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.

**12.07 Prohibited Interests:** Neither the Agency nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the project or any property included or planned to be included in the project in which any member, officer or employee of the Agency or the locality during tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the Agency, the Agency, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the Agency or the locality relating to such contract, subcontract or arrangement.

The Agency shall insert in all contracts entered into in connection with the project or any property included or planned to be included in any project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer or employee of the Agency or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

The provisions of this paragraph shall not be applicable to any agreement between the Agency and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

**12.08 Interest of Members of, or Delegates to, Congress:** No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

**13.00 Miscellaneous Provisions:**

**13.01 Environmental Regulations:** The Agency will be solely responsible for compliance with all the applicable environmental regulations, for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith. The Agency will be responsible for securing any applicable permits.

**13.02 Department Not Obligated to Third Parties:** The Department shall not be obligated or liable hereunder to any individual or entity not a party to this Agreement.

**13.03 When Rights and Remedies Not Waived:** In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

**13.04 How Agreement Is Affected by Provisions Being Held Invalid:** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.

**13.05 Bonus or Commission:** By execution of the Agreement, the Agency represents that it has not paid and, also

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agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

**13.06 State Law:** Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the project.

**13.07 Plans and Specifications:** In the event that this Agreement involves constructing and equipping of facilities on the State Highway System, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the project. The Department will review all plans and specifications and will issue to the Agency a written approval with any approved portions of the project and comments or recommendations covering any remainder of the project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency a written approval with said remainder of the project. Failure to obtain this written approval shall be sufficient cause of nonpayment by the Department. The Agency will physically include Form FHWA-1273 in all its contracts and subcontracts.

**13.08 Right-of-Way Certification:** Upon completion of right-of-way activities on the project, the Agency must certify compliance with all applicable federal and state requirements. Certification is required prior to advertisement for or solicitation of bids for construction of the project, including those projects for which no right-of-way is required.

**13.09 Agency Certification:** The Agency will certify in writing, prior to project closeout that the project was completed in accordance with applicable plans and specifications, is in place on the Agency's facility, adequate title is in the Agency's name, and the project is accepted by the Agency as suitable for the intended purpose.

**13.10 Agreement Format:** All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

**13.11 Execution of Agreement:** This Agreement may be simultaneously executed in a minimum of two counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

**13.12 Restrictions on Lobbying:**

**Federal:** The Agency agrees that no federally-appropriated funds have been paid, or will be paid by or on behalf of the Agency, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federally-appropriated funds have been paid by the Agency to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Agency shall require that the language of this paragraph be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**State:** No funds received pursuant to this contract may be expended for lobbying the Legislature, the judicial branch or a state agency.

**13.13 Maintenance:** The Agency agrees to maintain any project not on the State Highway System constructed under this Agreement. If the Agency constructs any improvement on Department right-of-way, the Agency  will  will not maintain the improvements made for their useful life.



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**13.14 Vendors Rights:** Vendors (in this document identified as the Agency) providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has 5 working days to inspect and approve the goods and services unless the bid specifications, purchase order or contract specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within 40 days after receipt of the invoice and the receipt, inspection, and approval of goods and services, a separate interest penalty in accordance with Section 215.422(3)(b), Florida Statutes, will be due and payable in addition to the invoice amount to the Agency. Interest penalties of less than one \$1 will not be enforced unless the Agency requests payment. Invoices which have to be returned to the Agency because of Agency 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.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from the Department. The Vendor Ombudsman may be contacted at 850-413-5516 or by calling the State Comptroller's Hotline, 877-693-5236.

**13.15 Reimbursement of Federal Funds:**

The Agency shall comply with all applicable federal guidelines, procedures, and regulations. If at any time a review conducted by FHWA reveals that the applicable federal guidelines, procedures, and regulations were not followed by the Agency and FHWA requires reimbursement of the funds, the Agency will be responsible for repayment to the Department of all funds awarded under the terms of this Agreement. Federal Economic Stimulus awards do not exempt the Agency from adherence to federal guidelines, procedures, and regulations.

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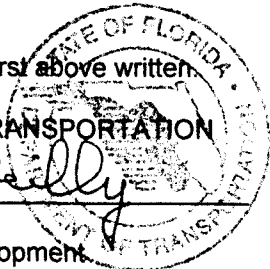
IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

AGENCY Palm Beach County

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

By: [Signature]  
Name:  
Title:

By: [Signature]  
Name: Gerry O'Reilly, P.E.  
Title: Director of Transportation Development



Attest: \_\_\_\_\_  
Title:

Attest: [Signature]  
Title: Admin. Asst.

~~As to form:~~

As to form: Legal Review

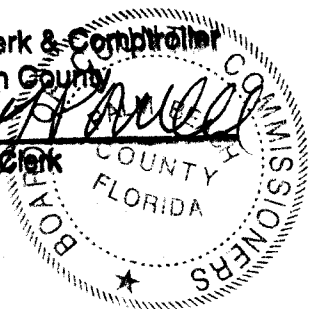
[Signature]  
Attorney

[Signature]  
District Attorney Office of the General Counsel

See attached Encumbrance Form for date of funding approval by Comptroller.

Sharon R. Bock, Clerk & Comptroller  
Palm Beach County

By: [Signature]  
Deputy Clerk



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**TYPE 1 AND PROGRAMMATIC CATEGORICAL EXCLUSION CHECKLIST**

Financial Project ID. FM 425259-1-52-01

FAP No. ARRA 016-B

Project Description: Historic Jupiter to Indiantown Trail

	YES	NO
Will the project cause significant adverse impacts to local traffic patterns, property access, or community cohesiveness, or planned community growth or land use patterns?	___	<u>X</u>
Will the project cause significant adverse impacts to air, noise and water?	___	<u>X</u>
Will the project cause significant adverse impacts to wetlands?	___	<u>X</u>
Will the project cause significant adverse impacts to navigation?	___	<u>X</u>
Will the project cause significant impacts to floodplains in accordance with Part 2, Chapter 24?	___	<u>X</u>
Will the project cause significant impacts to endangered and threatened species or their critical habitats?	___	<u>X</u>
Will the project require acquisition of significant amount of right-of-way?	___	<u>X</u>
Will the project require relocation of a significant number of residents or businesses?	___	<u>X</u>
Are there any properties protected under Section 4(f) of the U.S. Department of Transportation Act within the project limits that will require a Section 4(f) Evaluation in accordance with Part 2, Chapter 13?	___	<u>X</u>
Are there any properties protected under Section 106 of the National Historic Preservation Act within the project limits, and if there are, will the project have A significant impact any of those properties? Projects that may involve historic Properties must meet the requirements for consultation with the SHPO (or THPO as appropriate) as outlined in Part 2, Chapter 12 of this manual.	___	<u>X</u>
Will the project have a significant involvement with contamination?	___	<u>X</u>
Will the project require a public hearing or an opportunity for a public hearing?	___	<u>X</u>

**IMPORTANT** If the answer to any of these questions is Yes, then a Type 1 or Programmatic Categorical exclusion does not apply, and additional coordination with the FHWA Transportation Engineer is required to determine the necessary level of environmental documentation.

**ATTACHMENT C**  
FM# 425259-1-58-01

**TYPE 1 AND PROGRAMMATIC CATEGORICAL EXCLUSION CHECKLIST continued**

*FINDING:*

This project has been evaluated and has been determined to meet the conditions as set forth in the PD&E Manual, Part 1, Chapter 3, therefore:

YES NO

This project is a Programmatic Categorical Exclusion per FHWA approval on March 1, 1995 as amended on September 4, 1996, December 7, 2000, and the FHWA and the FTA Agency Operating Agreement executed on February 12, 2003.

This project is a Type 1 Categorical Exclusion under (23 CFR 771.117 c) effective November 27, 1987.

Agency Concurrence: *Robt Allen* Date: 11/17/2009

LAP Administrator: *Barbara Handrahan* Date: 11/25/09

FDOT Concurrence: *Ann B* Date: 11/25/2009  
fol: District 4 Environmental Administrator

**STATUS OF ENVIRONMENTAL CERTIFICATION**

Financial Project ID 425259-1-58-01

Proposal/Contract ID \_\_\_\_\_

Federal Aid No. ARRA-016B

Project Description Historic Jupiter/Indiantown Trail

This project is Categorical Exclusion under 23 C.F.R. 771.117 (c):

Type 1. It was reevaluated on 11/24/2009, and the determination remains valid.

Programmatic under current FHWA agreement. It was reevaluated on \_\_\_\_\_, and the determination remains valid.

The environmental document for this project was a (check one):

Categorical Exclusion under 23 C.F.R. 771.117(d) (Type 2) approved on \_\_\_\_\_

FONSI under 23 C.F.R. 771.121 approved on \_\_\_\_\_

Final Negative Declaration approved on \_\_\_\_\_, or

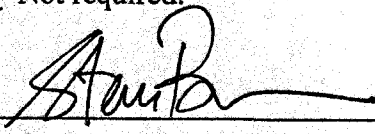
Final Environmental Impact Statement under 23 C.F.R. 771.125 approved on \_\_\_\_\_.

A reevaluation in accordance with 23 C.F.R. 771.129 was (check one):

Approved on \_\_\_\_\_

Not required.

Signature: \_\_\_\_\_



Fed: Environmental Administrator

Date: \_\_\_\_\_

11/25/2009

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LOCAL AGENCY PROGRAM AGREEMENT

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FPN No: 425259-1-58-01

**EXHIBIT "A"**  
**PROJECT DESCRIPTION AND RESPONSIBILITIES**

This exhibit forms an integral part of the Agreement between the state of Florida, Department of Transportation and

Palm Beach County

Dated:

**PROJECT LOCATION:** Historic Jupiter - Indiantown Road

The project is  is not on the National Highway System

The project  is not on the State Highway System

**PROJECT DESCRIPTION:**

Mack Dairy Rd. to Jupiter Farms Rd.

**SPECIAL CONSIDERATION BY THE AGENCY:**

The audit report(s) required in the Agreement shall include a Schedule of Project Assistance that will reflect the Department's contract number, the Financial Project Number (FPN), the Federal Authorization Number (FAN), where applicable, the amount of State funding action (receipt and disbursement of funds), any Federal or local funding action, and the funding action from any other source with respect to the project.

The Agency is required to provide a copy of the design plans for the Department's review and approval to coordinate permitting with the Department, and notify the Department prior to commencement of any right-of-way activities.

The Agency shall commence the projects activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

- a) N/A Study to be completed by N/A (Phase 18 and 28 LAP Agreements)
- b) Design to be completed on or before N/A (Phase 38 LAP Agreements)
- c) Right-of-Way requirements identified and provided to the Department by N/A (All LAPS requiring RW) (District will handle all Right-of-Way activities on LAPS, the date would be set by the necessary timeframe to complete RW activities)
- d) Right-of-Way to be certified prior to advertising for Construction. (All Phase 58 LAPS).
- e) Construction contract to be let on or before 2/1/2010 (For Phase 58 LAPS) (This date would be prior to the end of the Fiscal Year that the Phase 58 is programmed in FM)
- f) Construction to be completed on or before 12/31/2010 (Phase 58 LAP Agreements)

If this schedule cannot be met, the Agency will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of federal funding.

The project is for **Construction Only** in the year 2009 / 2010 in the amount of \$ 750,000.00. Upon execution of this agreement by all parties the Department will provide to the Agency **ONE EXECUTED AGREEMENT** and a **NOTICE TO PROCEED**. The Agency should not start any construction prior to the **EXECUTED AGREEMENT** and a **NOTICE TO PROCEED**. The Agency will only be reimbursed for costs incurred after the executed agreement date and prior to the expiration date of the agreement or time extension (if required by a request for a time extension from the Agency)

Upon completion of the project and submittal of a **Final Invoice** the Agency is required to complete and send the following:

1. The Final Inspection and Acceptance form (DOT Form # 525-010-42), signed and dated.
  2. And a copy of the Material Testing Certification. This form is in the LAP manual - Chapter 23 - Pages 15 - 16.
  3. A copy of the final plans signed and sealed.
  4. A copy of the executed contract between the Agency and the contractor.
- The Department may require an on site inspection with the Agency.

**SPECIAL CONSIDERATIONS BY DEPARTMENT:**

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**LOCAL AGENCY PROGRAM AGREEMENT**

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**EXHIBIT "B"**

**SCHEDULE OF FUNDING**

AGENCY NAME & BILLING ADDRESS Palm Beach County 301 N. Olive Avenue, Suite 1106 West Palm Beach, Florida 33401	FPN: 425259-1-58-01
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**PROJECT DESCRIPTION**

Name: Historic Jupiter - Indiantown Road Length: 2.017 miles  
 Termini: From Mack Dairy Rd. to Jupiter Farms Rd.

TYPE OF WORK By Fiscal Year	FUNDING		
	(1) TOTAL PROJECT FUNDS	(2) AGENCY FUNDS	(3) STATE & FEDERAL FUNDS
Planning 2006-2007 2007-2008 2008-2009 Total Planning Cost			
Project Development & Environment (PD&E) 2006-2007 2007-2008 2008-2009 Total PD&E Cost			
Design 2006-2007 2007-2008 2008-2009 Total Design Cost			
Right-of-Way 2006-2007 2007-2008 2008-2009 Total Right-of-Way Cost			
Construction 2006-2007 2008-2009 2009-2010 (FSSE) 2010-2011 Total Construction Cost			
Construction Engineering and Inspection (CEI) 2006-2007 2007-2008 2008-2009 Total CEI Cost			
Total Construction and CEI Costs	\$750,000.00		\$750,000.00
<b>TOTAL COST OF THE PROJECT</b>	\$750,000.00		\$750,000.00

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The Department's fiscal year begins on July 1. For this project, funds are not projected to be available until after the 1st of July of each fiscal year. The Department will notify the Agency, in writing, when funds are available.

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**EXHIBIT "1"**

**SINGLE AUDIT ACT**

**Federal Resources Awarded to the Recipient Pursuant to This Agreement Consist of the Following:**

**Federal Agency:** Federal Highway Administration

**CFDA #:** 20.205 Highway Planning and Construction

**Amount:** \$ 750,000.00

**ARRA Amount:** \$ 750,000.00

**Compliance Requirement:**

**Allowable Activities:** To be eligible, most projects must be located on public roads that are not functionally classified as local. The major exceptions are the Highway Bridge Replacement and Rehabilitation Program, which provides assistance for bridges on and off the federal-aid highways, highway safety activities, bicycle and pedestrian projects, transportation enhancement activities, the recreational trails program, and planning, research, development, and technology transfer. Proposed projects meeting these and other planning, design, environmental, safety, etc., requirements can be approved on the basis of state and local priorities within the limit of the funds apportioned or allocated to each state.

**Allowable Costs:** Eligible activities and allowable costs will be determined in accordance with Title 23 and Title 49 C.F.R. and the OMB cost principles applicable to the recipient/sub-recipient.

**Eligibility:** By law, the federal-aid highway program is a federally assisted state program that requires each state to have a suitably equipped and organized transportation department. Therefore, most projects are administered by or through State Departments of Transportation (State DOTs). Projects to be funded under the federal-aid highway program are generally selected by state DOTs or Metropolitan Planning Organizations (MPOs), in cooperation with appropriate local officials, as specified in 23 U.S.C. and implementing regulations. Territorial highway projects are funded in the same manner as other federal-aid highway projects, with the territorial transportation agency functioning in a manner similar to a state DOT. Most Federal Land Highway Program (FLHP) projects are administered by the Federal Highway Administration (FHWA) Office of Federal Lands Highway and its Divisions or by the various Florida Land Management Agencies (FLMAs). Under the FLHP, projects in the Indian Reservation Road (IRR) Program are selected by Tribal Governments and are approved by the Bureau of Indian Affairs (BIA) and the FHWA. Due to recent legislation, Tribal Governments meeting certain requirements may now administer various IRR projects on behalf of the BIA and FHWA. The Fish and Wildlife Service (FWS) and the National Park Service (NPS) select projects in the Refuge Road and Park Roads and Parkways Programs, respectively. For the Forest Highway Program, the Forest Service, the States and the FHWA jointly select projects.

**Compliance Requirements Applicable to the Federal Resources Awarded Pursuant to This Agreement Are As Follows:** The recipient of Local Agency Program (LAP) funding must comply with the statutory requirements in Sections 112.061, 215.422, 339.12, and 339.135, Florida Statutes, and Title 23 and Title 49, C.F.R.

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**EXHIBIT "S"**

**2009 AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)  
JOB REPORTING**

FPN: 425259-1-58-01

This exhibit forms an integral part of the Agreement between the State of Florida, Department of Transportation (Department) and

Palm Beach County

Dated \_\_\_\_\_

1-12-10

**SPECIAL CONSIDERATIONS BY AGENCY:**

**Compliance with the 2009 American Recovery and Reinvestment Act (ARRA)**

This project is subject to the criteria and conditions of the 2009 American Recovery and Reinvestment Act (ARRA). The Agency will satisfy the Federal reporting requirements for the project(s), such as the monthly employment report, for both the Contractor and Subcontractor. The Agency will provide the required information on form(s) provided by the Department in the timeframe indicated in the instructions. The Agency will ensure that the reporting requirements are included in all ARRA contracts and subcontracts.

The Agency will withhold the Contractor's progress payments, project acceptance, and final payment for failure to comply with the requirements of the 2009 ARRA.

**Authority of the U.S. Comptroller General**

Section 902 of the 2009 ARRA provides the U.S. Comptroller General and his representatives the authority:

1. To examine any records of the Contractor or any of its Subcontractors, or any State or Local Agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
2. To interview any officer or employee of the Contractor or any of its Subcontractors, or of any State or Local Agency administering the contract, regarding such transactions.

Accordingly, the U.S. Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the 2009 ARRA with respect to this contract, which is funded with funds made available under the 2009 ARRA. Section 902 further states that nothing in this Section shall be interpreted to limit or restrict, in any way, any existing authority of the U.S. Comptroller General.

**Authority of the U.S. Inspector General**

Section 1515(a) of the 2009 ARRA provides authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on this contract. The Contractor is advised that representatives of the U.S. Inspector General have the authority to examine any record and interview any employee or officer of the Contractor, its Subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this Section shall be interpreted to limit or restrict, in any way, any existing authority of the Inspector General.

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**EXHIBIT "X"**

**PROJECT ESTIMATE AND DISBURSEMENT SCHEDULE**

FPN: 425259-1-58-01

This exhibit forms an integral part of the Agreement between the State of Florida, Department of Transportation (Department) and Palm Beach County

Dated \_\_\_\_\_

1-12-10

**SPECIAL CONSIDERATIONS BY AGENCY:**

The following paragraph replaces Section 4.00 Project Estimate and Disbursement Schedule of the Local Agency Program Agreement executed between the Department and Palm Beach County

Dated \_\_\_\_\_

1-12-10

Prior to the execution of this Agreement, a project schedule of funding shall be prepared by the Agency and approved by the Department. The Agency shall maintain said schedule of funding, carry out the project, and shall incur obligations against and make disbursements of project funds only in conformity with the latest approved schedule of funding for the project. The schedule of funding may be revised by execution of a LAP Supplemental Agreement between the Department and the Agency. The Agency acknowledges and agrees that funding for this project may be reduced upon determination of the award amount and execution of a LAP Supplemental Agreement. If a LAP Supplemental Agreement is executed, copies should be forwarded to the Department's Office of Comptroller and Federal-Aid Management Office.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**FEDERAL-AID PROJECT FUNDING REQUEST**

525-010-30  
 CONSTRUCTION  
 08/00  
 Page 1 of 2

AGENCY Palm Beach County DATE 9/21/09  
 FEDERAL-AID PROJECT NUMBER ARRA 016 B

FIN NUMBER 425259-1-58-01 STATE JOB NUMBER \_\_\_\_\_ TIP PAGE NUMBER \_\_\_\_\_

PROJECT TITLE: Historical Jupiter – Indiantown Road

PROJECT TERMINI FROM: From Mack Dairy Road to Jupiter Farm Road

WORK PHASE:  PLANNING  ENVIRONMENTAL  DESIGN  CONSTRUCTION  RIGHT OF WAY

AWARD TYPE:  LOCAL  LOCAL FORCES

ENVIRONMENTAL DOCUMENT: Mark the type of environmental document prepared, indicate the approval date, and the most recent reevaluation date.

EIS approved on: \_\_\_\_\_, and reevaluated on: \_\_\_\_\_

EA /FONSI approved on: \_\_\_\_\_, and reevaluated on: \_\_\_\_\_

Categorical Exclusion:

Programmatic Categorical Exclusion determination on: \_\_\_\_\_

Type I Categorical Exclusion determination on: 11-25-09

Type II Categorical Exclusion determination on: \_\_\_\_\_

Categorical Exclusion Reevaluation on: \_\_\_\_\_

PHASE	TOTAL ESTIMATED COST (nearest Dollar)	LOCAL AGENCY FUNDS (nearest Dollar)	STATE FUNDING (nearest Dollar)	FEDERAL FUNDS (nearest Dollar)	PERCENT FEDERAL FUNDS	OBLIGATION DATE Month / Year
PLANNING						
PD&E						
DESIGN						
R/W						
CONST.	\$750,000.00			\$750,000.00	100	
TOTAL	\$750,000.00			\$750,000.00	100	

DESCRIPTION OF EXISTING FACILITY (Existing Design and Present Condition)  
 Roadway Width: \_\_\_\_\_ Number of Lanes \_\_\_\_\_  
 Bridge Number(s) on Project \_\_\_\_\_  
 A trail does not exist

DESCRIPTION OF PROPOSED WORK  New Construction  3-R  Enhancement  Congestion Mitigation  
 Roadway Width 10 Number of Lanes 1  
 Sidewalk construction \_\_\_\_\_  
 Bridge Numbers(s) on Project N/A

LOCAL AGENCY CONTACT PERSON Sally Channon	TITLE: Senior Environmental Manager
MAILING ADDRESS: 2300 N. Jog Road	PHONE: 561-233-2429
AGENCY Palm Beach County	ZIP CODE: 33411-2745

LOCATION AND DESIGN APPROVAL:  
 BY: [Signature] Approving Authority  
 TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

Sharon R. Bock, Clerk & Comptroller  
 Palm Beach County  
 By [Signature]  
 Deputy Clerk

APPROVED AS TO FORM  
 AND LEGAL SUFFICIENCY  
 BY [Signature]  
 County Attorney

AGENCY: Palm Beach County	PROJECT TITLE: Historical Jupiter - Indiantown Road	DATE: 9/21/09
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ENVIRONMENTAL COMMITMENTS AND CONSIDERATIONS:  
It was determined on 11-25-09 that this project is a Type I Categorical Exclusion with no environmental issues.

RIGHT OF WAY AND RELOCATION:  
There was no right-of-way acquisition associated with this project.

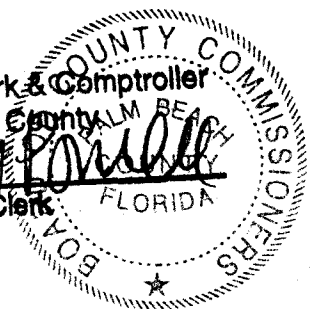
THIS PROJECT HAS BEEN REVIEWED BY THE LEGISLATIVE BODY OF THE ADMINISTRATION AGENCY OR AGENCIES, OR IT'S DESIGNEE, AND IS NOT INCONSISTANT WITH THE AGENCY'S COMPREHENSIVE PLAN FOR COMMUNITY DEVELOPMENT.

AGENCY: \_\_\_\_\_

DATE: \_\_\_\_\_

By: [Signature]  
(Mayor / Chairman)

Sharon R. Bock, Clerk & Comptroller  
Palm Beach County  
By: [Signature]  
Deputy Clerk



APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
BY [Signature]  
County Attorney

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STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**LAP CERTIFICATION**

575-095-05  
RIGHT OF WAY  
0907

R/W ITEM/SEGMENT NO.: \_\_\_\_\_ MANAGING DISTRICT: \_\_\_\_\_  
CONSTRUCTION ITEM/SEGMENT NO.: \_\_\_\_\_ STATE ROAD: \_\_\_\_\_  
F.A.P. NO. (Construction): 425259-1-58-01 **ARRA 16 B** DESCRIPTION: Historic Jupiter Indiantown  
COUNTY: PALM BEACH Road Pathway  
LETTING DATE: \_\_\_\_\_

The undersigned hereby certifies as follows:

Title to all property and easements needed for the above construction project is vested in the Florida Department of Transportation (Department) or a state or local government. Sufficient authority has been obtained to construct and maintain the proposed improvements on property and easements owned by state or local governments. Further:

**Acquisition**

- Right of way was not acquired for this project.
- Right of way was acquired for this project in compliance with applicable state and federal law.

**Relocation**

- No persons or businesses were required to move or move personal property from the project right of way.
- All persons and businesses that were required to move or move personal property from the project right of way have been provided relocation assistance in compliance with applicable state and federal law.

**Demolition**

- No structures or improvements, including encroachments, required removal from the project right of way.
- All structures and/or improvements, including encroachments, have been removed from the project right of way in compliance with applicable state and federal law, or will be included in the construction contract.

**Asbestos Abatement**

- No structures or improvements requiring asbestos abatement were located on the project right of way.
- Asbestos abatement of buildings and/or structures, including those to be removed by the construction contractor, has been completed in compliance with applicable state and federal law, or will be included in the construction contract.

Submitted by Local Agency: Richard E. Welby, Director ERM 4/20/09 Zp  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

8-27-09 U.N. Certified by: Cheryl A. Balogh 8/31/09  
Title: Cheryl A. Balogh, District R/W Manager Date: \_\_\_\_\_

**ADDITIONAL STATEMENT – Local Agency Program**

**No Additional Right of Way Required**

R/W ITEM/SEGMENT NO.: \_\_\_\_\_

STATE ROAD: \_\_\_\_\_

CONST. ITEM SEGMENT NO.: \_\_\_\_\_

DESCRIPTION: Historic Jupiter Indiantown

F.A.P. NO.: 425259-1-58-01 ARRA 16 B

Road Pathway \_\_\_\_\_

PREFERRED LETTING DATE: \_\_\_\_\_

LOCAL AGENCY: Palm Beach County

The following interests in land (Right of Way) will NOT be required for the construction of this project.

- Fee Title – land on which a permanent improvement is to be placed and maintained.
- Perpetual Easement – maybe used when permanent improvement is to be constructed and maintained on a parcel for which acquisition of fee title is impractical.
- Temporary Easement – used when it is necessary to temporarily occupy a parcel. No improvement which is a permanent part of the transportation facility or which requires maintenance beyond the term of the easement will be constructed on the temporary easement.

The right of way maps/sketches have been compared to the construction plans and the right of way, as shown, and will accommodate the planned construction. The construction activities will be performed in the existing right of way. The contractor will not be required to temporarily enter upon property not owned by NAME OF LOCAL GOVERNMENT for the purpose of restoration and harmonization.

Richard E. Walesky  
SIGNATURE

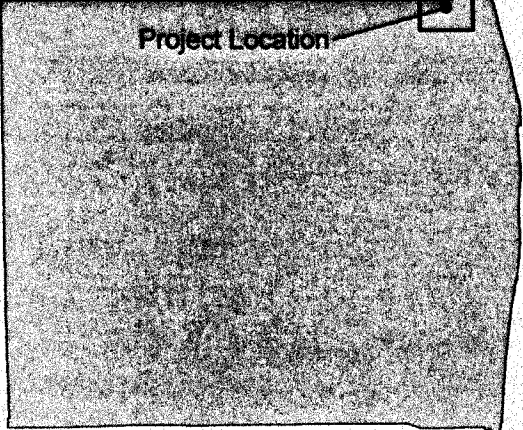
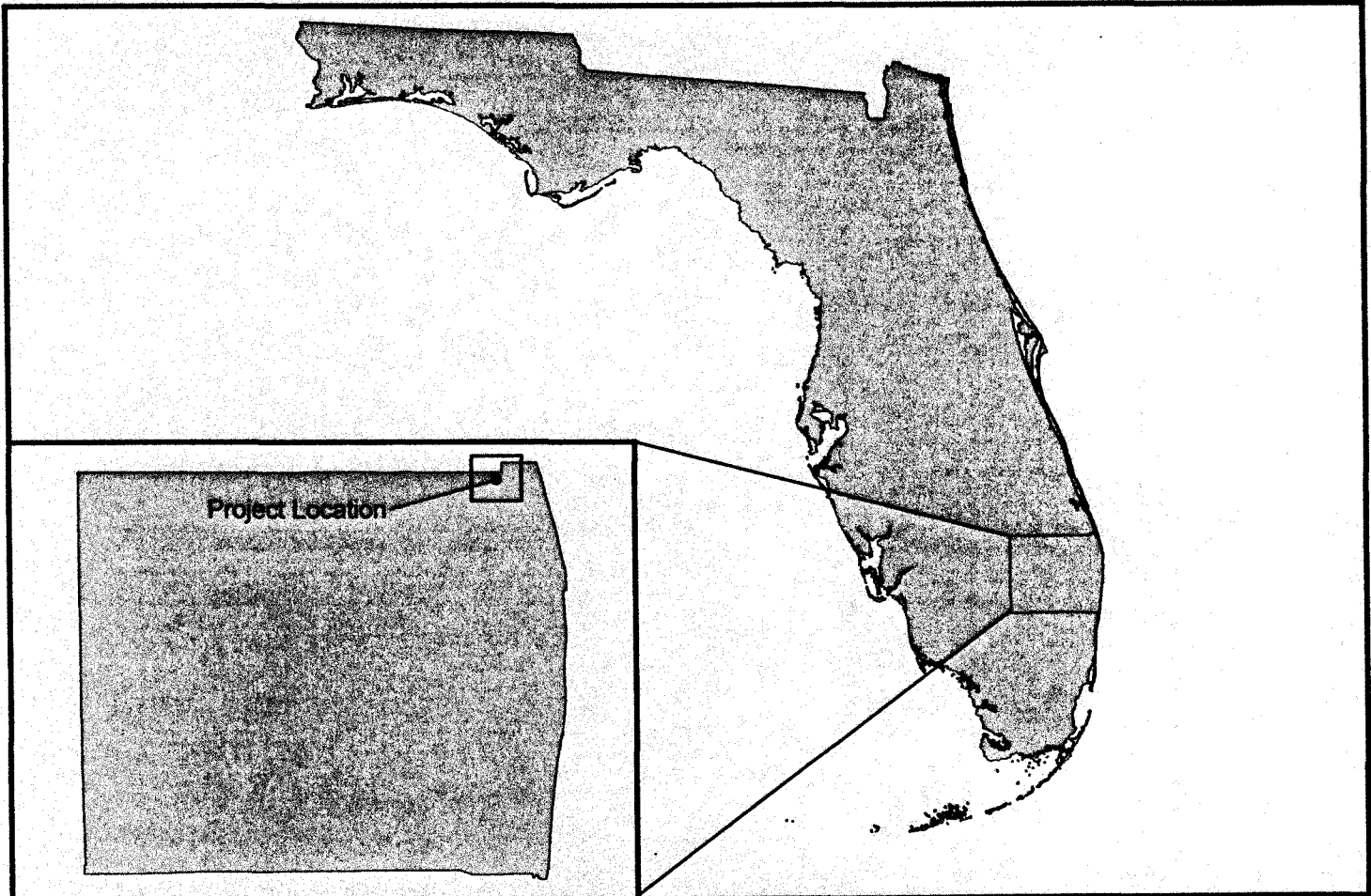
4/20/09  
DATE

Richard E. Walesky  
NAME (Printed)

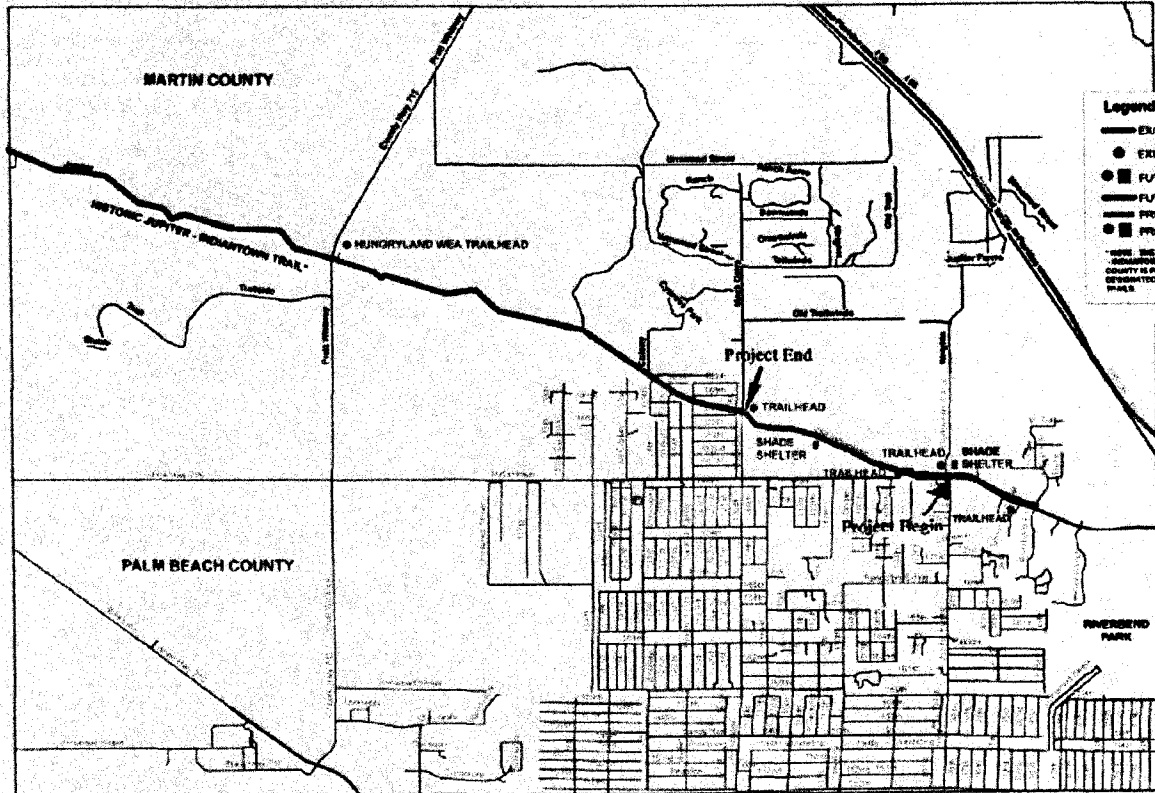
Title: Director

Agency: Palm Beach County Environmental Resources Management

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**EXHIBIT 2 - PROJECT LOCATION MAP**



- Legend:**
- EXISTING TRAIL
  - EXISTING TRAILHEAD
  - FUTURE FACILITY
  - FUTURE TRAIL
  - PROPOSED TRAIL
  - PROPOSED FACILITY
- NOTE: THE HISTORIC JUPITER-INDIANTOWN TRAIL IN MARTIN COUNTY IS PART OF THE STATE DESIGNATED GREENWAYS AND TRAILS.



**Historic Jupiter-Indiantown Trail  
FM # 425259-1 Location Map**

**STATUS OF ENVIRONMENTAL CERTIFICATION**

Financial Project ID 425259-1-58-01

Proposal/Contract ID \_\_\_\_\_

Federal Aid No. ARRA-016B

Project Description Historic Jupiter/Indiantown Trail

This project is Categorical Exclusion under 23 C.F.R. 771.117 (c):

Type 1. It was reevaluated on 11/24/2009, and the determination remains valid.

Programmatic under current FHWA agreement. It was reevaluated on \_\_\_\_\_, and the determination remains valid.

The environmental document for this project was a (check one):

Categorical Exclusion under 23 C.F.R. 771.117(d) (Type 2) approved on \_\_\_\_\_,

FONSI under 23 C.F.R. 771.121 approved on \_\_\_\_\_,

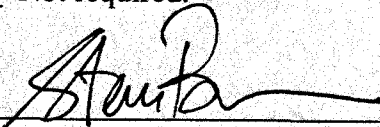
Final Negative Declaration approved on \_\_\_\_\_, or

Final Environmental Impact Statement under 23 C.F.R. 771.125 approved on \_\_\_\_\_.

A reevaluation in accordance with 23 C.F.R. 771.129 was (check one):

Approved on \_\_\_\_\_

Not required.

Signature: 

Date: 11/25/2009

foe: Environmental Administrator

### TYPE 1 AND PROGRAMMATIC CATEGORICAL EXCLUSION CHECKLIST

Financial Project ID. FM 425259-1-52-01

FAP No. ARRA 016-B

Project Description: Historic Jupiter to Indiantown Trail

	YES	NO
Will the project cause significant adverse impacts to local traffic patterns, property access, or community cohesiveness, or planned community growth or land use patterns?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Will the project cause significant adverse impacts to air, noise and water?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Will the project cause significant adverse impacts to wetlands?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Will the project cause significant adverse impacts to navigation?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Will the project cause significant impacts to floodplains in accordance with Part 2, Chapter 24?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Will the project cause significant impacts to endangered and threatened species or their critical habitats?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Will the project require acquisition of significant amount of right-of-way?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Will the project require relocation of a significant number of residents or businesses?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Are there any properties protected under Section 4(f) of the U.S. Department of Transportation Act within the project limits that will require a Section 4(f) Evaluation in accordance with Part 2, Chapter 13?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Are there any properties protected under Section 106 of the National Historic Preservation Act within the project limits, and if there are, will the project have A significant impact any of those properties? Projects that may involve historic Properties must meet the requirements for consultation with the SHPO (or THPO as appropriate) as outlined in Part 2, Chapter 12 of this manual.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Will the project have a significant involvement with contamination?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Will the project require a public hearing or an opportunity for a public hearing?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**IMPORTANT** If the answer to any of these questions is Yes, then a Type 1 or Programmatic Categorical exclusion does not apply, and additional coordination with the FHWA Transportation Engineer is required to determine the necessary level of environmental documentation.

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**ATTACHMENT C**  
FM# 425259-1-58-01

**TYPE 1 AND PROGRAMMATIC CATEGORICAL EXCLUSION CHECKLIST continued**

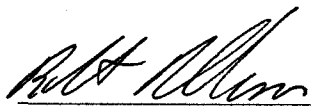
*FINDING:*


This project has been evaluated and has been determined to meet the conditions as set forth in the PD&E Manual, Part 1, Chapter 3, therefore:


YES NO

This project is a Programmatic Categorical Exclusion per FHWA approval on March 1, 1995 as amended on September 4, 1996, December 7, 2000, and the FHWA and the FTA Agency Operating Agreement executed on February 12, 2003.

This project is a Type 1 Categorical Exclusion under (23 CFR 771.117 c) effective November 27, 1987.

Agency Concurrence:  Date: 11/17/2009

LAP Administrator:  Date: 11/25/09

FDOT Concurrence:  Date: 11/25/2009

*Fol:* District 4 Environmental Administrator



**INTEROFFICE MEMORANDUM**  
**Palm Beach County**  
**Environmental Resources Management**

**To:** Richard E. Walesky, Director

**Through:** Dan Bates, Environmental Director *DB*  
Environmental Enhancement and Engineering Division

**From:** Sally Channon, AICP, Sr. Environmental Analyst *SC*  
Environmental Restoration and Enhancement Division

**Date:** November 19, 2009

**Subject:** Project Name: Historic Jupiter-Indiantown Trail  
Description: Type 1 Categorical Exclusion - Bicycle and Pedestrian  
Trail from Mack Dairy Road at Old Indiantown Road to  
Indiantown Road West at Jupiter Farms Road  
FM No: 425259-1-58-01  
County: Palm Beach

This project is a Type 1 Categorical Exclusion under 23 CFR 771.11(c) effective November 27, 1987.

The project scope involves creating a 2.07 mile long, ten foot wide, cemented Coquina shell bicycle/pedestrian path running diagonally through the County's Cypress Creek Natural Area, a 1489-acre Florida Land Management Area. Most of the path will be constructed on top of an abandoned shell-rock and dirt road that is on the Palm Beach County Register of Historic Places as "Old Indiantown Road". The presence of this old road bed in an otherwise environmentally sensitive area permits construction of the path with negligible negative environmental impacts; the pavement of a portion of the old road serves to preserve it without significant change to its character. The access the path provides to hiking trails in the natural area and the historic significance of the route it follows are special features of the project. Attachment A is a project location map. Attachment B contains photos of the project site. The baselines and trail segments referenced are shown on the plan sheets.

The project begins at the eastern edge of the right-of-way for Mack Dairy Road at Palm Beach County survey baseline (PBC/survey) station 00+71.81. The "old grade trail segment" runs from the beginning point to the current Indiantown Road right-of-way near PBC/Survey station 95. The old grade trail segment will be constructed on the old road bed, deviating once to skirt a private property between PBC/survey stations 54 and 59 by utilizing a dirt management road in the natural area. The western half of the old grade trail segment has been well maintained as a shell-rock road, although native vegetation has encroached in places narrowing the clear span from the original 35± feet. Selective clearing and grubbing of primarily herbaceous growth is required. East of PBC/survey station 57 the road has not been as well maintained. Although

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clear of any significant above ground vegetation, there are many tree stumps and downed trees to be removed. These trees may be ground and used as mulch for stabilization of disturbed soil in the work area.

The path turns east near PBC/survey station 95 running roughly parallel to the southern boundary of the natural area to Gulfstream Citrus Road, which it then follows south to the project terminus at the Gulfstream baseline station 0+50. The approximately quarter-mile segment of the path between the old grade trail segment and Gulfstream Citrus Road is co-located with a planned management accessway. The accessway crosses a section of the natural area that was formerly farmed, is now predominantly wooded and has minimal wetland impacts. Gulfstream Citrus Road is a private shell-rock road that will eventually support a multi-use trail connecting to conservation lands in Martin County. This last segment of path will be constructed at a 20' width with a spur north to Gulfstream baseline station 3+17.45 where a chickee shade shelter will be located. The eastern project terminus is at the northern edge of Indiantown Road (County Road 706) right-of-way.

Australian pine stumps and felled trees to be removed from the work area may be chipped to provide mulch to stabilize disturbed areas alongside the path. Other cleared and grubbed material from the old grade trail segment that does not meet technical specifications for embankment material will be disposed of off-site. The project scope also includes the following amenities: two observation platforms with boardwalk approaches, bicycle racks and gates at the trailheads for hiking trails, two chickee style shade shelters, information kiosks, trail-post signs and fencing along the route. An alternate bid item includes a pedestrian spur trail to the historic site for the Rood settlement, fencing, interpretive signage and a chickee shade shelter. All amenities will be constructed in uplands and exact locations field adjusted to minimize impacts to natural features.

The trail is being constructed on County-owned land. No additional right-of-way acquisitions are required.

The following summary is being provided in accordance with Local Agency Program (LAP) Categorical Exclusion requirements. Enclosed is the completed "Local Agency Program Type 1 or Programmatic Categorical Exclusion Checklist" (Attachment C).

#### **Local Traffic Patterns**

The project is off-road. The Technical Specifications require the contractor to provide a Maintenance of Traffic Plan as needed and to maintain access to private properties north of the project accessed by Gulfstream Citrus Road. The project will positively affect local traffic patterns by providing residents in the neighborhoods south and west of the project a safe off-road bicycle route. See Attachment A.

#### **Property Access and Right Of Way Acquisition**

No adverse effects on property access are expected as a result of the project. No right of way will be purchased for the proposed project. Gulfstream Citrus Road is a private road that is owned by Palm Beach County. The County plans to terminate public vehicular access to this road as part of managing the Cypress Creek Natural Area. South Florida Water Management District (SFWMD) and Martin County, owners of conservation land in Martin County north of

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Cypress Creek Natural Area, will continue to be provided local access to their properties.

**Planned Community Growth/Land Use Patterns**

This project is not expected to have any adverse impacts to planned community growth or planned land use patterns.

**Community Cohesiveness**

The project limits lie within Palm Beach County. The project is expected to have a positive effect on traffic by providing an alternate route for bicyclists traveling between parts of the Jupiter Farms community. All adverse affects will be temporary.

**Air Quality and Noise**

The project is located in an area which is designated attainment for all of the National Ambient Air Quality Standards under the criteria provided in the Clean Air Act. Therefore, the Clean Air Act conformity requirements do not apply to the project

The scope of work does not involve construction of additional travel lanes. No long-term noise impacts are expected. As per 23 CFR 772, a noise study is not required.

**Water Quality and Wetlands**

The project passes through the Cypress Creek Natural Area (a Florida Land Management Area), which contains wetlands and is in the Loxahatchee River Rare and Imperiled Watershed. The easternmost approximately quarter-mile of the path is being co-located with a management accessway. This accessway impacts 0.07 acre on the southern perimeter of a 4.04 acre cypress wetland by filling of the wetland. Wetland impacts are being minimized by use of a gravity wall and have been permitted by the South Florida Water Management District (SFWMD) and the Army Corps of Engineers (ACOE). No other impacts to wetlands and no impacts to water quality are anticipated from the proposed project activities. Bid documents will require the contractor to prepare a Stormwater Prevention Pollution Plan for the National Pollutant Discharge Elimination System permit and comply with all terms of the SFWMD and ACOE permits. See Attachment D, Water Quality and Wetlands Documentation.

No wetland mitigation is required to offset the 0.07 acre wetland impacts because construction of the access-way is necessary for Palm Beach County to effectively manage the environmental restoration and enhancement project that was previously authorized by the SFWMD and to implement on-going environmental management and maintenance activities anticipated under that permit.

**Floodplain Encroachment**

This project does not involve work within the horizontal limits of the 100-year floodplain. See Attachment E, Bluegill Trail Flood Zones Map.

**Endangered and Threatened Species, Other Wildlife, and Their Critical Habitat**

The County's Cypress Creek Natural Area was acquired by Palm Beach County for preservation and passive recreation and education uses because it is a mosaic of high-quality freshwater wetlands such as cypress swamps, marshes, and wet prairies, interspersed with pine flatwoods and hammocks. Occurrence information on listed species and their critical habitats was obtained through agency approved GIS databases and has been verified in the field by County

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staff. The federally endangered wood stork (*Mycteria americana*) and Peregrine falcon (*Falco peregrinus*) have been observed on site. Other State listed species that have been observed on the site include Florida sandhill crane (*Grus canadensis pratensis*), bald eagle (*Haliaeetus leucocephalus*), limpkin (*Aramus guarauna*), little blue heron (*Egretta caerulea*), tricolored heron (*Egretta tricolor*), gopher tortoise (*Gopherus polyphemus*), snowy egret (*Egretta thula*) and white ibis (*Eudocimus albus*). No federal, but several State listed plant species are known to occur on the site including the endangered celestial lily (*Nemastylis floridana*), hand fern (*Ophioglossum palmatum*), meadow jointvetch (*Aeschynomene pratensis*), and giant wild pine (*Tillandsia utriculata*). Neither the old road bed, nor the former agricultural land, nor the wetland area on which the path will be constructed constitute critical habitat for any of these species.

The project will provide non-motorized access to nature trails located in the natural area. Educational signs will be included in the entrance kiosks and shade shelter including information on the natural features and history of the site. Access to foot trails through this natural area will be available from the path. Providing the opportunity to observe and learn about the wildlife and habitats present is a special characteristic of the project. No work is being performed in the habitats of the listed species and due to the scope of work, no adverse impacts are likely to affect any endangered or threatened animal species, other wildlife, or their critical habitat. Selection of staging and stockpiling areas will be coordinated with Palm Beach County Environmental staff. On behalf of the County, FDOT coordinated with the FWS regarding potential impacts to listed species and their habitats. In an e-mail dated November 6, 2009 FWS concurred FDOT's finding that the project would not adversely affect any Federally-listed species.

#### **Essential Fish Habitat**

Due to the scope of work, no adverse impacts to any endangered or threatened animal species or essential fish habitat are anticipated.

#### **Coastal Barrier Resources**

The project is not located within a Coastal Barrier Resource Act (CBRA) area.

#### **Community Services**

No businesses or community services are located within the project area.

#### **Section 4(f) of the Department of Transportation Act**

The Section 4(f) property located within the limits of the proposed work is the Cypress Creek Natural Area that the path crosses. This natural area is managed by the Palm Beach County Department of Environmental Resources Management (ERM). Riverbend Park, a regional County facility, is approximately 0.75 mile away from the project and Jupiter Farms Park, a community park and equestrian facility, is approximately 1 mile away. Section 4f, Title 49 United States Code was enacted to ensure that Federal projects do not use publicly owned land from a park, recreation area, wildlife or waterfowl refuge of national, state or local significance without first determining that there is no feasible and prudent alternative, and that all possible planning has been used to minimize the harm resulting from such a use. A Section 4(f) use only occurs under one of the following situations:

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1. land from a Section 4(f) resource is permanently acquired and incorporated into a transportation project, or
2. there is a temporary occupancy of land that is adverse in terms of the statute's preservationist purposes, or
3. when the proximity impacts of a transportation project on a Section 4(f) site, without acquisition of the land from the 4(f) site, are so great that the purposes for which the Section 4(f) site exists are substantially impaired.

The project is consistent with the purposes for which the Cypress Creek Natural Area was acquired and does not create any permanent or temporary adverse occupancy in terms of the statute's preservationist purposes. The project is consistent with the Florida Communities Trust February 2009 approved management plan for the natural area. It implements a segment of County's Future 2020 Bicycle Facilities Map, the State's 2009 Multi-Use Trail Network Opportunity Map and provides the firm and stable tread portion of one of the multi-user Northeast Everglades Natural Area (NENA) trails planned to connect conservation lands within the NENA footprint. See Attachment G, Documentation of No Impact to Section 4(f) Resources for 4f property locations and other referenced documents.

The Contractor shall be required to stage construction equipment in areas that have already been cleared adjacent Gulfstream Citrus and Mack Dairy Roads, future sites for parking lots for the natural area. In addition, the contractor shall coordinate selection and review of any proposed staging areas with the appropriate environmental coordinator within ERM.

#### **Section 106 of the National Historic Preservation Act**

In accordance with the requirements of 36 CFR, part 800, the Florida Department of State was contacted regarding potential impacts to historical features. The State Historic Preservation Office (SHPO) conducted a Florida Site File Search and researched the National Register of Historic Places. Three Master site file sites were identified within the project area as shown on the map included in Attachment H. In addition, the alignment of the old road itself has a local historic designation. The project was reviewed and approved by Palm Beach County's Historical Resources Review Board (HRRB) in March 2009. In a letter dated November 4, 2009, the SHPO concurred that the project would have no adverse effects to historical or archeological features, but requested the following which will be provided by the County:

- A monitoring report;
- Florida Master Site Files and associated supporting documentation for any sites discovered during the course of the project;
- An updated Master Site Resource Group Form for the portion of the Indiantown/Jupiter Road within the project area. The form should outline the project activities and indicate the location of all trailside amenities;
- Photos of the completed trail.

The Palm Beach County archaeologist will supervise the project during clearing and construction and assist County in ensuring that the requested documents are provided to the SHPO upon completion of the project.

### **State Historic Highway**

This project does not involve a State Historic Highway, as designated in the Laws of Florida.

### **Contamination**

No contamination impacts are anticipated as a result of this project. In the event that construction operations encounter or expose any abnormal condition that may indicate the presence of a hazardous materials or toxic waste, the contractor is required to follow the 2004 edition of the FDOT Standard Specifications for Road and Bridge Construction (Section 8-4.9).

### **Public Hearing**

Per the PD&E Manual, Part 1, Chapter 8, the proposed project does not qualify as a major transportation improvement and therefore a public hearing is not required. However, the project has appeared before the public five times in four different venues and comments have been favorable. The venues are described below.

- A publically advertized special meeting held March 20, 2008 to obtain input from residents in the nearby Jupiter Farms community on development of the Historic Jupiter-Indiantown Trail
- A Natural Areas Management Advisory Committee (NAMAC) meeting held March 21, 2008. NAMAC is committee of seven citizens appointed by the Board of County Commissioners to advise them on management of County-owned natural areas. They hold regularly scheduled and advertized meetings open to public comment.
- Two Historic Resources Review Board (HRRB) meetings; March 19, 2009 and September 24, 2009. The HRRB is a committee of citizens appointed by the Board of County Commissioners to recommend sites for inclusion on the County Register of Historic Places and issue Certificates of Appropriateness for uses affecting those sites. They hold regularly scheduled, advertized meetings open to public comment.
- Florida Greenways and Trails Council web surveys and series of meetings held around the State in July 2008 on proposed updated trail opportunities map

### **Controversy**

No controversial environmental issues exist regarding this project.

### **Trees**

The easternmost approximately quarter-mile section of the path runs through former agricultural land that is now mostly wooded. Selective clearing of some native trees: slash pine (*Pinus elliottii*,) laurel oak (*Quercus laurifolia*) and cabbage palm (*Sabal palmetto*) will be necessary in order to construct this section of the path. These trees are all second growth vegetation in a former agricultural area. None are specimen trees. The path in this area has been routed to avoid the largest trees; as a result, some curves in the path will have a turning radius of less than 95 degrees.

### **Permits**

The South Florida Water Management District (SFWMD) permit #50-08174-P, which was issued for environmental restoration activities within Cypress Creek Natural Area, was modified to accommodate a management accessway that impacts 0.07 acres of a cypress wetland. The path has been co-located with this management accessway. The wetland impact of the accessway is

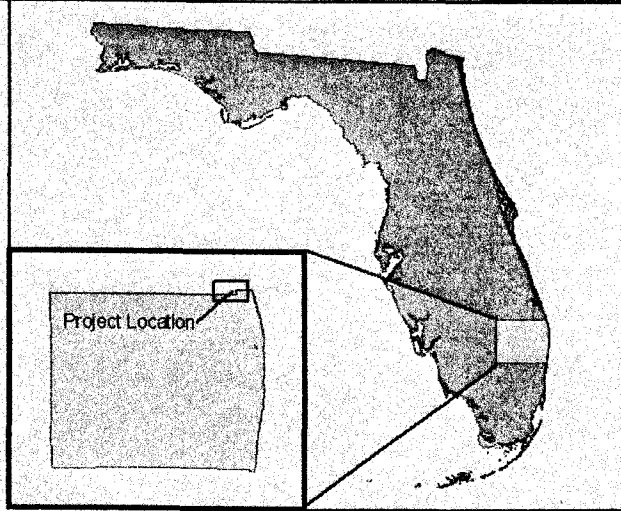
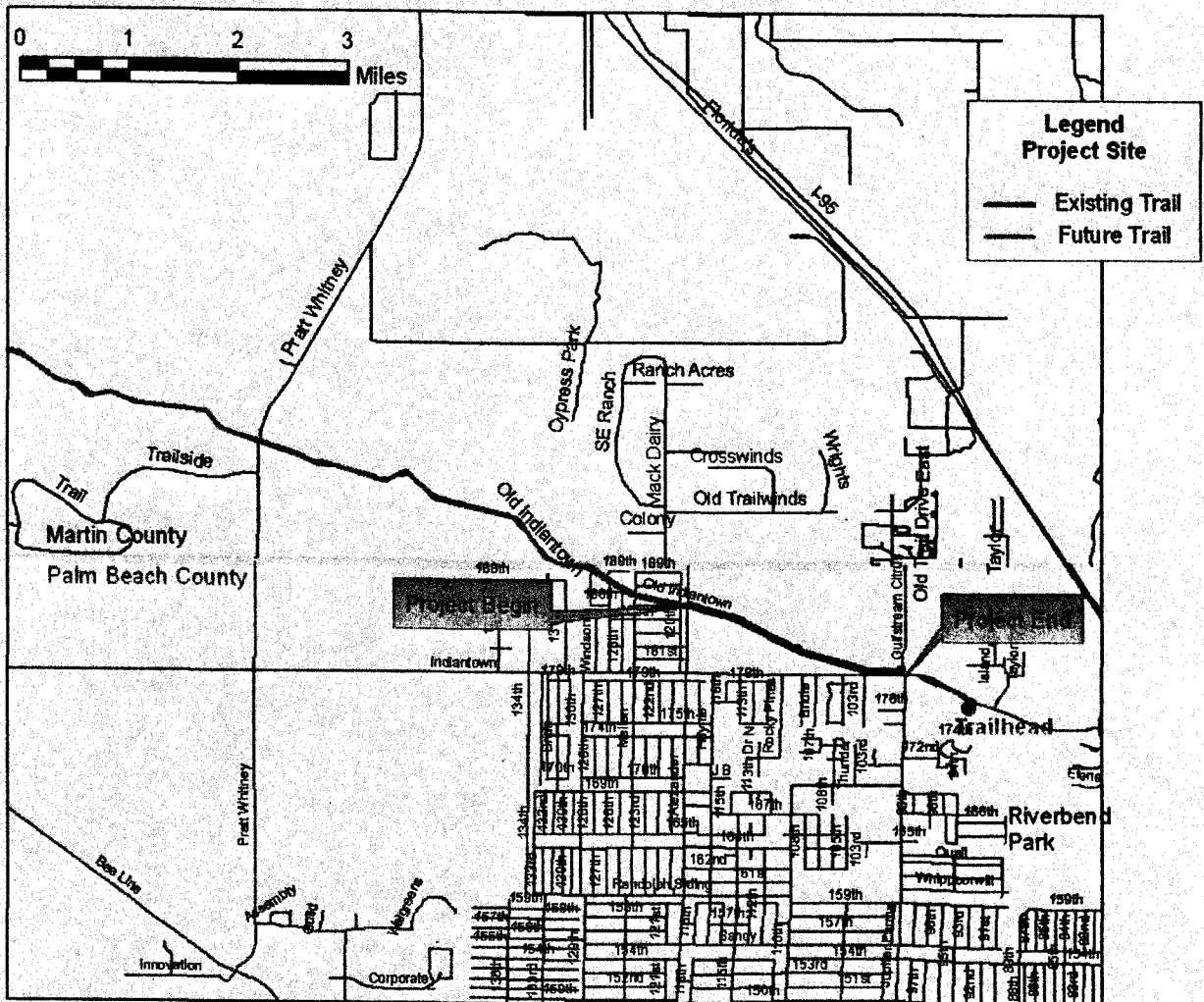
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also included in the U. S. Army Corps of Engineers application SAJ-2007-04700, which received a letter of authorization under Nationwide Permit Number 27. The SFWMD permit modification and ACOE letter of authorization are included in Attachment D, Water Quality and Wetlands Documentation. The project has also received a Certificate of Appropriateness from the Palm Beach County Historic Resources Review Board included in Attachment H, Section 106 Documentation. All other permit requirements have been met.



# ATTACHMENT A HISTORIC JUPITER-INDIANTOWN TRAIL LOCATION MAP



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## ATTACHMENT B SUPPLEMENTAL PHOTOS



**Top photo:**

Western end of project site close to project beginning. Existing disturbed areas at this end of the project will be flagged by ERM staff for use as a staging area. The western half of the Old Indiantown Road grade is a well maintained shell-rock road.

**Middle and bottom photos:**

Views of western half of trail where native vegetation has colonized a portion of the old roadbed. Minimal clearing and grubbing will be required to prepare for compaction, addition of a cemented Coquina base and installation of fencing and gates to control access to the natural area from the path.

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## ATTACHMENT B SUPPLEMENTAL PHOTOS



### **Top and middle photos:**

Eastern half of old road grade. This portion of Old Indiantown Road was only intermittently maintained following abandonment of the route in 1955. Numerous Australian pine trees were cut from this half of the old road grade. The felled trees within the work area and the stumps will be removed. Holes left by stump removal will be backfilled to create a lasting sub-grade for the path. The historic designation of Old Indiantown Road is due to the character and former function of this route which once served as the main route for commerce between the coastal Town of Jupiter and the interior Indiantown. The County Archaeologist will be present when the stumps are being removed.

### **Bottom photo:**

View west northwest on Old Indiantown Road near eastern terminus of the old road bed.

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## ATTACHMENT B SUPPLEMENTAL PHOTOS



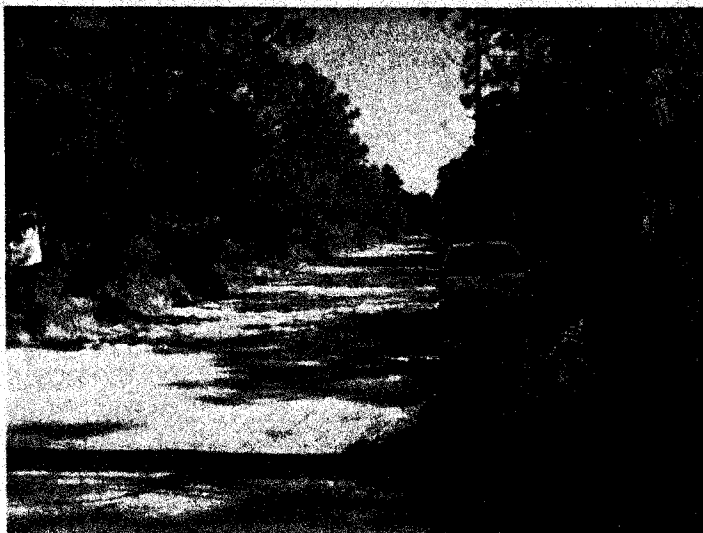
**Top photo:**

View of old farmland west of Gulfstream Citrus Road through which path will be constructed. Vegetation is primarily Slash pine and various oaks with cabbage palms interspersed. The path is being routed to avoid the larger shade trees. This results in some turns less than 95 degree radius; the turns will be signed to warn cyclists using the trail.



**Middle photo:**

Wetland that will be impacted by filling to construct a management accessway. Path will be co-located with the management accessway.



**Bottom photo:**

View north on Gulfstream Citrus Road near project end at Indiantown Road. Already disturbed areas east of this road will be flagged by ERM staff for use as a staging area and construction of one of the shade shelters serving the path and a future path north to Martin County.

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