

RESOLUTION NO. R -

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, APPROVING A LOCALLY FUNDED AGREEMENT (FM No. 429209-1-52-02) WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT), FOR THE CONSTRUCTION OF A BUS BAY ON THE NORTH SIDE OF SR-812 ACROSS FROM THE LAKESIDE MEDICAL CENTER IN WESTERN PALM BEACH COUNTY. ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Florida Department of Transportation is engaged in a project for the construction of a 5 foot sidewalk along the south side of SR-812/Hooker Highway from Lakeside Medical Center to County Annex Complex in Palm Beach County, Florida;

WHEREAS, Palm Beach County has requested to perform additional work on the north side of SR-812 in order to have Palm Tran buses service the Medical Center.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA:

1. That the BOARD has the authority to accept this Locally Funded Agreement.

2. That the County Administrator, or Executive Director of Palm Tran, Palm Beach County, Florida, is authorized to furnish such additional information as the Florida Department of Transportation may require in connection with the project.

3. That the BOARD authorizes its Chair to execute Locally Funded Agreement Number: 429209-1-52-02 on behalf of the Board of County Commissioners of Palm Beach County, Florida, with the Florida Department of Transportation, for Palm Tran, Palm Beach County's Surface Transportation Department.

This resolution shall take effect immediately upon its adoption.

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

Commissioner Karen T. Marcus, Chair	_____
Commissioner Shelley Vana, Vice Chair	_____
Commissioner Paulette Burdick	_____
Commissioner Steven L. Abrams	_____
Commissioner Burt Aaronson	_____
Commissioner Jess R. Santamaria	_____
Commissioner Priscilla A. Taylor	_____

The Chairman thereupon declared the resolution duly passed and adopted this _____ day of _____, 2011.

PALM BEACH COUNTY,
FLORIDA,
by its BOARD OF
COMMISSIONERS
Sharon R. Bock, Clerk and Comptroller

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

By: _____

Deputy Clerk

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
LOCALLY FUNDED AGREEMENT**

THIS Locally Funded Agreement ("Agreement"), entered into this _____ day of _____ 20____, by and between the State of Florida Department of Transportation hereinafter called the DEPARTMENT, and Palm Beach County located at 3201 Electronics Way, West Palm Beach, FL 33407, hereinafter called the COUNTY.

WITNESSETH

WHEREAS, the DEPARTMENT and the COUNTY are desirous of having the DEPARTMENT make certain improvements in connection with the DEPARTMENT's construction of a 5 foot sidewalk along the south side of SR-812/ Hooker Highway from Lakeside Medical Center to County Annex Complex in Palm Beach County, Florida, (hereinafter referred to the "Department's Improvement"). (Financial Management (FM) Number 429209-1-52-01/-02, Funded in Fiscal Year 2011/2012); and

WHEREAS, the COUNTY has requested that the DEPARTMENT perform the following additional work: Construction of a bus bay on the north side of SR-812/ Hooker Highway and the construction of a signalized pedestrian crosswalk, as set forth in **Exhibit A** attached hereto and made a part hereof and hereinafter referred to as the Project; and

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

WHEREAS, the COUNTY by Palm Beach County Board of County Commissioners Resolution No. _____ adopted on October 18, 2011, a copy of which is attached hereto and made a part hereof, authorizes the proper officials to enter into this AGREEMENT.

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

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. The DEPARTMENT shall be responsible for assuring that the Project complies with all applicable Federal, State and Local laws, rules, regulations, guidelines and standards.
3. The COUNTY agrees to make all previous studies, maps, drawings, surveys and other data and information pertaining to the Project available to the DEPARTMENT at no extra cost.
4. The total cost for the Project and the DEPARTMENT's sidewalk construction work along SR812/ Hooker Highway, is estimated to be THREE HUNDRED THIRTY ONE THOUSAND FIVE HUNDRED FORTY FOUR DOLLARS (\$331,544.00). The COUNTY's payment for the Project is estimated at ONE HUNDRED TWENTY THREE THOUSAND

SIX HUNDRED SEVENTY SEVEN DOLLARS (\$123,677.00), which sum shall be paid to the DEPARTMENT. In the event the actual cost of the Project results in a decrease to the COUNTY's cost, the difference shall be refunded to the COUNTY. In the event the actual cost of the Project results in a sum greater than that paid by the COUNTY, then such sum shall be the sole responsibility of the COUNTY and shall be paid to the DEPARTMENT.

- A. The COUNTY agrees that it will, within thirty (30) days of execution of this Agreement, furnish the DEPARTMENT with a check in the amount of ONE HUNDRED TWENTY THREE THOUSAND SIX HUNDRED SEVENTY SEVEN DOLLARS (\$123,677.00) towards the Project cost.

In the event payment is not received by the DEPARTMENT within thirty (30) days of execution of this AGREEMENT, this Agreement will be terminated.

Remittance shall be made payable to the Department of Financial Services, Revenue Processing. Payment shall be clearly marked to indicate that it is to be applied to FM No. 429209-1-52-02. The DEPARTMENT shall utilize this amount towards costs of Project No. 429209-1-52-02.

Payment shall be mailed to:

Florida Department of Transportation
Professional Services Unit- Attention: Leos A. Kennedy, Jr.
3400 W. Commercial Boulevard
Fort Lauderdale, Florida 33309-3421

- B. The COUNTY's share of the accepted bid for the Project (hereinafter referred to as "Accepted Bid") and the Department's Improvements plus allowances is hereinafter defined as the "Total Accepted Bid". If the COUNTY's share of the Accepted Bid for the Project plus allowances is in excess of the advance deposit amount, the COUNTY will provide an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT or prior to posting of the Total Accepted Bid, whichever is earlier, so that the total deposit is equal to the Accepted Bid amount for the Project plus allowances. The DEPARTMENT will notify the COUNTY as soon as it becomes apparent the Accepted Bid amount for the Project plus allowances are in excess of the advance deposit amount; however, failure of the DEPARTMENT to so notify the COUNTY shall not relieve the COUNTY from its obligation to pay for its full participation. If the COUNTY cannot provide the additional deposit within fourteen (14) calendar days, a letter must be submitted to and approved by the DEPARTMENT's Project Manager indicating when the deposit will be made. The COUNTY understands the request and approval of the additional time could delay the Project, and additional costs may be incurred due to delay of the Project. In the event of non-payment, the DEPARTMENT reserves the right to terminate this Agreement.

- C. If the COUNTY's share of the Accepted Bid for the Project plus allowances is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the COUNTY's share of the Accepted Bid amount plus allowances if such refund is requested by the COUNTY in writing.
- D. Should Project modifications occur that increase the COUNTY's cost for the Project, the COUNTY will be notified by the DEPARTMENT. The COUNTY agrees to provide, without delay, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the cost of the Project. The DEPARTMENT shall notify the COUNTY as soon as it becomes apparent the actual cost will exceed the COUNTY's payment. However, failure of the DEPARTMENT to so notify the COUNTY shall not relieve the COUNTY from its obligation to pay for its full participation. Funds due from the COUNTY, for the Project, not paid within forty (40) calendar days from the date of the invoice are subject to an interest charge at a rate established pursuant to *Section 55.03, F.S.*
- E. The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty (360) days of final payment to the Contractor. The DEPARTMENT considers the Project complete when the final payment has been made to the Contractor, not when the construction work is complete. All Project cost records and accounts shall be subject to audit by a representative of the COUNTY for a period of three (3) years after final close out of the Project and the Department's Improvement. The COUNTY will be notified of the final cost. Both parties agree that in the event the final accounting of Project costs pursuant to the terms of this Agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the COUNTY. If the final accounting is not performed within three hundred sixty (360) days, the COUNTY is not relieved from its obligation to pay.
- F. In the event the final accounting of Project costs is greater than the total deposits to date, the COUNTY will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The COUNTY agrees to pay interest at a rate as established pursuant to *Section 55.03, F.S.*, on any invoice not paid within forty (40) calendar days until the invoice is paid.
- G. The payment of funds under this Agreement will be made directly to the Department of Financial Services, Division of Treasury for deposit and as provide in the Memorandum of Agreement (MOA) between the COUNTY, the DEPARTMENT and the State of Florida, Department of Financial Services, Division of Treasury a copy of which is attached hereto and made a part hereof as **Exhibit B**.

5. In the event it becomes necessary for either party to institute suit for the enforcement of the provisions of this Agreement, each party shall be responsible to pay their own attorney fees and court costs. Venue with respect to any such litigation shall be in Broward County.
6. This AGREEMENT and any interest herein shall not be assigned, transferred or otherwise encumbered by the COUNTY under any circumstances without the prior written consent of the DEPARTMENT. However, this AGREEMENT shall run to the DEPARTMENT and its successors.
7. Except as otherwise set forth herein, this Agreement shall continue in effect and be binding to both the COUNTY and the DEPARTMENT until the Project and Department's Improvement is completed as evidenced by the written acceptance of the DEPARTMENT, or June 30, 2013 whichever occurs first, or if this Agreement is terminated earlier due to the failure of the COUNTY to make the payments called for hereunder.
8. The COUNTY warrants that it has not employed or obtained any company or person, other than bona fide employees of the COUNTY, to solicit or secure this Agreement, and it has not paid or agreed to pay any company, corporation, individual or firm, other than a bona fide employee employed by the COUNTY. For breach or violation of this provision, the DEPARTMENT shall have the right to terminate the Agreement without liability.
9. The COUNTY / Vendor/ Contractor:
 - a) shall utilize the U.S. Department of Homeland Security's E-verify system to verify the employment eligibility of all new employees hired by the COUNTY/ Vendor/Contractor during the term of the contract; and
 - b) shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
10. This Agreement is governed by and construed in accordance with the laws of the State of Florida.
11. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

12. Any or all notices (except invoices) given or required under this Agreement shall be in writing and either personally delivered with receipt acknowledged or sent by certified mail, return receipt requested. All notices delivered shall be sent to the following addresses:

If to the DEPARTMENT:

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

If to the COUNTY:

Palm Beach County
3201 Electronics Way
West Palm Beach, FL 33407
Attn: Charles D. Cohen, Executive Director
With a copy to: Attorney

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

PALM BEACH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: _____
NAME: _____
TITLE: _____

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

ATTEST:
Sharon R. Bock, Clerk & Comptroller

LEGAL REVIEW

CLERK OR DEPUTY CLERK (SEAL)

BY: _____
OFFICE OF THE GENERAL COUNSEL

APPROVED AS TO FORM AND:
LEGAL SUFFICIENCY:

APPROVED:

BY: _____
COUNTY ATTORNEY

BY: _____
PROFESSIONAL SERVICES ADMINISTRATOR

APPROVED AS TO TERMS AND CONDITIONS:

BY: 
Charles D. Cohen, Executive Director
Palm Tran

EXHIBIT A Scope of Services

SR-812/Hooker Highway from Lakeside Medical Center to County Annex Complex
FM# 429209-1-52-02

This Project involves the construction of a bus bay on the north side of SR-812/Hooker Highway, which is located across from the Lakeside Medical Center and construction of a signalized pedestrian crossing including signing and marking. This Project will be constructed in compliance with ADA (American Disability Act) standards.

Exhibit "B"

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this _____, day of _____, 20_____, by and between the State of Florida, Department of Transportation, hereinafter referred to as "DEPARTMENT", the State of Florida, Department of Financial Services, Division of Treasury hereinafter referred to as "TREASURY", and Palm Beach County hereinafter referred to as the "COUNTY".

To be Completed

By FDOT

WITNESSETH

WHEREAS, DEPARTMENT is currently constructing the following project:

Main Financial Project Number: 429209-1-52-02
County: PALM BEACH COUNTY

hereinafter referred to as the "Project".

To be Completed
By FDOT

WHEREAS, the DEPARTMENT and the COUNTY entered into a Locally Funded Agreement (LFA) dated _____, 201_____, wherein DEPARTMENT agreed to perform certain work for the COUNTY in conjunction with the Project.

WHEREAS, the parties to this AGREEMENT mutually agreed that it would be in the best interest of the DEPARTMENT and the COUNTY to establish an interest bearing escrow account to provide funds for the work performed on the Project on behalf of the COUNTY by the DEPARTMENT.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. The DEPARTMENT and the COUNTY agree that the recitals set forth above are true and correct and deemed incorporated herein.
2. An initial deposit in the amount of ONE HUNDRED TWENTY THREE THOUSAND SIX HUNDRED SEVENTY SEVEN DOLLARS (\$123,677.00) will be made by the COUNTY into an interest bearing escrow account established by the DEPARTMENT for the purposes of the Project. Said escrow account will be opened with the TREASURY, on behalf of the DEPARTMENT upon receipt of this Memorandum of Agreement. Such account will be an asset of the DEPARTMENT.
3. Other deposits may be made by the COUNTY as necessary to cover the cost increases or the cost of additional work prior to the execution of any Supplemental Agreements or Amendments.
4. Payment will be made as follows (check appropriate payment method):

- Wire transfer
- ACH deposit
- Check

A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible. Following is the wiring and ACH deposit instructions:

For wire transfers: Bank of America
Account # 001009068974
ABA # 026009593
Chief Financial Officer of Florida
Re: DOT – K 11-78, Financial Project #

For ACH deposits: Bank of America
Account # 001009068974
ABA # 063100277
Chief Financial Officer of Florida
Re: DOT – K 11-78, Financial Project #

If a check is the method of payment, the check shall be made payable to the Department of Financial Services, Revenue Processing and mailed to FDOT, OOC-GAO for appropriate processing at the following address:

Florida Department of Transportation
OOC-GAO, LFA Section
605 Suwannee Street, MS 42B
Tallahassee, Florida 32399

5. The DEPARTMENT's Comptroller or designee shall be the sole signatories on the escrow account with the TREASURY and shall have sole authority to authorize withdrawals from said account.
6. Unless instructed otherwise by the parties hereto, all interest accumulated in the escrow account shall remain in the account for the purposes of funding the COUNTY's portion of the Project as defined in the LFA.
7. The TREASURY agrees to provide written confirmation of receipt of funds to the DEPARTMENT.
8. The TREASURY further agrees to provide periodic reports to the DEPARTMENT.

STATE OF FLORIDA

STATE OF FLORIDA

DEPARTMENT OF TRANSPORTATION
COMPTROLLER

DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF TREASURY

PALM BEACH COUNTY

BY: _____

NAME: _____

TITLE: _____

3201 Electronics Way
West Palm Beach, FL 33407
ADDRESS

F-596-000-785
FEDERAL EMPLOYER I.D. NUMBER