

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

Meeting Date: March 20, 2012

Consent
 Workshop

Regular
 Public Hearing

Department:

Submitted By: **Engineering & Public Works**
Submitted For: **Streetscape Section**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to authorize: The County Administrator, or his designee, to issue Work Orders to construct irrigation and landscape improvements on State Road 7 in the amounts not-to-exceed \$400,000 from the Broward County Line to Palmetto Park Road, and \$248,000 from Palmetto Park Road to Glades Road (Improvements) utilizing Palm Beach County's (County) Annual Roadway Landscaping Contract R2011-0019, as amended by R2011-1294 and R2011-1987 with Arazoza Brothers Corporation.

SUMMARY: This authorization will enable the County Administrator, or his designee, to issue Work Orders for the contractual services necessary to construct the Improvements. The Florida Department of Transportation has agreed to provide the County with up to \$400,000 (for Broward County Line to Palmetto Park Road) and \$248,000 (for Palmetto Park Road to Glades Road) in 100% grant funding for the construction of the Improvements. No matching funds are required. The County is currently responsible for maintaining both segments of State Road 7.

District 5 (MRE)

Background and Justification: On January 11, 2011, the Board of County Commissioners (Board) approved the Annual Roadway Landscaping Contract R2011-0019 with Arazoza Brothers Corporation to provide construction of irrigation and landscaping improvements for Countywide projects. On September 13, 2011, the Board approved an Amendment to the Contract R2011-1294 that lowered the unit prices on certain bid items. On December 20, 2011, the Board approved another Amendment to the Contract R2011-1987 that reinstated the unit prices on certain bid items.

The Improvements are fully-funded under two previously executed Joint Participation Agreements (JPA) R2010-1206 and R2009-1623, as amended by R2011-0706 with the Florida Department of Transportation. One JPA provides up to \$400,000 in funding for construction of median landscaping from the Broward County Line to Palmetto Park Road. The other JPA and Amendment provide up to \$248,000 in funding for construction of median landscaping from Palmetto Park Road to Glades Road. The Board's authorization is required to enable the County Administrator, or his designee, to issue Work Orders to construct the Improvements.

Attachments:

1. Location Sketch
2. Joint Participation Agreement R2010-1206
3. Joint Participation Agreement R2009-1623
4. Amendment Number One R2011-0706

Recommended by: _____

Division Director

Date

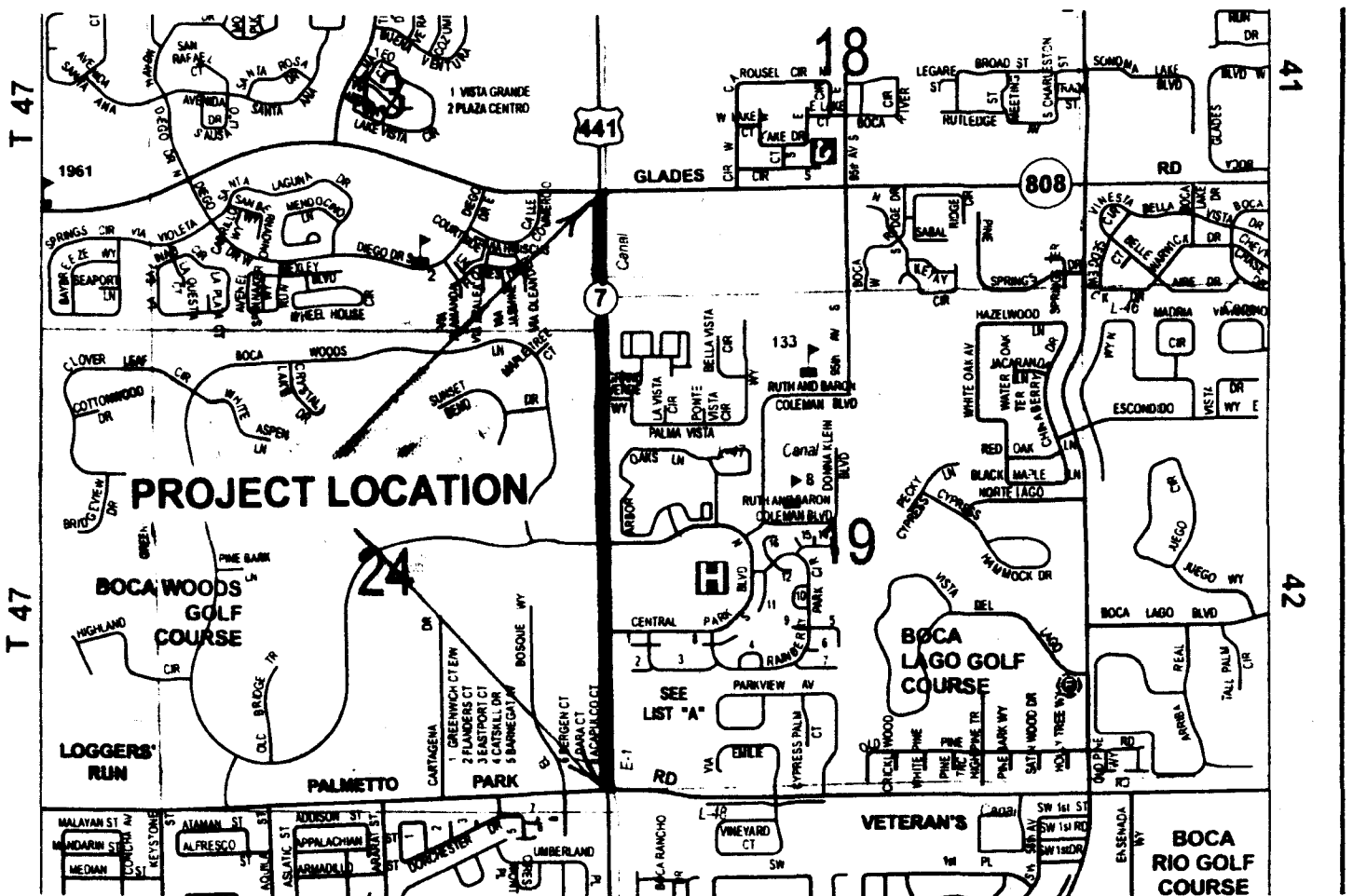
Approved By: _____

Sgt. J. Webb

County Engineer

2/22/12
Date

LOCATION SKETCH



DUN 8470481
CSFA No. 55.023

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STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
JOINT PARTICIPATION AGREEMENT
CONTRACT NUMBER R2010-1206 AG174

THIS Agreement, entered into this 2nd day of Sept 2010, by and between the State of Florida Department of Transportation, a component agency of the State of Florida, hereinafter called the DEPARTMENT, and PALM BEACH COUNTY, a political subdivision of the State of Florida, located at 2300 North Jog Road, West Palm Beach, Florida 33411, hereinafter called the PARTICIPANT.

WITNESSETH

WHEREAS, the DEPARTMENT and the PARTICIPANT are desirous of having the PARTICIPANT make certain improvements in connection with Financial Management (FM) Number 426014-1-58-01 for landscape, hardscape and/or irrigation improvements at State Road 7 (US441) from the Broward/Palm Beach County Line (M.P. 0.000) to Palmetto Park Road (M.P. 1.485) Palm Beach County, Florida, herein after referred to as the Project. Refer to Exhibit "A" for a detailed Scope of Services and Exhibit "B" for a set of Production Plans attached hereto and made a part hereof; and,

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

WHEREAS, the PARTICIPANT by Resolution No. R2010-1206 adopted on AUG 17 2010, 2010, 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 PARTICIPANT shall be responsible for assuring that the Project complies with all applicable Federal, State and Local laws, rules, regulations, guidelines and standards, and will not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the performance of work under the Agreement.
3. The DEPARTMENT agrees to make all previous studies, maps, drawings, surveys and other data and information pertaining to the Project available to the PARTICIPANT at no extra cost.
4. The PARTICIPANT shall have the sole responsibility for resolving claims and requests for additional work for the Project. The PARTICIPANT will make best efforts to obtain the DEPARTMENT's input in its decisions.

5. The total cost of the Project is estimated at **Four Hundred Thousand Dollars and No Cents (\$400,000.00)**. The DEPARTMENT agrees to pay one hundred percent (100%) of the total actual cost of the Project, up to a maximum amount of **\$400,000.00** for actual costs incurred. The PARTICIPANT shall submit progress billings to the DEPARTMENT on a quarterly basis. The balance of the Project cost shall be the sole responsibility of and paid by the PARTICIPANT. The PARTICIPANT acknowledges and agrees that the DEPARTMENT'S obligation to make payment under the AGREEMENT is contingent upon an annual appropriation by the Florida legislature.
6. The PARTICIPANT will comply with the Federal and/or State Audit provisions set forth in Exhibit "C" and Exhibit "D" which are attached hereto and made part of this Agreement.
7. The PARTICIPANT must obtain a permit from the DEPARTMENT before the PARTICIPANT may proceed with construction of the Project.
8. The PARTICIPANT must certify that the installation of the project is completed by a Contractor prequalified by the DEPARTMENT as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2010), as amended unless otherwise approved by the DEPARTMENT in writing.
9. This Agreement and any interest herein shall not be assigned, transferred or otherwise encumbered by the PARTICIPANT under any circumstances without the prior written consent of the DEPARTMENT. However, this Agreement shall run to the DEPARTMENT and its successors.
10. Except as otherwise set forth herein, this Agreement shall continue in effect and be binding to both the PARTICIPANT and the DEPARTMENT until the Project is accepted in writing by the DEPARTMENT'S Project Manager as complete, or **December 31, 2012**, whichever occurs first.
11. The PARTICIPANT shall agree to maintain all landscape improvements in accordance with the terms of the State Highway Landscape Maintenance, and Compensation Agreement dated November 19, 2003, approved by the Palm Beach County Commission on September 23, 2003 under Resolution No. R-2003-1513. A letter of commitment from the PARTICIPANT to the DEPARTMENT to maintain said improvements is attached hereto and made a part hereof as Exhibit E.
12. Upon completion and certification of Project, the PARTICIPANT must submit the final invoice to the DEPARTMENT within 180 days after the final acceptance of the Project which follows the 365 day warranty period. Invoices submitted after the 180 day time period will not be paid.
13. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Department of Financial Services under **Section 215.422(14), Florida Statutes**, or by the DEPARTMENT'S Comptroller under **Section 334.004(29), Florida Statutes**.

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fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than one year."

21. The PARTICIPANT warrants that it has not employed or obtained any company or person, other than bona fide employees of the PARTICIPANT, 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 PARTICIPANT. For breach or violation of this provision, the DEPARTMENT shall have the right to terminate the Agreement without liability.
22. With respect to any of the PARTICIPANT'S agents, consultants, sub consultants, contractors and / or sub contractors, such party in any contract for this Project shall agree to indemnify, defend, save and hold harmless the DEPARTMENT from all claims, demands, liabilities and suits of any nature arising out of, because of, or due to any intentional and / or negligent act or occurrence, omission or commission of such agents, consultants, sub consultants, contractors and / or sub contractors. The PARTICIPANT shall provide to the DEPARTMENT written evidence of the foregoing upon the request of the DEPARTMENT. It is specifically understood and agreed that this indemnification does not cover or indemnify the DEPARTMENT for its own negligence.
23. This Agreement is governed by and construed in accordance with the laws of the State of Florida. In the event it becomes necessary for the DEPARTMENT or PARTICIPANT 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 such litigation shall be in Broward County, Florida.
24. 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 except the Landscape Maintenance Memorandum of Agreement between the DEPARTMENT and the PARTICIPANT which is included as Exhibit E. 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.
25. 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:

5311 W. Martin Luther King Blvd., Suite 101, Fort Lauderdale, FL 33309-4000, Phone: (954) 371-1111, Fax: (954) 371-1112

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If to the DEPARTMENT:
State of Florida Department of Transportation
3400 West Commercial Blvd.
Ft. Lauderdale, FL 33309-3421
Attention: Elisabeth A. Hassett, R.L.A.
FDOT District IV Landscape Architect
A second copy to: Office of the General Counsel

If to the PARTICIPANT:
Palm Beach County
2300 North Jog Road,
West Palm Beach, Florida 33411
Attention: Mr. Andrew S. Hertel
With a copy to: City Attorney

24. LIST OF EXHIBITS

- Exhibit A: Scope of Services
- Exhibit B: Project Plans
- Exhibit C: Federal and /or State Funded Contracts
- Exhibit D: Authorization
- Exhibit E: Maintenance Commitment Letter

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

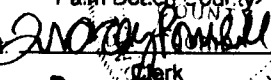
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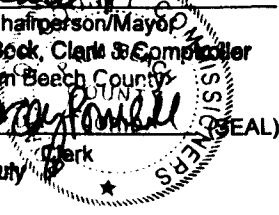
AGENCY (PALM BEACH COUNTY)

Steven L Abrams

By: 
Burt Aaronson, Chairperson/Mayor


Sharon R. Beck, Clerk & Comptroller
Palm Beach County

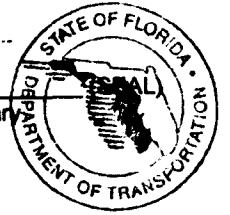
Attest: 
Deputy Clerk



STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: 
Transportation Development Director

Attest: 
Executive Secretary



Legal Review

Date


Attorney

7/30/10

Legal Review

Date


Office of the General Counsel

8/31/2010



Approved as to terms and conditions

EXHIBIT B
PROJECT PLANS

Please see attached plans prepared by:

George G. Gentile, FASLA/Gentile, Holloway, O'Mahoney

EXHIBIT C

FEDERAL AND/OR STATE FUNDED CONTRACTS

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

MONITORING

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

AUDITS**PART I: FEDERALLY FUNDED**

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

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

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- 4. Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency.

PART II: STATE FUNDED

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

- 1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services and the CFO; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. This agreement indicates state financial assistance awarded through the Department by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
- 2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(d), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
- 3. If the recipient expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. However, if the recipient elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
- 4. State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

PART III: OTHER AUDIT REQUIREMENTS

The recipient shall follow up and take corrective action on audit findings. Preparation of a summary schedule of prior year audit findings, including corrective action and current status of the audit findings is required. Current year audit findings require corrective action and status of findings.

Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and audit work papers shall be given to the FDOT, the Department of Financial Services, and the Auditor General. This section does not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

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DUNSTON 70481
CSFA No. 55.023

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

A. The Department at the following address:

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

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

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

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

A. The Department at the following address:

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

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

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

PART V: RECORD RETENTION

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

EXHIBIT D

AUTHORIZATION: SECTION 339.24 & 339.205, Florida Statutes

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

STATE RESOURCES

Agency: PALM BEACH COUNTY

FM#: 426014-1-58-01

<u>State Agency</u>	<u>Catalog of State Financial Assistance (Number & Title)</u>	<u>Amount</u>
FDOT 55.023	State Highway Project Reimbursement (Department of Transportation)	\$400,000.00

Compliance Requirement: In developing audit procedures to test compliance with the requirements for a state project, the auditor should first look to Part Two, Matrix of Compliance Requirements, to identify which of the 10 types of compliance requirements described in Part Three of the Compliance Supplement are applicable and then look to Parts Three and Four for the details of the requirements.

Activities Allowed: Under the terms of the Highway Beautification Grant Agreement allowable activities include:

- Installation of landscaping on the highway facility as specified in the landscape plan in conformance with Rule 14-40.003, Florida Administrative Code, and the "Florida Highway Landscape Guide". Any deviation from the approved landscape plan requires the approval of the Department; (Agreement Provision 1)
- Maintenance of the landscaping within the median and areas outside the travel way within the right of way line in accordance with the Landscape Maintenance Plan included in the agreement and consistent with the requirements of Rule 14-40.003(5), Florida Administrative Code. Any deviation from the Landscape Maintenance Plan requires the written approval of the Department; and (Agreement Provision 2)
- Landscape installation and maintenance activities that are in accordance with the Maintenance of Traffic Plan included in the agreement and Rule 14.003, Florida Administrative Code. (Agreement Provision 3)

Allowable Grants provide for the costs of purchase and installation of a sprinkler

5. Program: Highway Beautification (PART 2) Grants: Federal Title 49, Part 635, Subpart 635.101, Florida Administrative Code, (PART 2) Grants: Federal Title 49, Part 635, Subpart 635.101, Florida Administrative Code.

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Costs: system, the cost of plant materials and fertilizer, and may provide for the costs for labor associated with the installation of the plantings. Each recipient that receives a grant is responsible for any costs for water, for the maintenance of the sprinkler system, for the maintenance of the landscaped areas in accordance with a maintenance agreement with the Department, and, except as otherwise provided in the grant, for any costs for labor associated with the installation of the plantings. (Section 339.2405(11), Florida Statutes)

Cash Management: See Part Three.

Matching: A 50 percent or more of like-kind match by the recipient is encouraged.

Period of Availability: Grant recipients have one year from date of grant award letter to complete landscape plans and execute necessary agreements.

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EXHIBIT E

MAINTENANCE COMMITMENT LETTER

Please see attached letter from Andrew S. Hertel, AICP, Palm Beach County Streetscape Section Manager

Dated: January 23, 2009



**Department of Engineering
and Public Works**
P.O. Box 21229
West Palm Beach, FL 33416-1229
(561) 684-4000
www.pbcgov.com

**Palm Beach County
Board of County
Commissioners**

Jeff Koons, Chairman
Burt Aaronson, Vice Chairman

Karen T. Marcus
Shelley Vana

Jess R. Santamaria
Addie L. Greene

County Administrator
Robert Weisman



*"An Equal Opportunity
Affirmative Action Employer"*

printed on recycled paper

January 23, 2009

Cleo Marsh, P.E.
Florida Department of Transportation District IV
3400 West Commercial Boulevard
Ft. Lauderdale, FL 33309

**SUBJECT: State Road 7 – Broward County Line to Glades Road (SR 808)
Landscape Maintenance**

Dear Mr. Marsh:

Please let this letter confirm that Palm Beach County is committed to continuing its maintenance of the landscape, as well as planned irrigation on State Road 7 from the Broward County Line to Glades Road (SR 808) pursuant to the terms of the existing Joint Partnership Agreement with the Department (dated November 19, 2003).

The planned irrigation will be installed by the County following the completion of the Department's pending RRR project within these roadway limits.

Please feel free to contact me if you have any questions.

Sincerely,

Office of the County Engineer

Andrew S. Hertel, AICP
Manager, Streetscape Section

pc: Elisabeth Hassett, RLA – Florida Department of Transportation
George T. Webb, P.E., County Engineer (w/attachment)
Steve Carrier, P.E., Assistant County Engineer (w/attachment)
Carl Bengtson, RLA – Streetscape Section (w/attachment)

File: Roads – State Road 7
Florida Department of Transportation

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STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

JOINT PARTICIPATION AGREEMENT

CONTRACT NUMBER R 2009 1623
APQS7

This Agreement entered into this 28th day of October 2009, by and between the State of Florida Department of Transportation hereinafter called the DEPARTMENT, and the County of Palm Beach, a political subdivision of the State of Florida, located at 2300 North Jog Road, West Palm Beach, Florida 33411, hereinafter called the PARTICIPANT.

WITNESSETH

WHEREAS, the DEPARTMENT and the PARTICIPANT are desirous of having the PARTICIPANT make certain improvements in connection with Financial Management (FM) Number 426013-1-58-01 for landscape, hardscape and/or irrigation improvements at State Road SR 7 (US 441) from Palmetto Park Road (M.P. 1.485) to SR 808 (Glades Road) (MP 2.751) Phase I Palm Beach County, Florida. Refer to Exhibit "A" for a detailed Scope of services and Exhibit "B" for a set of Production Plans attached hereto and made a part hereof; and,

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

WHEREAS, the PARTICIPANT by Resolution No. R 2009 1623 adopted on OCT 06 2009, 2009, 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 PARTICIPANT shall be responsible for assuring that the Project complies with all applicable Federal, State and Local laws, rules, regulations, guidelines and standards, and will not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the performance of work under the Agreement.
3. The DEPARTMENT agrees to make all previous studies, maps, drawings, surveys and other data and information pertaining to the Project available to the PARTICIPANT at no extra cost.
4. The PARTICIPANT shall have the sole responsibility for resolving claims and requests for additional work for the Project. The PARTICIPANT will make best efforts to obtain the DEPARTMENT'S input in its decisions.
5. The total cost of the Project is estimated at Two Hundred Thousand Dollars and No Cents (\$200,000.00). The DEPARTMENT agrees to pay one hundred percent (100%) of the total actual cost of the Project, up to a maximum amount of Two Hundred Thousand

Dollars and No Cents (\$200,000.00). The balance of the Project cost shall be paid by the PARTICIPANT. The PARTICIPANT acknowledges and agrees that the DEPARTMENT'S obligation to make payment under the AGREEMENT is contingent upon an annual appropriation by the Florida legislature.

6. If the PARTICIPANT fails to maintain the landscape for at least 5 years, the DEPARTMENT shall be reimbursed the entire grant amount. If the PARTICIPANT maintains the landscape for at least 5 years, but less than 10 years, the DEPARTMENT shall be reimbursed for 65% of the grant amount. If the PARTICIPANT maintains the landscape for at least 10 years, but less than 15 years, the DEPARTMENT shall be reimbursed for 35% of the grant amount.
7. The PARTICIPANT will comply with the Federal and/or State Audit provisions set forth in Exhibit "C" and Exhibit "D" which are attached hereto and made part of this Agreement.
8. The PARTICIPANT must obtain an FDOT permit before the PARTICIPANT may proceed with construction of the Project.
9. Upon certification of Project completion the PARTICIPANT must submit the final invoice to the DEPARTMENT within 180 days after the final acceptance of the Project. Invoices submitted after the 180 days time period will not be paid.
10. This Agreement and any interest herein shall not be assigned, transferred or otherwise encumbered by the PARTICIPANT under any circumstances without the prior written consent of the DEPARTMENT. However, this Agreement shall run to the DEPARTMENT and its successors.
11. Except as otherwise set forth herein, this Agreement shall continue in effect and be binding to both the PARTICIPANT and the DEPARTMENT until the Project is accepted in writing by the DEPARTMENT'S Project Manager as complete, or December 31, 2011, whichever occurs first.
12. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Department of Financial Services under *Section 215.422(14), Florida Statutes*, or by the DEPARTMENT'S Comptroller under *Section 334.004(29), Florida Statutes*.
13. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Project Manager prior to payments. The Department will render a decision on the acceptability of services within 10 working days of receipt of a progress report. The Department reserves the right to withhold payments for work not completed, or work completed unsatisfactorily, or work that is deemed inadequate or untimely by the Department. Any payment withheld will be released and paid to the PARTICIPANT promptly when work is subsequently performed.
14. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.
15. PARTICIPANT providing goods and services to the DEPARTMENT should be aware of the following time frames. The DEPARTMENT has (10) ten working days to inspect and approve the goods and services where working day is defined as any day of the week excluding Saturday, Sunday and any legal holiday as designated in *Section 110.117*,

Florida Statutes. The DEPARTMENT has 20 calendar days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 calendar days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

16. If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to **Section 55.03(1), Florida Statutes**, will be due and payable, in addition to the invoice amount, to the PARTICIPANT. Interest penalties of less than one (1) dollar will not be enforced unless the PARTICIPANT requests payment. Invoices that have to be returned to a PARTICIPANT because of PARTICIPANT preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.
17. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Department of Financial Services Hotline at 1-877-693-5236...
18. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include the PARTICIPANT'S general accounting records and the Project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the Project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
19. In the event this contract is for services in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) and a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than one year."
20. The PARTICIPANT warrants that it has not employed or obtained any company or person, other than bona fide employees of the PARTICIPANT, 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 PARTICIPANT. For breach or violation of this

provision, the DEPARTMENT shall have the right to terminate the Agreement without liability.

21. With respect to any of the PARTICIPANT'S agents, consultants, sub consultants, contractors and / or sub contractors, such party in any contract for this Project shall agree to indemnify, defend, save and hold harmless the DEPARTMENT from all claims, demands, liabilities and suits of any nature arising out of, because of, or due to any intentional and / or negligent act or occurrence, omission or commission of such agents, consultants, sub consultants, contractors and / or sub contractors. The PARTICIPANT shall provide to the DEPARTMENT written evidence of the foregoing upon the request of the DEPARTMENT. It is specifically understood and agreed that this indemnification does not cover or indemnify the DEPARTMENT for its own negligence.
22. This Agreement is governed by and construed in accordance with the laws of the State of Florida. In the event it becomes necessary for the DEPARTMENT or PARTICIPANT 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 such litigation shall be in Broward County, Florida.
23. 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 except the State Highway Landscape Maintenance and Compensation Agreement between the DEPARTMENT and the PARTICIPANT dated November 19, 2003 and is included as Exhibit E. 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.
24. 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:

State of Florida Department of Transportation
Planning & Environmental Management
3400 West Commercial Blvd.
Ft. Lauderdale, FL 33309-3421
Attention: Elisabeth A. Hassett, R.L.A.
FDOT District IV Landscape Architect
A second copy to: District General Counsel

If to the PARTICIPANT:

County of Palm Beach
2300 North Jog Road
West Palm Beach, Florida 33411
Attention: Mr. Andrew S. Hertel
With a copy to: County Attorney

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

16 23

AGENCY

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: John F. Koons Chairman
John F. Koons Chairman
Sherrill C. ...
Attest: [Signature]
Denise Clark
Date: OCT 6 2009
Seal: BOARD OF COUNTY COMMISSIONERS
FLORIDA

By: [Signature]
Transportation Development Director
Seal: STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Approval

Approval as to Form

Date

[Signature] 10/21/09
Attorney

[Signature] 10/28/2009
District General Counsel

[Signature]
Approved as to terms and conditions

**EXHIBIT A
SCOPE OF SERVICES**

The **PARTICIPANT** (County of Palm Beach) agrees to make certain landscape improvements for, State Road SR 7 (US 441) from Palmetto Park Road (M.P. 1.485) to SR 808 (Glades Road) (MP 2.751) Palm Beach County, Florida and will subsequently furnish, construct, and inspect the landscape, hardscape, and/or irrigation as shown in the plans and specifications prepared by **George G. Gentile, FASLA of Gentile, Holloway, O'Mahoney**. The following conditions shall apply:

- a. The current Florida Department of Transportation Design Standard Index 546 must be adhered to.
- b. Clear zone/horizontal clearance as specified in the Plans Preparation Manual – English Volume 1, Chapter 2 and Department Design Standard Index 700 must be adhered to.
- c. Landscape materials shall not obstruct roadside signs or permitted sight window for outdoor advertising signs as permitted in F.A.C. 14-40.
- d. Landscape, hardscape, and/or irrigation materials shall be of a size, type and placement so as not to impede large machine mowing that the **DEPARTMENT** currently provides and will continue to provide at the same frequency.
- e. Should the **PARTICIPANT** elect to design, furnish and construct irrigation, all costs associated with water source connection(s), continued maintenance of the distribution system and water, and electricity costs shall be born solely by the **PARTICIPANT**. All permits (including tree permits), fees, and any mitigation associated with the removal, relocation or adjustments of these improvements are the maintaining **PARTICIPANT'S** responsibility.
- f. During the installation of the Project and future maintenance operations, maintenance of traffic shall be in accordance with the current edition of the MUTCD and the current Department Design Standards (series 600).
- g. The **PARTICIPANT** shall secure a permit from the **DEPARTMENT** prior to the commencement of any work. The Engineer of Record (EOR) shall meet with Permit Staff prior to permit application and provide the local maintenance office located at, 7900 Forest Boulevard, West Palm Beach, Florida 33413 (561-434-3903) a twenty-four (24) hour telephone number and the name of a responsible person that the **DEPARTMENT** may contact. The **PARTICIPANT** shall notify the local maintenance office 48 hours prior to the start of the Project.
- h. If there is a need to restrict the normal flow of traffic it shall be done on off-peak hours (9 AM to 3 PM), and the party performing such work shall give notice to the local law enforcement agency within whose jurisdiction such road is located prior to commencing work on the Project. The **DEPARTMENT'S** Public Information Office shall also be notified by phone at 954-777-4092.
- i. The **PARTICIPANT** shall be responsible to clear all utilities within the Project limits.

EXHIBIT B
PROJECT PLANS

Please see attached plans prepared by:

George G. Gentile, FASLA/Gentile, Holloway, O'Mahoney

Dated: January 20, 2009

EXHIBIT C

FEDERAL AND/OR STATE FUNDED CONTRACTS

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

MONITORING

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

AUDITS**PART I: FEDERALLY FUNDED**

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

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

4. Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency.

PART II: STATE FUNDED

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

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services and the CFO; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. This agreement indicates state financial assistance awarded through the Department by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(d), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. However, if the recipient elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

PART III: OTHER AUDIT REQUIREMENTS

The recipient shall follow up and take corrective action on audit findings. Preparation of a summary schedule of prior year audit findings, including corrective action and current status of the audit findings is required. Current year audit findings require corrective action and status of findings.

Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and audit work papers shall be given to the FDOT, the Department of Financial Services, and the Auditor General. This section does not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

PART IV: REPORT SUBMISSION

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

- A. The Department at the following address:

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

- B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

**Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132**

- C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

2. In the event that a copy of the reporting package for an audit required by PART I of this agreement and conducted in accordance with OMB Circular A-133, as revised, is not required to be submitted to the Department for reasons pursuant to section .320 (e)(2), OMB Circular A-133, as revised, the recipient shall submit the required written notification pursuant to Section .320 (e)(2) and a copy of the recipient's audited schedule of expenditures of Federal awards directly to the following:

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

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

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

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

A. The Department at each of the following address:

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

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

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

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

A. The Department at the following address:

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

5. Any reports, management letter, or other information required to be submitted to the Department pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
6. Recipients, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

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

EXHIBIT D

AUTHORIZATION: SECTION 339.24 & 339.205, Florida Statutes

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

STATE RESOURCES

Agency: County of Palm Beach

FM#:426013-1-58-01

<u>State Agency</u>	<u>Catalog of State Financial Assistance (Number & Title)</u>	<u>Amount</u>
FDOT 55.023	State Highway Project reimbursement (Department of Transportation)	\$200,000.00

Compliance Requirement: In developing audit procedures to test compliance with the requirements for a state project, the auditor should first look to Part Two, Matrix of Compliance Requirements, to identify which of the 10 types of compliance requirements described in Part Three of the Compliance Supplement are applicable and then look to Parts Three and Four for the details of the requirements.

Activities Allowed: Under the terms of the Highway Beautification Grant Agreement allowable activities include:

- Installation of landscaping on the highway facility as specified in the landscape plan in conformance with Rule 14-40.003, Florida Administrative Code, and the "Florida Highway Landscape Guide." Any deviation from the approved landscape plan requires the approval of the Department; (Agreement Provision 1)
- Maintenance of the landscaping within the median and areas outside the travel way within the right of way line in accordance with the Landscape Maintenance Plan included in the agreement and consistent with the requirements of Rule 14-40.003(5), Florida Administrative Code. Any deviation from the Landscape Maintenance Plan requires the written approval of the Department; and (Agreement Provision 2)
- Landscape installation and maintenance activities that are in accordance with the Maintenance of Traffic Plan included in the agreement and Rule 14.003, Florida Administrative Code. (Agreement Provision 3)

Allowable Costs: Grants provide for the costs of purchase and installation of a sprinkler system, the cost of plant materials and fertilizer, and may provide for the costs for labor associated with the installation of the plantings. Each

recipient that receives a grant is responsible for any costs for water, for the maintenance of the sprinkler system, for the maintenance of the landscaped areas in accordance with a maintenance agreement with the Department, and, except as otherwise provided in the grant, for any costs for labor associated with the installation of the plantings. (Section 339.2405(11), Florida Statutes)

Cash

See Part Three.

Management:

Matching:

A 50 percent or more of like-kind match by the recipient is encouraged.

Period of

Availability:

Grant recipients have one year from date of grant award letter to complete landscape plans and execute necessary agreements.

EXHIBIT E
STATE HIGHWAY AND COMPENSATION AGREEMENT

See Attached Document

DUNS No. 078470481

CSFA No. 55.023

**DISTRICT FOUR (4) AMENDMENT NO. ONE (1)
TO STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND
PALM BEACH COUNTY JOINT PARTICIPATION AGREEMENT
CONTRACT NUMBER APG57**

This is Amendment Number One to the Joint Participation Agreement dated October 28, 2009, made and entered into this 1 day of June 2011 by and between the State of Florida Department of Transportation hereinafter called the "DEPARTMENT" and Palm Beach County, a political subdivision of the State of Florida, hereinafter called the "PARTICIPANT".

WHEREAS, the parties entered into the Joint Participation Agreement dated October 28, 2009, for landscape, hardscape and/or irrigation improvements at State Road 7 (US 441) from Palmetto Park Road (M.P. 1.485) to SR 808 (Glades Road) (M.P. 2.751) in Palm Beach County, Florida; and,

WHEREAS, the DEPARTMENT and PARTICIPANT have agreed to add additional landscape improvements to be installed on State Road 7 (US 441) in accordance with the above referenced Agreement;

NOW THEREFORE, for and in consideration of mutual benefits to be derived from joint participation on the Project, the parties covenant and agree as follows:

1. The PARTICIPANT agrees to have installed for an additional amount of Forty Eight Thousand Dollars (\$48,000). Paragraph 5 of the Joint Participant Agreement for State Road 7 (US 441) dated October 28, 2009 is amended as follows:

The total cost of the Project is estimated at Two Hundred and Forty Eight Thousand Dollars and No Cents (\$248,000). The DEPARTMENT agrees to pay one hundred percent (100%) of the total actual cost of the Project, up to a maximum amount of Two Hundred and Forty Eight Thousand Dollars and No Cents (\$248,000). The balance of the Project shall be paid by the PARTICIPANT. The PARTICIPANT acknowledges and agrees that the DEPARTMENT's obligation to make payment under the AGREEMENT is contingent upon an annual appropriation by the Florida Legislature.

2. The PARTICIPANT must certify that the installation of the project is completed by a Contractor prequalified by the DEPARTMENT as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2010), as amended unless otherwise approved by the DEPARTMENT in writing.

- Construction Engineering Inspection (CEI) services will be provided by hiring a DEPARTMENT prequalified consultant firm including one individual that has completed the Advanced Maintenance of Traffic Level Training, unless otherwise approved by the DEPARTMENT in writing. The CEI staff shall be present on the Project at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida licensed Professional Engineer. The DEPARTMENT shall approve all CEI personnel.

3. PARTICIPANT shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of;
 - (1) All persons employed by the PARTICIPANT during the term of the Contract to perform employment duties within Florida; and
 - (2) All persons, including subcontractors, assigned by the PARTICIPANT to perform work pursuant to the contract with the DEPARTMENT.
4. The PARTICIPANT shall provide the following quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The deliverables for the entire Project are shown in Exhibit A, Deliverables, attached hereto and made apart hereof.

The PARTICIPANT will be reimbursed only for actual expenses incurred during the Agreement time period that are directly related to the installation of landscape, hardscape and/or irrigation improvements as set forth in this Agreement. The PARTICIPANT will submit a written progress report by the 15th day of the month following the installation attesting to the actual number of large and/or small plants installed, along with all irrigation parts received and installation at the Project site. Upon completion, the PARTICIPANT will notify the DEPARTMENT'S Landscape Architect who will be responsible for inspection and acceptance of the landscape improvements contemplated in this Agreement.

5. Paragraph 11 of the Joint Participant Agreement for State Road 7 (US 441) dated October 28, 2009 is amended as follows:

Except as otherwise set forth herein, this Agreement shall continue in effect and be binding to both the PARTICIPANT and the DEPARTMENT until the Project is accepted in writing by the DEPARTMENT'S Project Manager as complete, or **December 31, 2012**, whichever occurs first. The DEPARTMENT and PARTICIPANT may agree to extend this Agreement in writing. The PARTICIPANT shall delegate signature authority for the PARTICIPANT to the COUNTY ENGINEER.

6. Exhibit B of the Joint Participant Agreement for State Road 7 (US 441) dated October 28, 2009 is amended with the additional set of plans as referenced in Exhibit B dated April 15, 2011.

Except as modified by this amendment, all terms and conditions of the Agreement shall remain in full force and effect.

DUNS No. 078470481
CSFA No. 55.023

Exhibits

- Exhibit A – Deliverables
- Exhibit B – Landscape Improvement Project Plans
- Exhibit C – Maintenance Letter

R 2011 07 06

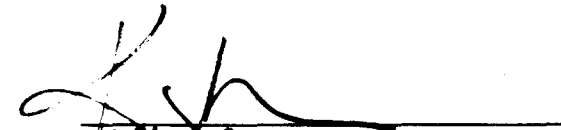
In Witness whereof, the parties hereto have executed with this Amendment effective the 1 day June year written and approved.

AGENCY (PALM BEACH COUNTY)

State of Florida
Department of Transportation

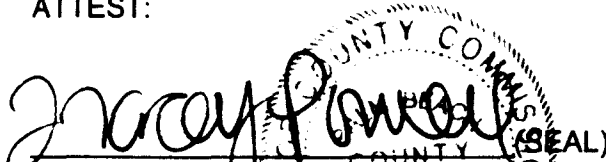
BY:

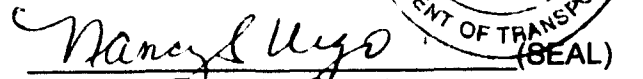
BY:


 Karen T. Marcus Chair



 Director of Transportation Development

ATTEST:

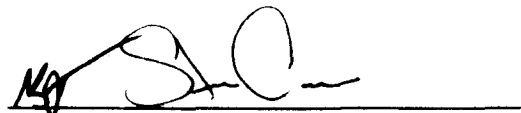

 Deputy Clerk
 COUNTY COMMISSIONERS
 PALM BEACH COUNTY
 FLORIDA
 (SEAL)


 Executive Secretary
 DEPARTMENT OF TRANSPORTATION
 FLORIDA
 (SEAL)

LEGAL REVIEW:


 Attorney
 5/12/11
 Date


 Office of the General Counsel
 6/1/2011
 Date


 Approved as to Terms and Conditions