

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

Meeting Date: March 14, 2017	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
	<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing
Department:	Engineering & Public Works	
Submitted By:	Engineering & Public Works	
Submitted For:	Roadway Production Division	

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- A) adopt a resolution to approve the County Incentive Grant Program (CIGP) agreement in the amount of up to \$150,000 with the State of Florida Department of Transportation (FDOT) for the design of Military Trail and Forest Hill Boulevard intersection improvements (Project); and
- B) approve a three party escrow agreement (Escrow Agreement) with FDOT, and the Florida Department of Financial Services, Division of Treasury to establish an escrow account for the project.

SUMMARY: Approval of this CIGP agreement will allow Palm Beach County (County) to receive a grant of up to \$150,000 (50/50 matching funds) for the design of the project, which has a current estimated design cost of \$300,000. The County will be responsible for all costs above this grant amount. The project will add a second left turn lane on the north and south approaches of Military Trail, right turn lanes on all approaches of the intersection, reconstruct sidewalks, and replace all traffic signals at the intersection. FDOT will perform the entire design of the intersection improvements, and the County will provide FDOT with its share of the design cost after the CIGP agreement is executed. Approval of the escrow agreement will allow County funds to be deposited into an escrow account that has been established for the project. Funding exists in the Five Year Road Program (FY2017) for the County’s portion of the project. Districts 2 and 3 (PK)

Background and Justification: The intent of the CIGP is to provide grants to counties to improve transportation facilities on the State Highway System (SHS) or to improve transportation facilities that relieve traffic on the SHS. This CIGP agreement with FDOT will grant the County \$150,000 in design funding for the project. FDOT will design the project, and the County will pay its share of \$150,000 to FDOT, via an escrow agreement, after the CIGP agreement is executed. The term of the CIGP agreement will be from the date of execution by FDOT until June 30, 2021.

Attachments:

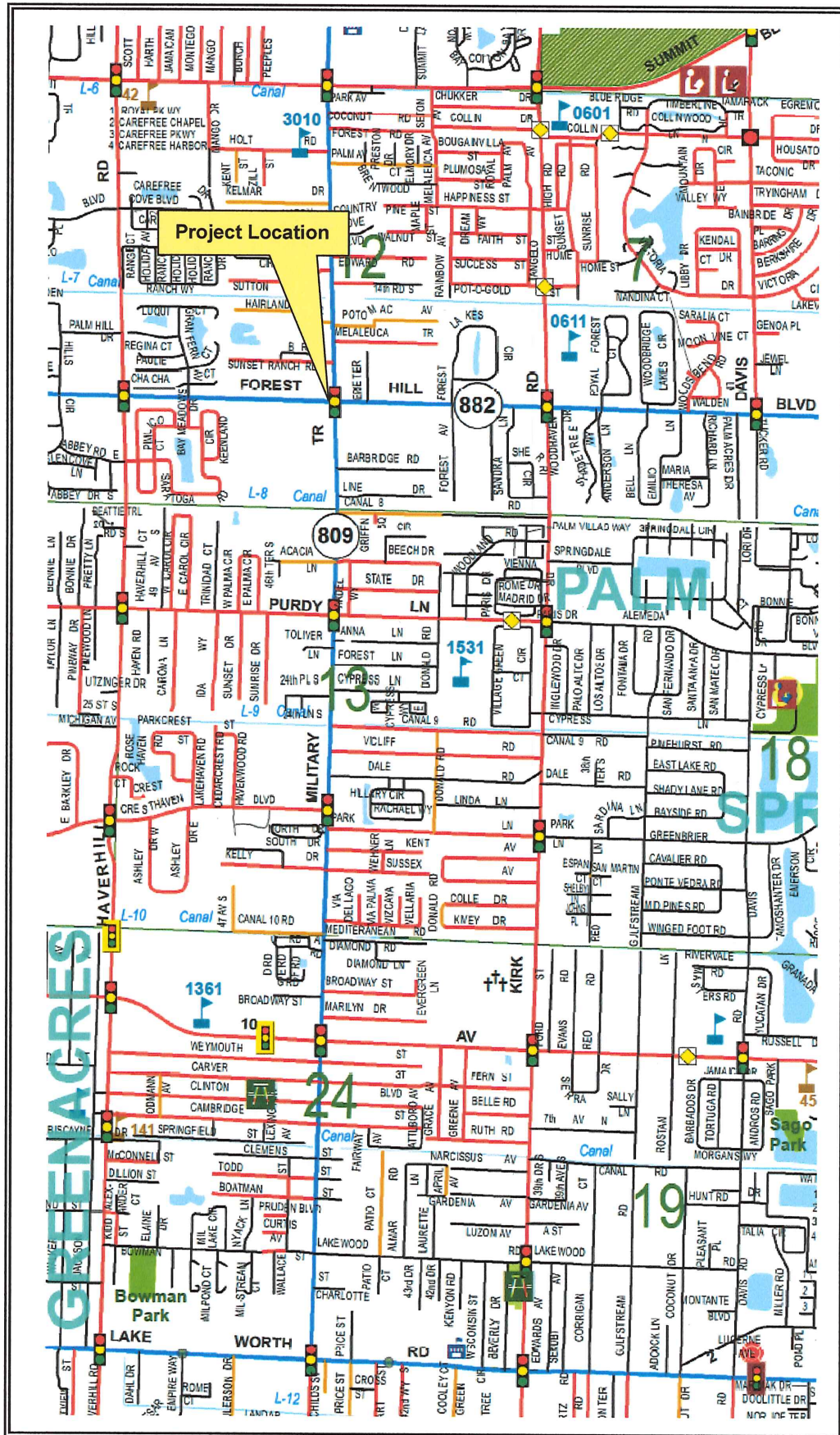
1. Location Sketch
2. CIGP Agreement (7) with Exhibits “A” and “B” (three party escrow agreement)
3. Three Party Escrow Agreement (7)
4. Resolution (7)

Recommended by: S. J. White 3/6/17
Department Director Date

Approved By: [Signature] 3-10-17
Assistant County Administrator Date

Deputy

PROJECT LOCATION
MILITARY TRAIL AT FOREST HILL BOULEVARD
INTERSECTION IMPROVEMENTS
PALM BEACH COUNTY PROJECT #2014509S



LOCATION MAP

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

**COUNTY INCENTIVE GRANT PROGRAM
LOCALLY FUNDED AGREEMENT**

THIS County Incentive Grant Program Agreement ("Agreement"), entered into this _____ day of _____, 20_____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT," and PALM BEACH COUNTY, hereinafter referred to as the "COUNTY."

WITNESSETH

WHEREAS, the DEPARTMENT has the authority, under F.S. §334.044, to enter into this Agreement; and

WHEREAS, the County Incentive Grant Program has been created by Fla. Stat. §339.2817 to provide grants to counties to improve a transportation facility which is located on the State Highway System or which relieves traffic congestion on the State Highway System; and

WHEREAS, the COUNTY has certified to the DEPARTMENT that it has met the eligibility requirements of F.S. §339.2817; and

WHEREAS, the COUNTY is willing to provide the DEPARTMENT with financial assistance in connection with the DEPARTMENT's design work for the intersection improvements of SR809/ Military Trail and Forest Hill Boulevard (Financial Management (FM) Number 437878-1-32-01/02, Funded in Fiscal Year 2016/2017) as set forth in **Exhibit A**, attached hereto and made a part hereof and hereinafter referred to as the "Project"; and

Whereas, the COUNTY by Resolution No. _____ dated the _____ day of _____, _____, a copy of which is attached hereto and made a part hereof, has authorized the Mayor of its Board of Commissioners or designee to enter into this Agreement.

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

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. **SERVICES AND PERFORMANCE**
 - A) The DEPARTMENT agrees to undertake the Project in accordance with all applicable federal, state and local statutes, rules and regulations, and standards.
 - B) 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.

- C) The DEPARTMENT shall have the sole responsibility for resolving claims and requests for additional work for the Project. The DEPARTMENT will make reasonable efforts to obtain the COUNTY input in its decisions.
- D) The COUNTY will be entitled at all times to be advised, at its request, as to the status of work being done by the DEPARTMENT and the details thereof. Either party to the Agreement may request and be granted a conference.
- E) All tracings, plans, specifications, maps, and/or reports prepared or obtained under this Agreement shall become the property of the DEPARTMENT without restriction or limitation on their use.
- F) All notices under this Agreement shall be directed to the following addresses:

TO DEPARTMENT:	TO COUNTY:
Florida Department of Transportation	Palm Beach County
3400 West Commercial Blvd.	Department of Engineering and Public Works
Fort Lauderdale, FL 33309-3421	2300 N. Jog Road
Attn: Leos A. Kennedy, Jr.	West Palm Beach, FL 33411-2745
With a copy to: General Counsel	Attn: George Webb, P.E.
With a copy second copy to: Betsy Jeffers	With a copy to: County Attorney
	With a second copy to: Holly Knight, P.E.

3. TERM

- A) Except as otherwise set forth herein, the term of this Agreement commences upon its execution by both parties and shall continue in effect and be binding to both the COUNTY and the DEPARTMENT until the Project is completed as evidenced by the written acceptance of the DEPARTMENT or June 30, 2021, whichever occurs first.
- B) This Agreement shall not be renewed. Any time extension shall be in writing and executed by both parties, and shall be subject to the same terms and conditions as set forth in this Agreement and contingent upon the DEPARTMENT'S Director of Transportation Development or Designee's approval.

4. COMPENSATION AND PAYMENT

- A) The COUNTY and the DEPARTMENT agree to share the cost of this Project FM# 437878-1-32-01/02. The COUNTY agrees to provide one-half (1/2) of the cost for Project expenditures and the Department agrees to provide the other one-half (1/2) pursuant to F.S. §339.2817

- B) The estimated total cost for the Project as set forth in the DEPARTMENT's adopted work program is THREE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$300,000.00). Of that sum, the COUNTY's estimated payment for the Project is ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00), which sum shall be paid to the DEPARTMENT.
- C) In the event the final negotiated amount for the Project, increases or exceeds the COUNTY's payment for the Project, then one half of any additional cost shall be the sole responsibility of the COUNTY. This increased sum shall be paid by the COUNTY within 14 days from notification by the DEPARTMENT. In the event the COUNTY cannot provide the additional sum within fourteen (14) calendar days, a letter must be submitted to and approved by the DEPARTMENT's Project Manager indicating the date the additional funds will be given to the DEPARTMENT and the DEPARTMENT's written consent, not to be unreasonably withheld, to the payment of the additional sum on said date. The COUNTY understands the request and approval of the additional time could delay the Project, and additional costs are at the COUNTY's expense may be incurred due to delay of the Project. However and notwithstanding the foregoing, in the event the COUNTY does not provide the DEPARTMENT with the additional funding as the approved date as stated in the COUNTY's letter, the DEPARTMENT reserves the right to terminate this Agreement and cancel the Project.
- D) However and notwithstanding the foregoing, in the event Project scope modifications occur that increases or exceeds the COUNTY's payment for the Project, then any additional cost shall be the sole responsibility of the COUNTY. Any funding increase as a result of modifications to the Project shall be added by means of an amendment to the Agreement to be signed by both parties before work is undertaken. However, in the event the COUNTY and the DEPARTMENT fail to negotiate an amendment for any reason whatsoever, the Project shall not include such modifications.
- E) In the event the actual cost of the Project upon completion results in a decrease in COUNTY's cost, the difference will be applied to future phases (Right of Way and/or Construction) which would be pursuant to future agreements. However, in the event that there are no other phases on which to apply the excess funds, the DEPARTMENT will refund any excess funds to the COUNTY. In the event the actual cost of the Project upon completion, without modifications, results in a sum greater than that paid by the COUNTY, then both the COUNTY and the DEPARTMENT shall each be responsible for one half of the additional cost.
- F) 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 FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00) towards the Project Costs.

In the event payment is not received by the DEPARTMENT within thirty (30) days of execution of this Agreement, the execution of this Agreement may be delayed and/or terminated and the Project may not be designed.

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 Project No.: 437878-1-32-01/02. The DEPARTMENT shall utilize this amount towards costs of project 437878-1-32-01/02.

Payment shall be mailed to:

Florida Department of Transportation

Program Management Unit - Attention: Leos A. Kennedy, Jr.

3400 W. Commercial Boulevard

Fort Lauderdale, Florida 33309-3421

- G) The DEPARTMENT'S obligation to pay any sum pursuant to this Agreement is contingent upon an annual appropriation by the Florida Legislature.
- H) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred and sixty days (360) of final payment to the Consultant. The DEPARTMENT considers the Project complete when the final payment has been made to the Consultant, not when the design 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. The COUNTY will be notified of the final cost. Both parties agree that in the event the final accounting of total Project costs pursuant to the terms of this Agreement is less than the total deposits to date, the excess of funds will be applied to future phases (Right of Way and/or Construction) which would be pursuant to future agreements. However, in the event that there are no other phases on which to apply the excess funds, the DEPARTMENT will refund any excess funds 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.
- I) The payment of funds under this Agreement, once they are received by the DEPARTMENT from the PARTICIPANT, will be sent directly to the Department of Financial Services, Division of Treasury for deposit as provided in the attached Three Party Escrow Agreement, 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**.
- J) Should the DEPARTMENT and the COUNTY decide to proceed with subsequent phases of the Project, the Agreement may be amended to identify the respective responsibilities and the financial arrangements between the parties, and/or a new Agreement will be procured and executed.

5. MISCELLANEOUS

- A) 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.

- B) The DEPARTMENT will comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

- C) The COUNTY / Vendor/ Contractor:
 - (1) 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
 - (2) 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.

- D) No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch, or a state agency.

- E) This Agreement is governed by and construed in accordance with the laws of the State of Florida. Venue with respect to judicial proceedings arising out of this Agreement shall be in Broward County, Florida.

- F) 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.

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IN WITNESS WHEREOF, the COUNTY has caused this Agreement to be executed in its behalf this ____ day of _____, _____, by the Mayor of the Board of Commissioners, authorized to enter into and execute same by Resolution Number ____ of the Board on the _____ day of _____, _____, and the DEPARTMENT has executed this Agreement through its District Director of Transportation Development for District _____, Florida Department of Transportation, this ____ day of _____, _____.

PALM BEACH COUNTY, FLORIDA

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

ATTEST:
SHARON R. BOCK

BY: _____
NAME: _____
TITLE: MAYOR
____ day of _____, 20____

CLERK & COMPTROLLER (SEAL)
CIRCUIT COURT

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS:

BY: _____
COUNTY ATTORNEY

BY: _____

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

ATTEST: _____ (SEAL)
EXECUTIVE SECRETARY

BY: _____
STACY L. MILLER, P.E
DIRECTOR OF TRANSPORTATION
DEVELOPMENT

NAME: _____

DISTRICT _____

LEGAL REVIEW:

OFFICE OF THE GENERAL COUNSEL

EXHIBIT A
SCOPE OF WORK
FM 437878-1-32-01/02

The DEPARTMENT shall design the intersection improvements of SR-809/Military Trail at Forest Hill Blvd. including but not limited to the following scope elements:

- Widening to provide for SB (southbound) and NB (northbound) right turn lanes and additional SB and NB left turn lanes on Military Trail.
- Widening to provide EB (eastbound) and WB (westbound) right turn lanes on Forest Hill Blvd.
- Construction of a new sidewalk to replace the existing sidewalk that will be removed, due to the roadway widening.
- Lighting
- Drainage: existing closed drainage system.
- Utility Relocation
- The existing un-painted galvanized mast- arm signals will be replaced, due to the roadway widening.
- Signing and Pavement Markings.

THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), Palm Beach County ("Participant"), and the State of Florida, Department of Financial Services, Division of Treasury ("Escrow Agent"), and shall become effective upon the Agreement's execution by Escrow Agent.

WHEREAS, FDOT and Participant are engaged in the following project ("Project"):

Project Name: Design work for intersection improvements at SR-809/Military Trail
and Forest Hill Blvd.
Project #: 437878-1-32-01/02
County: Palm Beach County

WHEREAS, FDOT and Participant desire to establish an escrow account for the project.

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

1. An initial deposit will be made into an interest bearing escrow account established hereunder for the purposes of the Project. The escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent's receipt and execution of this Agreement.
2. Other deposits to the escrow account may be made during the life of this Agreement.
3. Deposits will be delivered in accordance with instructions provided by the Escrow Agent to the FDOT for deposit into the escrow account. A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible.
4. FDOT's Comptroller or designee shall be the sole signatory on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from the account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided to the Escrow Agent by FDOT's Comptroller or designee.
5. Moneys in the escrow account will be invested in accordance with section 17.61, Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while invested. There is no guaranteed rate of return. Investments in the escrow account will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of the investments shall accrue to the escrow account.

6. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the Project.
7. The Escrow Agent agrees to provide written confirmation of receipt of funds to FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon request.
8. The Escrow Agent further agrees to provide quarterly reports to FDOT concerning the escrow account. FDOT agrees to provide a copy of such quarterly reports to Participant upon request.
9. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.
10. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.
11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. This Agreement shall terminate upon disbursement by the Escrow Agent of all money held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent that the account is to be closed.

The remainder of this page is blank.

IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

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

ATTEST:
SHARON R. BOCK

BY: _____
NAME: _____
TITLE: MAYOR
_____ day of _____, 20_____
F-596-000-785-224
Federal Employer I.D. Number

CLERK & COMPTROLLER (SEAL)
CIRCUIT COURT

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS:

BY: _____

BY: _____

FDOT Legal Review:

For FDOT (signature)

For Escrow Agent (signature)

Name and Title

Name and Title

59-3024028
Federal Employer I.D. Number

Date

Date

RESOLUTION NO. R-2017-

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA; AUTHORIZING THE MAYOR TO EXECUTE BOTH THE COUNTY INCENTIVE GRANT PROGRAM AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE THREE PARTY ESCROW AGREEMENT WITH FDOT AND THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF TREASURY, CONCERNING THE MILITARY TRAIL AT FOREST HILL BOULEVARD INTERSECTION IMPROVEMENT PROJECT.

WHEREAS, the Florida Department of Transportation (FDOT) has awarded a County Incentive Grant Program (CIGP) grant to help finance improvements to the intersection of Military Trail and Forest Hill Boulevard (Project); and

WHEREAS, the FDOT has requested that Palm Beach County (County) enter into a CIGP agreement outlining the responsibilities of each party with respect to the CIGP grant for the Project; and

WHEREAS, a three party escrow agreement with FDOT and the Florida Department of Financial Services, Division of Treasury is required to establish an escrow account for the Project; and

WHEREAS, through the CIGP agreement, FDOT will provide CIGP funding for Project design; and

WHEREAS, FDOT will design the Project; and

WHEREAS, the County will provide the matching funds to FDOT; and

WHEREAS, the matching funds will be deposited to an escrow account established by the FDOT; and

WHEREAS, the Board of County Commissioners has determined execution of these agreements to be in the best interest of the citizens and residents of the County.

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NOW, THEREFORE be it resolved by the Board of County Commissioners of Palm Beach County, Florida, that the Mayor is hereby authorized to execute the agreements.

1. The recitations set forth herein above are true, accurate and correct and are incorporated herein.
2. This Resolution will take effect 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 Paulette Burdick, Mayor	-
Commissioner Melissa McKinlay, Vice Mayor	-
Commissioner Hal R. Valeche	-
Commissioner Dave Kerner	-
Commissioner Steven L. Abrams	-
Commissioner Mary Lou Berger	-
Commissioner Mack Bernard	-

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____ 2017.

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

SHARON BOCK, CLERK AND
COMPTROLLER

By: _____

Assistant County Attorney

By: _____

Deputy Clerk