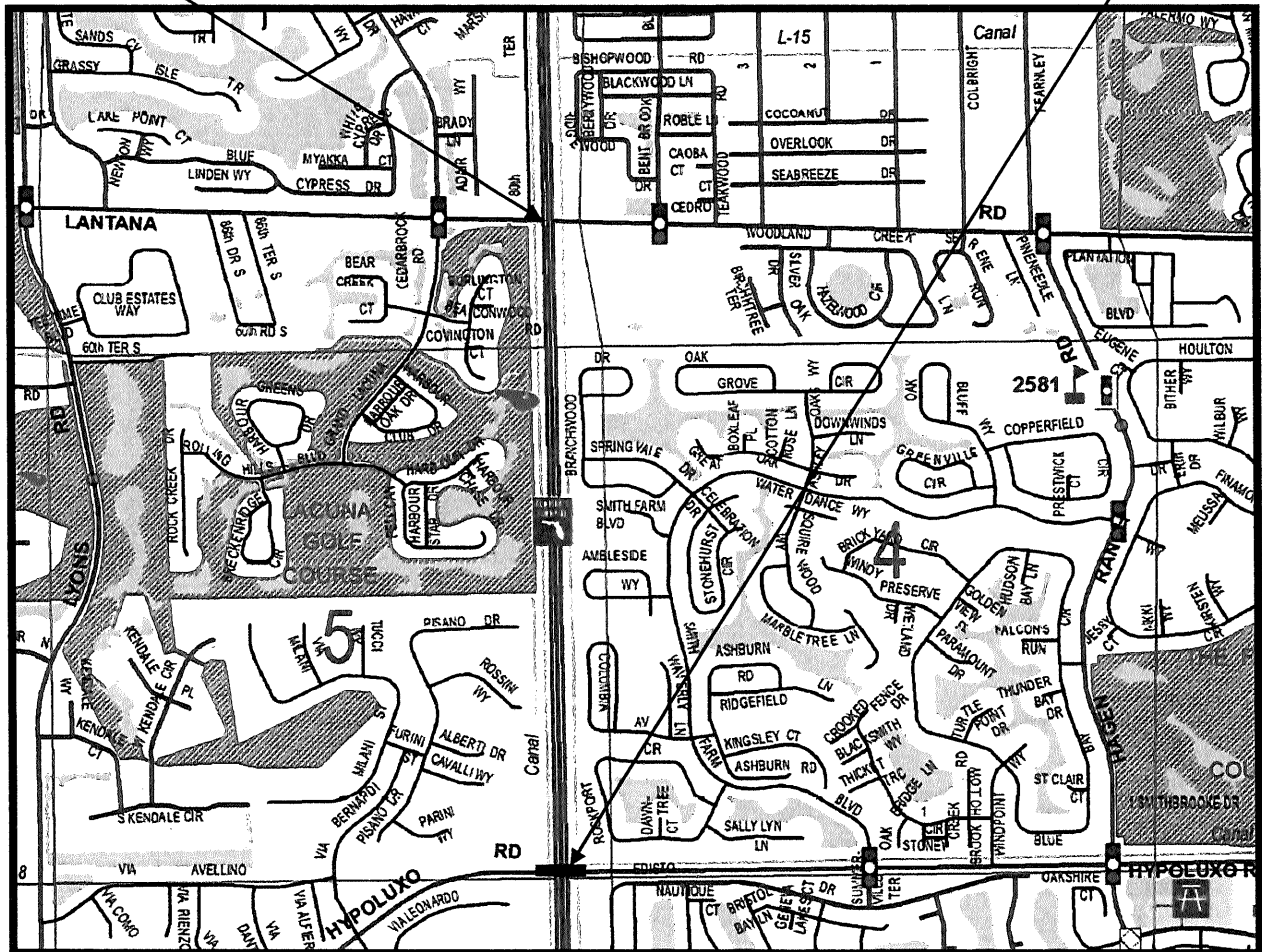


LOCATION MAP

Lantana Road and Hypoluxo Road Bridge over Florida's Turnpike



RESOLUTION NO. R-2019-

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, APPROVING A MEMORANDUM OF AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION, FLORIDA'S TURNPIKE ENTERPRISE FOR LANTANA ROAD BRIDGES AND HYPOLUXO ROAD BRIDGE CONSTRUCTION, MAINTENANCE, OPERATION AND OWNERSHIP.

WHEREAS, the Florida Department of Transportation, Florida's Turnpike Enterprise (Department) will construct certain improvements, more particularly described as Financial Project ID 406144-1-52-01, which includes widening the Department's bridges over Lantana Road and the reconstruction of Palm Beach County's (County) Hypoluxo Road bridge over Florida's Turnpike (Project); and

WHEREAS, the Department has requested that the County enter into a Memorandum of Agreement (MOA) outlining the responsibilities of each party with respect to the Project; and

WHEREAS, through this MOA, the Department will be responsible for the funding and construction of the Project; and

WHEREAS, the County's Engineering Department supports the Project; and

WHEREAS, the County will be responsible for continued maintenance of its facilities located on Lantana Road; and

WHEREAS, the County will be responsible for maintaining the Hypoluxo Road bridge improvements after completion of the Project; and

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

(Intentionally Left Blank)

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 MOA.

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 for its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

District 1:	Hal R. Valeche	-
District 2:	Gregg K. Weiss	-
District 3:	Dave Kerner	-
District 4:	Robert S. Weinroth	-
District 5:	Mary Lou Berger	-
District 7:	Mack Bernard	-
District 6:	Melissa McKinlay	-

The Mayor thereupon declared the Resolution duly passed and adopted this ____ day of _____, 2019.

PALM BEACH COUNTY, FLORIDA BY
AND THROUGH ITS BOARD OF
COUNTY COMMISSIONERS

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

SHARON R. BOCK, CLERK AND
COMPTROLLER

By: _____

Assistant County Attorney

By: _____

Deputy Clerk

**MEMORANDUM OF AGREEMENT
BETWEEN
FLORIDA DEPARTMENT OF TRANSPORTATION
FLORIDA'S TURNPIKE ENTERPRISE
AND
PALM BEACH COUNTY, FLORIDA
FOR
LANTANA ROAD BRIDGES AND HYPOLUXO ROAD BRIDGE
CONSTRUCTION, MAINTENANCE, OPERATION AND OWNERSHIP**

This MEMORANDUM OF AGREEMENT (hereinafter "MOA") is made and entered into this ___ day of ___, 2019, by and between the STATE of FLORIDA DEPARTMENT OF TRANSPORTATION, FLORIDA'S TURNPIKE ENTERPRISE, an executive agency of the State of Florida (hereinafter the "DEPARTMENT"), with headquarters located at Mile Post 263, Building 5315, Post Office Box 613069, Ocoee, Florida, 34761, and PALM BEACH COUNTY, a political subdivision of the State of Florida, with principal place of business located at 301 North Olive Avenue, West Palm Beach, Florida 33401 (hereinafter the "COUNTY");

RECITALS

WHEREAS, DEPARTMENT is authorized by Section 334.044(13), Florida Statutes, to coordinate the planning, development, and operation of the State Highway System;

WHEREAS, DEPARTMENT is authorized under Section 338,2216(2), Florida Statutes, to plan, develop, own, purchase, lease, or otherwise acquire, demolish, construct, improve, relocate, equip, repair, maintain, operate, and manage the Turnpike System; and to cooperate, coordinate, partner, and contract with other entities, public and private, to accomplish these purposes;

WHEREAS, the DEPARTMENT proposes to widen the DEPARTMENT's Turnpike (State Road 91) (hereinafter "TURNPIKE") from north of State Road 804 (Boynton Beach Boulevard) to north of State Road 802 (Lake Worth Road) through FPID No. 406144-1-52-01 (hereinafter "PROJECT"), which will include without limitation, roadway widening, new bridge structures, bridge widenings, ramp widenings, traffic control plan, MSE walls, retaining walls, noise walls, guardrail, barriers, cross drain replacements/extensions, drainage pipes, drainage structures, stormwater management facilities, fence, signs, roadway lighting, intelligent transportation system adjustments, traffic signals, electronic tolling infrastructure, temporary works, utility adjustments and earthwork; and

WHEREAS, the PROJECT will include the widening of both TURNPIKE northbound bridge number 931002 and southbound bridge number 931003 over Lantana Road ("Lantana Road Bridges"), and the in-kind replacement of the COUNTY'S Hypoluxo Road bridge over TURNPIKE (hereinafter "BRIDGE"); and

WHEREAS, the BRIDGE conveys Hypoluxo Road, a road that is owned, operated, and maintained by COUNTY, pursuant to that License and Maintenance Agreement, effective June 15, 2007 (collectively “2007 License and Maintenance Agreement”), by and between DEPARTMENT and COUNTY; and

WHEREAS, upon PROJECT completion, the BRIDGE, as referenced in the 2007 License and Maintenance Agreement, the TURNPIKE Reference # TP-93-BR-015-07 and in Department Permit # 07-K-853-010, shall continue to be subject to all conditions originally set forth therein (which shall also remain in full force and effect) and will be subject to certain obligations of the parties related to the PROJECT, as particularly set forth in this MOA; and

WHEREAS, COUNTY acknowledges and agrees that construction of the PROJECT will partially occur in the COUNTY right-of-way, and COUNTY hereby permits the DEPARTMENT and its contractors and assigns, to enter its right-of-way for such purpose; and

WHEREAS, upon PROJECT completion, the PROJECT improvements shall be owned and maintained by the parties as provided in this MOA.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises and covenants hereinafter set forth, and other good and sufficient consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereby mutually agree as follows:

1. Each of the above recitals is true and correct to the best of the knowledge, information, and belief of the parties, and they form a material part of this MOA upon which the parties have relied.
2. The DEPARTMENT and its contractors are authorized to enter the COUNTY’s right of way, including any other real property and real property rights owned, leased, licensed, possessed, or otherwise controlled by COUNTY, to perform all activities necessary for the construction of the PROJECT.
3. Obligations of the parties regarding the PROJECT are set forth as follows:

As to DEPARTMENT:

- a. DEPARTMENT has prepared construction design plans for the PROJECT and obtained all applicable agency permits.
- b. In the event that there is any change, deviation, revision, correction or any alteration (“change”) from the PROJECT plans reviewed by the COUNTY that require a plan revision per the FDOT Design Manual which change occurs within COUNTY right-of-way or COUNTY maintained facilities,

the DEPARTMENT shall coordinate said plan change with the COUNTY and obtain COUNTY approval of change, approval of which shall not be unreasonably withheld.

- c. DEPARTMENT will submit permit applications to the required agencies for the proposed utility work related to water lines at Hypoluxo Road.
- d. DEPARTMENT has executed the “Utility Work by Highway Contractor Agreement (at FDOT Expense)” Agreement with COUNTY required for the installation of the water main at Hypoluxo Road, Palm Beach County Resolution R2017-1590.
- e. DEPARTMENT shall be responsible for permit compliance during construction of the PROJECT. Upon completion and final acceptance of the PROJECT, DEPARTMENT will transfer to COUNTY, any current permits that are associated with the BRIDGE and COUNTY roadway improvements.
- f. The DEPARTMENT shall include the following paragraph as part of Section 7-13.2 of the Standard Specifications for Road and Bridge Construction, Division 1, General Requirements and Covenants (January 2019), as amended, applicable to this PROJECT:

“Cause Palm Beach County to be an additional insured party on the Contractor’s Public Liability and Property Damages Liability Insurance policies that insure the Contractor for the described work that it performs under the Contract.”
- g. DEPARTMENT will procure a Construction Engineering & Inspection firm that will be responsible for managing the construction of the PROJECT and providing inspection oversight for the PROJECT at no expense to COUNTY.
- h. DEPARTMENT will notify COUNTY in writing and invite COUNTY to attend the semi-final inspection prior to PROJECT completion and acceptance by the DEPARTMENT.
- i. Upon completion and final acceptance of the PROJECT by the DEPARTMENT, the DEPARTMENT will furnish COUNTY with final construction as-builts and any shop drawings related to the BRIDGE and its approaches, and any improvements within COUNTY rights-of-way.
- j. The DEPARTMENT will continue to own, operate, and maintain the following as it relates to the BRIDGE:
 - i) All grass areas within the DEPARTMENT right-of-way;

- ii) The guardrails and other safety features protecting the BRIDGE piers beneath the BRIDGE;
 - iii) All roadway features, pavement striping and safety devices on the TURNPIKE.
- k. The DEPARTMENT hereby agrees to provide the following items to the COUNTY in the event of a traffic impact to the BRIDGE that is caused by a vehicle traveling on the TURNPIKE:
- i) Promptly notify the COUNTY of any traffic related incident involving the BRIDGE that the DEPARTMENT is informed of;
 - ii) Provide traffic control for damage assessment and repair work to the BRIDGE;
 - iii) To the extent permitted by law, including, but not limited to the DEPARTMENT's sovereign immunity, legal defenses, and Florida's Turnpike Enterprise's Turnpike System bond resolutions, DEPARTMENT will otherwise cooperate with the COUNTY in providing information relative to any COUNTY insurance claim for damage to the BRIDGE that occurs as a result of a traffic incident on the TURNPIKE.

As to COUNTY:

- l. COUNTY has reviewed and approved the PROJECT design plans
- m. Any Lake Worth Drainage District (LWDD) and South Florida Water Management District (SFWMD) permit conditions related to the BRIDGE, Lantana Road Bridges or other PROJECT work within COUNTY rights-of-way, that remain in effect after PROJECT completion and acceptance by the DEPARTMENT and that apply to the operation and maintenance of COUNTY rights-of-way, will remain with the COUNTY.
- n. Upon completion and final acceptance of the PROJECT by the DEPARTMENT, the COUNTY will accept full ownership, operation, and maintenance responsibility of the BRIDGE. The COUNTY shall notify the Florida's Turnpike Enterprise's Permits Office at least 48 hours (two working days) prior to performing any inspections or routine or periodic maintenance that may be required on portions of the BRIDGE within the DEPARTMENT's right-of-way. The Florida's Turnpike Enterprise's Permits Office will review the work and traffic control plan for compliance with DEPARTMENT Standards and Specifications. COUNTY shall maintain the BRIDGE to protect and prevent any hazards from occurring to the public traveling below the BRIDGE. It shall be the COUNTY's responsibility to monitor, inspect and maintain the structural integrity of the BRIDGE, including performing BRIDGE inspections and reports in accordance with Section 335.074, Florida Statutes. In the event that

BRIDGE deficiencies come to the attention of the DEPARTMENT and which, after reasonable notice to the COUNTY, the COUNTY fails to correct, such failure to correct may be deemed grounds for termination of this Agreement and may result in DEPARTMENT correcting such deficiencies. COUNTY agrees to reimburse the DEPARTMENT for the cost of repairs to the BRIDGE.

- o. As the PROJECT will impact an existing COUNTY water main and a force main at the corner of TURNPIKE and Lantana Road, COUNTY shall be responsible for the relocation of the existing utilities, and coordination with the DEPARTMENT to support the utility relocations. COUNTY has executed the "Utility Work by Highway Contractor Agreement (at Utility Expense)" Agreement for the relocations, Palm Beach County Resolution R2018-1643.
 - p. COUNTY shall execute all necessary agreements to effectuate the complete transfer to COUNTY of ownership, operation and maintenance of the BRIDGE, including, but not limited to bridge transfer agreements, right of way agreements, construction agreements, operations agreements, maintenance agreements, and permits.
- 4. This MOA constitutes the entire agreement of the parties pertaining to the PROJECT, and supersedes all prior negotiations and discussions of the parties, whether oral or written. No waiver, modification, or amendment of the terms of this MOA will be valid unless in writing and signed by each of the parties hereto.
 - 5. This MOA shall be construed and enforced in accordance with the laws of the State of Florida. The parties agree that venue shall lie in Leon County, Florida.
 - 6. This MOA is not intended for the benefit of third-parties.
 - 7. No provision of this MOA shall be construed against or interpreted to the disadvantage of either party by any court or other governmental entity by reason of such party's having or being deemed to have prepared or participated in the preparation of this MOA.
 - 8. This MOA shall be binding upon each of the parties hereto, together with their representatives, successors, and assigns. Neither party shall assign this MOA or the rights and obligations hereunder to any other person or firm without the prior written consent of both parties hereto.
 - 9. All notices or other communications by or between the parties that may be due or required shall be sufficient if given by hand delivery, or mailed by first class mail, or by registered or certified mail, return receipt requested, or by overnight courier service, return receipt requested to the following addresses:

As to the DEPARTMENT:

Debbie Meyer, Ph.D., P.E.
Turnpike District Maintenance Engineer
Post Office Box 9828
Fort Lauderdale, Florida 33310

With a copy to:

Office of the Turnpike General Counsel
Post Office Box 613069
Ocoee, Florida 34761

As to the COUNTY:

Palm Beach County Department of Engineering and Public Works
Omelio A. Fernandez, P.E., Director, Roadway Production Division
2300 North Jog Road
3rd Floor West
West Palm Beach, Florida 33411

With a copy to:

Palm Beach County Attorney's Office
Yelizaveta B. Herman, Esquire
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401

10. This MOA may be executed by any number of counterparts, each of which when executed and delivered, shall constitute and be deemed an original, but all counterparts together shall constitute one and the same instrument.
11. This MOA shall become effective on the date of the last of the parties to execute and deliver this instrument to the other party.

IN WITNESS WHEREOF, the COUNTY and the DEPARTMENT have executed this MOA on the day and year provided below.

**PALM BEACH COUNTY, by and through its
BOARD OF COUNTY COMMISSIONERS**

By: _____
Mayor Mack Bernard

_____ day of _____, 2019

Approved as to form:

By: _____
Yelizaveta B. Herman, Assistant County Attorney

Approved as to terms and conditions:

By: Doncho A. Fernandez
WA

Attest: _____ Official Seal
County Clerk

**FLORIDA DEPARTMENT OF TRANSPORTATION
FLORIDA'S TURNPIKE ENTERPRISE**

BY: _____
Paul Wai, P.E.
Executive Director & Chief Executive Officer

Date Signed: _____

Attest: _____ Official Seal
Executive Secretary

Approved as to form and legality:

Office of the Turnpike General Counsel