

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

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|                      |                 |                                     |                 |                          |                       |
|----------------------|-----------------|-------------------------------------|-----------------|--------------------------|-----------------------|
| <b>Meeting Date:</b> | August 17, 2021 | <input checked="" type="checkbox"/> | <b>Consent</b>  | <input type="checkbox"/> | <b>Regular</b>        |
|                      |                 | <input type="checkbox"/>            | <b>Workshop</b> | <input type="checkbox"/> | <b>Public Hearing</b> |

|                       |                                       |
|-----------------------|---------------------------------------|
| <b>Department:</b>    | Engineering & Public Works Department |
| <b>Submitted By:</b>  | Engineering & Public Works Department |
| <b>Submitted For:</b> | Roadway Production Division           |

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**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to:

- A) **adopt** a Resolution approving a County Incentive Grant Program (CIGP) locally funded agreement and a three party escrow agreement with the State of Florida Department of Transportation (FDOT) for construction and construction engineering inspection (CEI) of SR-809/Military Trail at Forest Hill Boulevard (Project);
  
- B) **approve** a CIGP locally funded agreement in the amount of \$2,769,834 with FDOT for the construction and CEI of the Project; and
  
- C) **approve** a three party escrow agreement with FDOT and the State of Florida Department of Financial Services, Division of Treasury, to establish an escrow account for the construction and CEI of the Project.


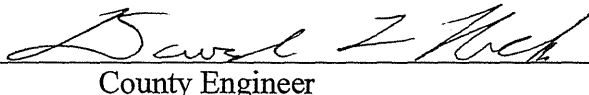
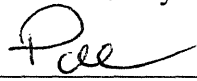
**SUMMARY:** Approval of the CIGP agreement will authorize a total payment of \$2,769,834 to FDOT to be held in escrow. The payment of \$2,769,834 is to be paid within 30 days of execution of this CIGP agreement. This payment is for Palm Beach County's (County) 50% share of the construction and CEI cost for the Project, which has an estimated total cost of \$5,539,668. The Project will provide the construction of turn lane improvements on all approaches of the intersection. If total costs exceed this amount, the excess amount will be paid equally by FDOT and the County. The Project's construction and CEI will be administered by FDOT. The Board of County Commissioners (BCC) approved a locally funded agreement and three party escrow agreement for the design phase of the Project on March 14, 2017 as R2017-0244 and R2017-0245, and for the right-of-way acquisition phase on January 15, 2019 as R2019-0022 and R2019-0023. Approval of the escrow agreement will allow County funds to be deposited into an escrow account that has been established by FDOT for the Project. Districts 2 & 3 (YBH)

**Background and Justification:** These agreements will allow the County to participate in construction funding for the Project with FDOT. FDOT will administer the construction and CEI for the Project, and the County will pay its share of \$2,769,834 to FDOT.

**Attachments:**

1. Location Map
2. Resolution (3 originals)
3. CIGP Locally Funded Agreement (3 originals)
4. Three Party Escrow Agreement (3 originals)

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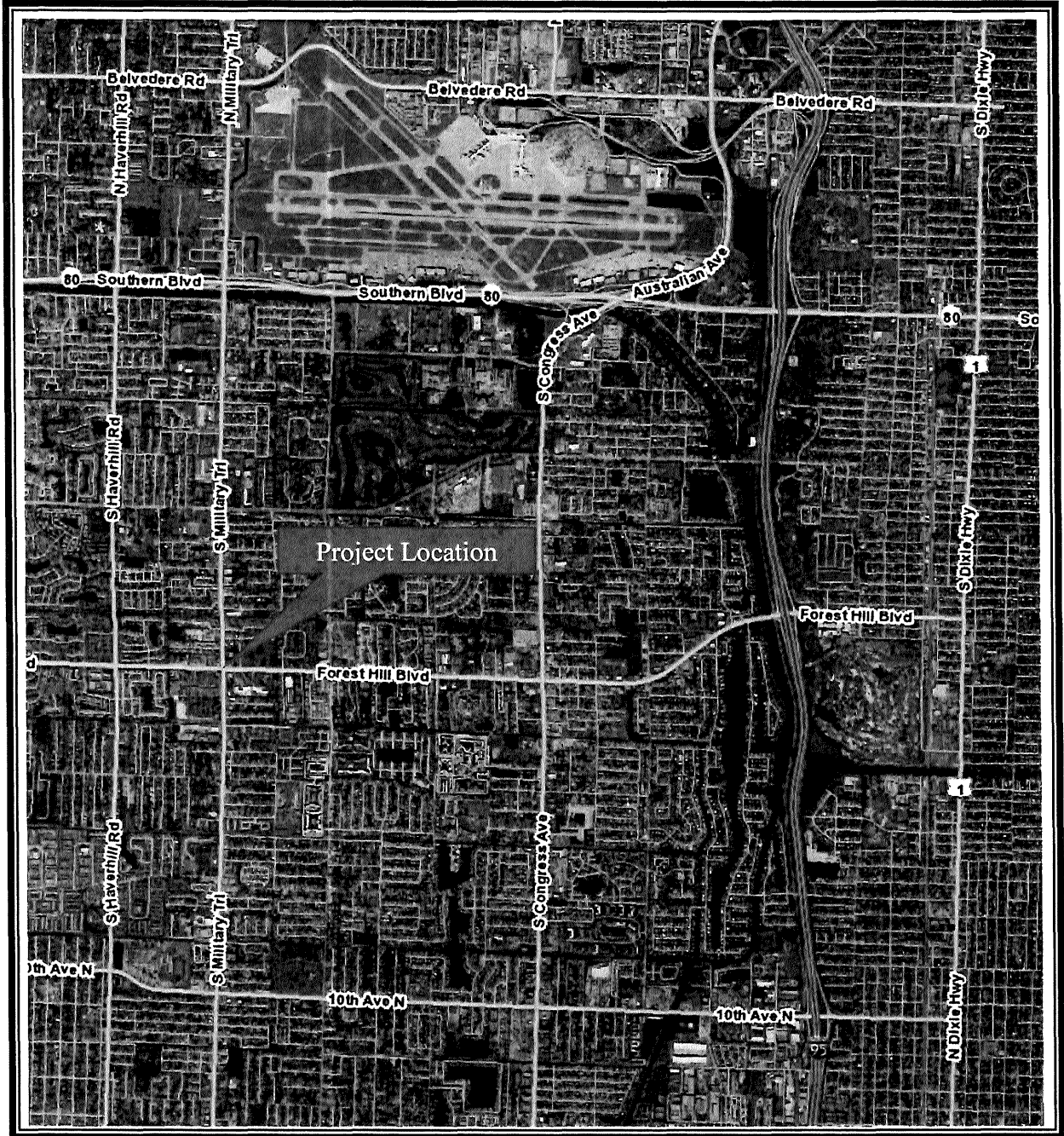
|   |                   |
|---|-------------------|
|  Recommended by: <sup>YBH</sup> YBH/TEL<br> County Engineer | Date<br>2/28/2021 |
| Approved By: <br>Assistant County Administrator  | Date<br>8/11/21   |



PROJECT LOCATION

SR-809/MILITARY TRAIL AT FOREST HILL BOULEVARD

PROJECT NUMBER 2012504



LOCATION MAP

**RESOLUTION NO. R2021-**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, APPROVING A COUNTY INCENTIVE GRANT PROGRAM LOCALLY FUNDED AGREEMENT AND A THREE PARTY ESCROW AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR CONSTRUCTION AND CONSTRUCTION ENGINEERING INSPECTION (CEI) OF SR-809/MILITARY TRAIL AT FOREST HILL BOULEVARD (PROJECT).**

**WHEREAS**, the Florida Department of Transportation (FDOT) intends to construct the Project;  
and

**WHEREAS**, FDOT has requested that Palm Beach County (County) enter into a County Incentive Grant Program (CIGP) locally funded agreement outlining the responsibilities of each party with respect to the funding for the construction and CEI of the Project; and

**WHEREAS**, FDOT requires that the County enter into a Three Party Escrow Agreement with them and the State of Florida Department of Financial Services, Division of Treasury, to establish an escrow account for the construction of the Project; and

**WHEREAS**, the County Engineering and Public Works Department supports the construction of the Project; and

**WHEREAS**, the Board of County Commissioners has determined that the execution of these agreements is 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:

1. The Mayor is hereby authorized to execute the agreements.
2. The recitations set forth herein above are true, accurate and correct and are incorporated herein.
3. 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 Dave Kerner, Mayor             | _____ |
| Commissioner Robert S. Weinroth, Vice Mayor | _____ |
| Commissioner Maria G. Marino                | _____ |
| Commissioner Gregg K. Weiss                 | _____ |
| Commissioner Maria Sachs                    | _____ |
| Commissioner Melissa McKinlay               | _____ |
| Commissioner Mack Bernard                   | _____ |

The Mayor thereupon declared the Resolution duly passed and adopted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PALM BEACH COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, BY AND THROUGH ITS BOARD OF COUNTY COMMISSIONERS

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

JOSEPH ABRUZZO, CLERK OF THE CIRCUIT COURT & COMPTROLLER

By: \_\_\_\_\_  
Assistant County Attorney

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

APPROVED AS TO TERMS AND CONDITIONS

By:   
Division Director  
KOF

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.”

W I T N E S S E T H

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 construction work for the intersection improvements of SR809/ Military Trail and Forest Hill Boulevard (Financial Management (FM) Number 437878-1-52-01, 437878-1-62-01/02, Funded in Fiscal Year 2021/2022) 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:

| <b>TO DEPARTMENT:</b>                               | <b>TO COUNTY:</b>                          |
|---|--|
| 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: Scott Thurman                                 | West Palm Beach, FL 33411-2745             |
| With a copy to: General Counsel                     | Attn: Kathleen Farrell, P.E.               |
| With a copy second copy to:<br>Leos A. Kennedy, Jr. | 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 (FM# 437878-1-52-01, 437878-1-62-01/02) is completed as evidenced by the written acceptance of the DEPARTMENT.

**4. COMPENSATION AND PAYMENT**

- A) The COUNTY and the DEPARTMENT agree to share the cost of this Project FM# 437878-1-52-01 & 437878-1-62-01/02. 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 FIVE MILLION FIVE HUNDRED THIRTY NINE THOUSAND SIX HUNDRED SIXTY EIGHT DOLLARS AND NO CENTS (\$5,539,668.00). Of that sum, the COUNTY's estimated payment for the Project is TWO MILLION SEVEN HUNDRED SIXTY NINE THOUSAND EIGHT HUNDRED THIRTY FOUR DOLLARS AND NO CENTS (\$2,769,834.00), which sum shall be paid to the DEPARTMENT.

Funding Allocation

| <b>Financial Management No.</b> | <b>Department's Share</b> | <b>County's Share</b> | <b>Total Amount</b>   |
|---------------------------------|---------------------------|-----------------------|-----------------------|
| 437878-1-52-01 (construction)   | \$2,386,968.00            | \$2,386,968.00        | \$4,773,936.00        |
| 437878-1-62-01 (CEI services)   | \$341,412.00              | \$341,412.00          | \$682,824.00          |
| 437878-1-62-02 (post design)    | \$41,454.00               | \$41,454.00           | \$82,908.00           |
| <b>Total Amount</b>             | <b>\$2,769,834.00</b>     | <b>\$2,769,834.00</b> | <b>\$5,539,668.00</b> |

- C) In the event the total Project cost increases then the COUNTY shall be responsible for one half of any additional increase. This increased sum shall be paid by the COUNTY within 14 days from notification by the DEPARTMENT. The DEPARTMENT will notify the COUNTY as soon as it becomes apparent that Project costs are in excess of the advanced deposit amount; however, failure of the DEPARTMENT to so notify the COUNTY shall not relieve the COUNTY from its obligation to pay for its full participation. 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) If the COUNTY's payment for the accepted bid amount plus allowances is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the COUNTY's payment for the accepted bid amount plus allowances if such refund is requested by the COUNTY in writing.
- E) 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.



- F) In the event the actual cost of the Project upon completion results in a decrease in COUNTY's cost, 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.
- G) 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 TWO MILLION SEVEN HUNDRED SIXTY NINE THOUSAND EIGHT HUNDRED THIRTY FOUR DOLLARS AND NO CENTS (\$2,769,834.00) towards the Project Costs.

In the event payment is not received by the DEPARTMENT within thirty (30) days of execution of this Agreement, this Agreement may be terminated and the Project removed from the DEPARTMENT's Work Program the Work Program.

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.: 437878-1-52-01 & 437878-1-62-01/02. The DEPARTMENT shall utilize this amount towards costs of project 437878-1-52-01 & 437878-1-62-01/02.

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

In lieu of mailing payment to the DEPARTMENT, the COUNTY may also submit the payment for the Project via wire transfer.

Wire transfer/Payments are to be made to:

Wells Fargo Bank, N.A.  
Account # 4834783896  
ABA # 121000248  
Chief Financial Officer of Florida  
Re: DOT – K 11-78, Financial project # 437878-1-52-01 & 437878-1-62-01/02.

In order for the DEPARTMENT to receive credit for the funds due to the DEPARTMENT, the reference line must contain "FDOT" and an abbreviated purpose, financial project number or LFA account number.

Once the wire transfer is complete, please contact Kenneth Ward at 850-414-4886. In addition to calling Mr. Ward, please send an email notification to Leos Kennedy at leos.kennedy@dot.state.fl.us stating the day and time the wire transfer was sent.

H) The DEPARTMENT'S obligation to pay any sum pursuant to this Agreement is contingent upon an annual appropriation by the Florida Legislature.

I) 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 contractor. The DEPARTMENT considers the Project complete when the final payment has been made to the contractor, not when the construction 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 refunded to the COUNTY. 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.

J) In the event the final accounting of total Project costs indicate that one half of the Project costs are greater than the total deposits to date, the COUNTY will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The COUNTY agrees to pay interest at a rate as established pursuant to *Section 55.03, F.S.*, on any invoice not paid within forty (40) calendar days until the invoice is paid.

K) The payment of funds under this Agreement, once they are received by the DEPARTMENT from the COUNTY, 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**.

L) Upon completion of the intersection improvements, the COUNTY shall be responsible for the maintenance of mast arms installed during the Project and shall comply with the provisions set forth in the State Highway Lighting, Maintenance, and Compensation Agreement dated April 19<sup>th</sup>, 2004, **Exhibit C**, which is attached hereto and made a part hereof. The terms of this paragraph shall survive the termination of this Agreement.

## 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.

*The remainder of this page left intentionally blank*

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, BY AND THROUGH ITS BOARD  
OF COUNTY COMMISSIONERS

ATTEST:  
JOSEPH ABRUZZO

BY: \_\_\_\_\_  
NAME: DAVE KERNER  
TITLE: MAYOR  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
CLERK OF THE CIRCUIT (SEAL)  
COURT & COMPTROLLER

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS:

BY: \_\_\_\_\_  
ASSISTANT COUNTY ATTORNEY

BY:   
KOF DIVISION DIRECTOR

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**

ATTEST: \_\_\_\_\_  
EXECUTIVE SECRETARY

BY: \_\_\_\_\_  
STEVEN C. BRAUN, P.E  
DIRECTOR OF TRANSPORTATION  
DEVELOPMENT

NAME: \_\_\_\_\_

DISTRICT \_\_\_\_\_

LEGAL REVIEW:

\_\_\_\_\_  
OFFICE OF THE GENERAL COUNSEL

**EXHIBIT A**  
**SCOPE OF WORK**  
**FM 437878-1-52-01 &**  
**437878-1-62-01/02**

The DEPARTMENT shall construct the intersection improvements of SR-809/Military Trail at Forest Hill Blvd. including but not be 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.
- Drainage and sidewalk to be adjusted to accommodate widened intersection.
  - Construction of a new sidewalk to replace the existing sidewalk that will be removed, due to the roadway widening.
  - 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.
- Lighting
  - Construction (installation) of new signalized mast arms and traffic lights in all four quadrants.
- Construction (installation) of new Pedestrian signalization in all four quadrants.
- Construct ADA curb ramps
- Construction of bicycle lane on Military Trail.

**Exhibit B**  
**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: Construction of intersection improvements at SR-809 Military Trail and Forest Hill Blvd.  
Project #: 437878-1-52-01; 437878-1-62-01/02  
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.

THIS IS AN EXHIBIT ONLY... NOT FOR EXECUTION!

***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, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

ATTEST:  
JOSEPH ABRUZZO

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: MAYOR  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
F-596-000-785-149  
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

**THIS IS AN EXHIBIT ONLY... NOT FOR EXECUTION!**



## **EXHIBIT C**

# **STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION AGREEMENT WITH PALM BEACH COUNTY**

**STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION  
AGREEMENT**

R2004 0435 MAR 16 2004

THIS AGREEMENT, entered into this 19<sup>th</sup> day of April, year of 2004, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "FDOT", and PALM BEACH COUNTY, hereinafter referred to as the "MAINTAINING AGENCY";

**WITNESSETH:**

**WHEREAS**, the **MAINTAINING AGENCY** has the authority to enter into this Agreement and to undertake the maintenance and operation of lighting on the State Highway System, and the **FDOT** is authorized under Sections 334.044, Florida Statutes and 335.055, Florida Statutes to enter into this Agreement; and

**WHEREAS**, the **MAINTAINING AGENCY** has authorized its undersigned officers to enter into and execute this Agreement;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein, the **FDOT** and the **MAINTAINING AGENCY** hereby agree as follows:

**1. Maintenance of Facilities**

- a. The **MAINTAINING AGENCY** shall maintain all the lighting now or hereafter located on the State Highway System within the jurisdictional boundaries of the **MAINTAINING AGENCY**, hereinafter referred to as the "Facilities," throughout its expected useful life. For the purposes of this Agreement, the term Facilities shall be deemed to include, but not necessarily be limited to, lighting for roadways, as well as park and ride, pedestrian overpasses, and recreational areas owned by or located on the property of the **FDOT**, but shall exclude those systems listed in Exhibit "A" attached hereto and by this reference made a part hereof, and shall exclude lighting located in weigh stations, rest areas, or on Interstate highways.
- b. In maintaining the Facilities, the **MAINTAINING AGENCY** shall perform all activities necessary to keep the Facilities fully operating, properly functioning, with a minimum of 90% of the lights burning for any lighting type (ex. high mast, standard, underdeck, sign) or roadway system at all times for their normal expected useful life in accordance with the original design thereof, whether necessitated by normal wear and tear, accidental or intentional damage, or acts of nature. Said maintenance shall include, but shall not be limited to, providing electrical power and paying all charges associated therewith, routine inspection and testing, preventative maintenance, emergency maintenance, replacement of any component parts of the Facilities (including the poles and any and all other component parts installed as part of the Facilities), and locating (both vertically and horizontally) the Facilities, as may be necessary.
- c. All maintenance shall be in accordance with the provisions of the following:
  - (1) Manual of Uniform Traffic Control Devices; and,
  - (2) All other applicable local, state, or federal laws, rules, resolutions, or ordinances, and **FDOT** procedures.
- d. For lighting installed as part of an **FDOT** project, the **MAINTAINING AGENCY's** obligation to maintain shall commence upon the **MAINTAINING AGENCY's** receipt of notification from the **FDOT** that the **FDOT** has finally accepted the project, except for the obligation to provide for electrical power, which obligation to provide for electrical power shall commence at such time as the lighting system is ready to be energized; provided, however, that the **MAINTAINING AGENCY** shall not be required to perform any activities which are the responsibilities of **FDOT's** contractor.

Prior to any acceptance by the **FDOT**, the **MAINTAINING AGENCY** shall have the opportunity to inspect and request modifications/corrections to the installation(s) and the **FDOT** agrees to undertake those prior to acceptance so long as the modifications/corrections comply with the contract and specifications previously approved by both the **FDOT** and the **MAINTAINING AGENCY**.

# STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION AGREEMENT

- e. The continuing obligations under this paragraph 1 beyond the first fiscal year hereof are subject to the voluntary negotiation of the amount to be paid as set forth in subparagraph 2b hereof.

## 2. Compensation and Payment

- a. The **FDOT** agrees to pay to the **MAINTAINING AGENCY** a lump sum of \$ 175,589.00 for the fiscal year in which this Agreement is signed (fiscal year as referenced in this Agreement shall be **FDOT's** fiscal year).
- b. For each future fiscal year, the **FDOT** and the **MAINTAINING AGENCY** shall agree on the amount to be paid prior to the fiscal year beginning. The **FDOT** will issue a work order confirming the amount and authorizing the performance of maintenance for each new fiscal year. The Work Order shall be an **FDOT** signed letter of authorization to the **MAINTAINING AGENCY** with a subject line containing the terms "State Highway Lighting, Maintenance, And Compensation Agreement Work Order." The Work Order shall reflect the contract number, financial project number, FEID No. of the Maintaining Agency, the fiscal year, and the lump sum amount to be paid for the fiscal year indicated. The Work Order shall be signed by the **MAINTAINING AGENCY** and returned to **FDOT**. No payment will be made on Work Orders which are not properly signed and returned to **FDOT** prior to performing services.
- c. Invoices may be submitted anytime after May 19<sup>th</sup> of the fiscal year in which the services were provided, but no later than 180 days after the end of said fiscal year. Payment shall be made in one lump sum as provided in paragraph 4 hereof.
- d. Payment shall be made in accordance with Section 215.422, Florida Statutes.
- e. Bills for fees or other compensation for services or expenses shall be submitted in a format acceptable to the **FDOT** and in detail sufficient for a proper pre-audit and post-audit thereof.

## 3. Record Keeping

The **MAINTAINING AGENCY** shall keep records of all activities performed pursuant to this Agreement. The records shall be kept in a format approved by the **FDOT**.

Records shall be maintained and made available upon request to the **FDOT** at all times during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to the **FDOT** upon request.

## 4. Invoicing

Upon receipt, the **FDOT** has five (5) working days to inspect and approve the goods and services. The **FDOT** has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the **MAINTAINING AGENCY**. Interest penalties of less than one (1) dollar shall not be enforced unless the **MAINTAINING AGENCY** requests payment. Invoices returned to a **MAINTAINING AGENCY** because of **MAINTAINING AGENCY** preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the **FDOT**.

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) 410-9724 or by calling the Chief Financial Officer's Hotline, 1-800-848-3792.

The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

**STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION  
AGREEMENT**

The **FDOT**, 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 shall be null and void, and no money may be paid on such contract. The **FDOT** shall require a statement from the Comptroller of the **FDOT** that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the **FDOT** which are for an amount in excess of \$25,000 and which have a term for a period of more than one (1) year.

The **FDOT** will provide a copy of the statement referenced above to the **MAINTAINING AGENCY**.

**5. Default**

In the event that the **MAINTAINING AGENCY** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, the **FDOT** may exercise one or more of the following options, provided that at no time shall the **FDOT** be entitled to receive double recovery of damages:

- a. Pursue a claim for damages suffered by the **FDOT** or the public.
- b. Pursue any other remedies legally available.
- c. As to any work not performed by the **MAINTAINING AGENCY**, perform such work with its own forces or through contractors and seek reimbursement for the cost thereof from the **MAINTAINING AGENCY** if the **MAINTAINING AGENCY** fails to cure the non-performance within fourteen (14) days after written notice from the **FDOT** of the non-performance; provided, however, that advance notice and cure shall not be preconditions in the event of an emergency.

**6. Force Majeure**

Neither the **MAINTAINING AGENCY** nor the **FDOT** shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimate duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

**7. Miscellaneous**

- a. The **FDOT** shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.
- b. The **MAINTAINING AGENCY** shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **MAINTAINING AGENCY** in conjunction with this Agreement. Failure by the **MAINTAINING AGENCY** to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the **FDOT**.
- c. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto.
- d. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining provisions hereof.
- e. Time is of the essence in the performance of all obligations under this Agreement.

**STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION  
AGREEMENT**

- f. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided. The **MAINTAINING AGENCY** shall have a continuing obligation to notify each District of the **FDOT** of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

**MAINTAINING AGENCY:**

AMY HARRIS  
 PALM BEACH COUNTY  
 160 AUSTRALIAN AVENUE  
 WEST PALM BECH, FL 33416-1229

**FDOT:**

DISTRICT MAINTENANCE ENGINEER  
 FLORIDA DEPARTMENT OF TRANSPORTATION  
 3400 WEST COMMERCIAL BOULEVARD  
 FT. LAUDERDALE, FL 33309

- g. **PUBLIC ENTITY CRIME INFORMATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for **CATEGORY TWO** for a period of thirty six (36) months from the date of being placed on the convicted vendor list.
- h. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.
- i. Nothing herein shall be construed as a waiver of either party's sovereign immunity.



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 construction work for the intersection improvements of SR809/ Military Trail and Forest Hill Boulevard (Financial Management (FM) Number 437878-1-52-01, 437878-1-62-01/02, Funded in Fiscal Year 2021/2022) 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:

| <b>TO DEPARTMENT:</b>                               | <b>TO COUNTY:</b>                          |
|---|--|
| 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: Scott Thurman                                 | West Palm Beach, FL 33411-2745             |
| With a copy to: General Counsel                     | Attn: Kathleen Farrell, P.E.               |
| With a copy second copy to:<br>Leos A. Kennedy, Jr. | 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 (FM# 437878-1-52-01, 437878-1-62-01/02) is completed as evidenced by the written acceptance of the DEPARTMENT.

**4. COMPENSATION AND PAYMENT**

- A) The COUNTY and the DEPARTMENT agree to share the cost of this Project FM# 437878-1-52-01 & 437878-1-62-01/02. 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 FIVE MILLION FIVE HUNDRED THIRTY NINE THOUSAND SIX HUNDRED SIXTY EIGHT DOLLARS AND NO CENTS (\$5,539,668.00). Of that sum, the COUNTY's estimated payment for the Project is TWO MILLION SEVEN HUNDRED SIXTY NINE THOUSAND EIGHT HUNDRED THIRTY FOUR DOLLARS AND NO CENTS (\$2,769,834.00), which sum shall be paid to the DEPARTMENT.



Funding Allocation

| <b>Financial Management No.</b> | <b>Department's Share</b> | <b>County's Share</b> | <b>Total Amount</b> |
|---------------------------------|---------------------------|-----------------------|---------------------|
| 437878-1-52-01 (construction)   | \$2,386,968.00            | \$2,386,968.00        | \$4,773,936.00      |
| 437878-1-62-01 (CEI services)   | \$341,412.00              | \$341,412.00          | \$682,824.00        |
| 437878-1-62-02 (post design)    | \$41,454.00               | \$41,454.00           | \$82,908.00         |
| <b>Total Amount</b>             | \$2,769,834.00            | \$2,769,834.00        | \$5,539,668.00      |

- C) In the event the total Project cost increases then the COUNTY shall be responsible for one half of any additional increase. This increased sum shall be paid by the COUNTY within 14 days from notification by the DEPARTMENT. The DEPARTMENT will notify the COUNTY as soon as it becomes apparent that Project costs are in excess of the advanced deposit amount; however, failure of the DEPARTMENT to so notify the COUNTY shall not relieve the COUNTY from its obligation to pay for its full participation. 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) If the COUNTY's payment for the accepted bid amount plus allowances is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the COUNTY's payment for the accepted bid amount plus allowances if such refund is requested by the COUNTY in writing.
- E) 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.

- F) In the event the actual cost of the Project upon completion results in a decrease in COUNTY's cost, 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.
- G) 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 TWO MILLION SEVEN HUNDRED SIXTY NINE THOUSAND EIGHT HUNDRED THIRTY FOUR DOLLARS AND NO CENTS (\$2,769,834.00) towards the Project Costs.

In the event payment is not received by the DEPARTMENT within thirty (30) days of execution of this Agreement, this Agreement may be terminated and the Project removed from the DEPARTMENT's Work Program the Work Program.

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.: 437878-1-52-01 & 437878-1-62-01/02. The DEPARTMENT shall utilize this amount towards costs of project 437878-1-52-01 & 437878-1-62-01/02.

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

In lieu of mailing payment to the DEPARTMENT, the COUNTY may also submit the payment for the Project via wire transfer.

Wire transfer/Payments are to be made to:

Wells Fargo Bank, N.A.  
Account # 4834783896  
ABA # 121000248  
Chief Financial Officer of Florida  
Re: DOT – K 11-78, Financial project # 437878-1-52-01 & 437878-1-62-01/02.

In order for the DEPARTMENT to receive credit for the funds due to the DEPARTMENT, the reference line must contain "FDOT" and an abbreviated purpose, financial project number or LFA account number.

Once the wire transfer is complete, please contact Kenneth Ward at 850-414-4886. In addition to calling Mr. Ward, please send an email notification to Leos Kennedy at leos.kennedy@dot.state.fl.us stating the day and time the wire transfer was sent.

H) The DEPARTMENT'S obligation to pay any sum pursuant to this Agreement is contingent upon an annual appropriation by the Florida Legislature.

I) 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 contractor. The DEPARTMENT considers the Project complete when the final payment has been made to the contractor, not when the construction 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 refunded to the COUNTY. 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.

J) In the event the final accounting of total Project costs indicate that one half of the Project costs are greater than the total deposits to date, the COUNTY will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The COUNTY agrees to pay interest at a rate as established pursuant to *Section 55.03, F.S.*, on any invoice not paid within forty (40) calendar days until the invoice is paid.

K) The payment of funds under this Agreement, once they are received by the DEPARTMENT from the COUNTY, 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**.

L) Upon completion of the intersection improvements, the COUNTY shall be responsible for the maintenance of mast arms installed during the Project and shall comply with the provisions set forth in the State Highway Lighting, Maintenance, and Compensation Agreement dated April 19<sup>th</sup>, 2004, **Exhibit C**, which is attached hereto and made a part hereof. The terms of this paragraph shall survive the termination of this Agreement.

## 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.

*The remainder of this page left intentionally blank*

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, BY AND THROUGH ITS BOARD  
OF COUNTY COMMISSIONERS

ATTEST:  
JOSEPH ABRUZZO

BY: \_\_\_\_\_  
NAME: DAVE KERNER  
TITLE: MAYOR  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
CLERK OF THE CIRCUIT (SEAL)  
COURT & COMPTROLLER

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS:

BY: \_\_\_\_\_  
ASSISTANT COUNTY ATTORNEY

BY:   
KOF DIVISION DIRECTOR

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**

ATTEST: \_\_\_\_\_  
EXECUTIVE SECRETARY

BY: \_\_\_\_\_  
STEVEN C. BRAUN, P.E  
DIRECTOR OF TRANSPORTATION  
DEVELOPMENT

NAME: \_\_\_\_\_

DISTRICT \_\_\_\_\_

LEGAL REVIEW:

\_\_\_\_\_  
OFFICE OF THE GENERAL COUNSEL

**EXHIBIT A**  
**SCOPE OF WORK**  
**FM 437878-1-52-01 &**  
**437878-1-62-01/02**

The DEPARTMENT shall construct the intersection improvements of SR-809/Military Trail at Forest Hill Blvd. including but not be 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.
- Drainage and sidewalk to be adjusted to accommodate widened intersection.
  - Construction of a new sidewalk to replace the existing sidewalk that will be removed, due to the roadway widening.
  - 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.
- Lighting
  - Construction (installation) of new signalized mast arms and traffic lights in all four quadrants.
- Construction (installation) of new Pedestrian signalization in all four quadrants.
- Construct ADA curb ramps
- Construction of bicycle lane on Military Trail.

**Exhibit B  
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: Construction of intersection improvements at SR-809/Military Trail  
and Forest Hill Blvd.  
Project #: 437878-1-52-01; 437878-1-62-01/02  
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, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

ATTEST:  
JOSEPH ABRUZZO

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_ MAYOR  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
F-596-000-785-149  
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

**THIS IS AN EXHIBIT ONLY... NOT FOR EXECUTION!**

## **EXHIBIT C**

# **STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION AGREEMENT WITH PALM BEACH COUNTY**

**STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION  
AGREEMENT**

R2004 0435 MAR 16 2004

THIS AGREEMENT, entered into this 19<sup>th</sup> day of April, year of 2004, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "FDOT", and PALM BEACH COUNTY, hereinafter referred to as the "MAINTAINING AGENCY";

**WITNESSETH:**

WHEREAS, the MAINTAINING AGENCY has the authority to enter into this Agreement and to undertake the maintenance and operation of lighting on the State Highway System, and the FDOT is authorized under Sections 334.044, Florida Statutes and 335.055, Florida Statutes to enter into this Agreement; and

WHEREAS, the MAINTAINING AGENCY has authorized its undersigned officers to enter into and execute this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the FDOT and the MAINTAINING AGENCY hereby agree as follows:

**1. Maintenance of Facilities**

- a. The MAINTAINING AGENCY shall maintain all the lighting now or hereafter located on the State Highway System within the jurisdictional boundaries of the MAINTAINING AGENCY, hereinafter referred to as the "Facilities," throughout its expected useful life. For the purposes of this Agreement, the term Facilities shall be deemed to include, but not necessarily be limited to, lighting for roadways, as well as park and ride, pedestrian overpasses, and recreational areas owned by or located on the property of the FDOT, but shall exclude those systems listed in Exhibit "A" attached hereto and by this reference made a part hereof, and shall exclude lighting located in weigh stations, rest areas, or on Interstate highways.
- b. In maintaining the Facilities, the MAINTAINING AGENCY shall perform all activities necessary to keep the Facilities fully operating, properly functioning, with a minimum of 90% of the lights burning for any lighting type (ex. high mast, standard, underdeck, sign) or roadway system at all times for their normal expected useful life in accordance with the original design thereof, whether necessitated by normal wear and tear, accidental or intentional damage, or acts of nature. Said maintenance shall include, but shall not be limited to, providing electrical power and paying all charges associated therewith, routine inspection and testing, preventative maintenance, emergency maintenance, replacement of any component parts of the Facilities (including the poles and any and all other component parts installed as part of the Facilities), and locating (both vertically and horizontally) the Facilities, as may be necessary.
- c. All maintenance shall be in accordance with the provisions of the following:
  - (1) Manual of Uniform Traffic Control Devices; and,
  - (2) All other applicable local, state, or federal laws, rules, resolutions, or ordinances, and FDOT procedures.
- d. For lighting installed as part of an FDOT project, the MAINTAINING AGENCY's obligation to maintain shall commence upon the MAINTAINING AGENCY's receipt of notification from the FDOT that the FDOT has finally accepted the project, except for the obligation to provide for electrical power, which obligation to provide for electrical power shall commence at such time as the lighting system is ready to be energized; provided, however, that the MAINTAINING AGENCY shall not be required to perform any activities which are the responsibilities of FDOT's contractor.

Prior to any acceptance by the FDOT, the MAINTAINING AGENCY shall have the opportunity to inspect and request modifications/corrections to the installation(s) and the FDOT agrees to undertake those prior to acceptance so long as the modifications/corrections comply with the contract and specifications previously approved by both the FDOT and the MAINTAINING AGENCY.

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- e. The continuing obligations under this paragraph 1 beyond the first fiscal year hereof are subject to the voluntary negotiation of the amount to be paid as set forth in subparagraph 2b hereof.

**2. Compensation and Payment**

- a. The FDOT agrees to pay to the **MAINTAINING AGENCY** a lump sum of \$ 175,589.00 for the fiscal year in which this Agreement is signed (fiscal year as referenced in this Agreement shall be FDOT's fiscal year).
- b. For each future fiscal year, the FDOT and the **MAINTAINING AGENCY** shall agree on the amount to be paid prior to the fiscal year beginning. The FDOT will issue a work order confirming the amount and authorizing the performance of maintenance for each new fiscal year. The Work Order shall be an FDOT signed letter of authorization to the **MAINTAINING AGENCY** with a subject line containing the terms "State Highway Lighting, Maintenance, And Compensation Agreement Work Order." The Work Order shall reflect the contract number, financial project number, FEID No. of the Maintaining Agency, the fiscal year, and the lump sum amount to be paid for the fiscal year indicated. The Work Order shall be signed by the **MAINTAINING AGENCY** and returned to FDOT. No payment will be made on Work Orders which are not properly signed and returned to FDOT prior to performing services.
- c. Invoices may be submitted anytime after May 19<sup>th</sup> of the fiscal year in which the services were provided, but no later than 180 days after the end of said fiscal year. Payment shall be made in one lump sum as provided in paragraph 4 hereof.
- d. Payment shall be made in accordance with Section 215.422, Florida Statutes.
- e. Bills for fees or other compensation for services or expenses shall be submitted in a format acceptable to the FDOT and in detail sufficient for a proper pre-audit and post-audit thereof.

**3. Record Keeping**

The **MAINTAINING AGENCY** shall keep records of all activities performed pursuant to this Agreement. The records shall be kept in a format approved by the FDOT.

Records shall be maintained and made available upon request to the FDOT at all times during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to the FDOT upon request.

**4. Invoicing**

Upon receipt, the FDOT has five (5) working days to inspect and approve the goods and services. The FDOT has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the **MAINTAINING AGENCY**. Interest penalties of less than one (1) dollar shall not be enforced unless the **MAINTAINING AGENCY** requests payment. Invoices returned to a **MAINTAINING AGENCY** because of **MAINTAINING AGENCY** preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the FDOT.

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) 410-9724 or by calling the Chief Financial Officer's Hotline, 1-800-848-3792.

The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

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The FDOT, 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 shall be null and void, and no money may be paid on such contract. The FDOT shall require a statement from the Comptroller of the FDOT that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the FDOT which are for an amount in excess of \$25,000 and which have a term for a period of more than one (1) year.

The FDOT will provide a copy of the statement referenced above to the **MAINTAINING AGENCY**.

**5. Default**

In the event that the **MAINTAINING AGENCY** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, the FDOT may exercise one or more of the following options, provided that at no time shall the FDOT be entitled to receive double recovery of damages:

- a. Pursue a claim for damages suffered by the FDOT or the public.
- b. Pursue any other remedies legally available.
- c. As to any work not performed by the **MAINTAINING AGENCY**, perform such work with its own forces or through contractors and seek reimbursement for the cost thereof from the **MAINTAINING AGENCY** if the **MAINTAINING AGENCY** fails to cure the non-performance within fourteen (14) days after written notice from the FDOT of the non-performance; provided, however, that advance notice and cure shall not be preconditions in the event of an emergency.

**6. Force Majeure**

Neither the **MAINTAINING AGENCY** nor the FDOT shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimate duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

**7. Miscellaneous**

- a. The FDOT shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.
- b. The **MAINTAINING AGENCY** shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **MAINTAINING AGENCY** in conjunction with this Agreement. Failure by the **MAINTAINING AGENCY** to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the FDOT.
- c. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto.
- d. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining provisions hereof.
- e. Time is of the essence in the performance of all obligations under this Agreement.

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- f. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided. The **MAINTAINING AGENCY** shall have a continuing obligation to notify each District of the **FDOT** of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

**MAINTAINING AGENCY:**

AMY HARRIS  
PALM BEACH COUNTY  
160 AUSTRALIAN AVENUE  
WEST PALM BECH, FL 33416-1229

**FDOT:**

DISTRICT MAINTENANCE ENGINEER  
FLORIDA DEPARTMENT OF TRANSPORTATION  
3400 WEST COMMERCIAL BOULEVARD  
FT. LAUDERDALE, FL 33309

- g. **PUBLIC ENTITY CRIME INFORMATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for **CATEGORY TWO** for a period of thirty six (36) months from the date of being placed on the convicted vendor list.
- h. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.
- i. Nothing herein shall be construed as a waiver of either party's sovereign immunity.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION  
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**8. Certification**

This document is a printout of an FDOT form maintained in an electronic format and all revisions thereto by the Maintaining Agency in the form of additions, deletions or substitutions are reflected only in an Appendix entitled "Changes To Form Document" and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the Maintaining Agency hereby represents that no change has been made to the text of this document except through the terms of the Appendix entitled "Changes To Form Document."

You MUST signify by selecting or checking which of the following applies:

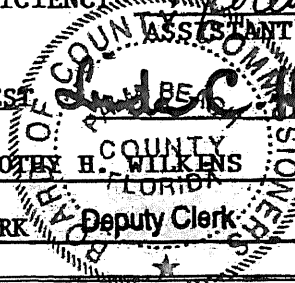
- No changes have been made to this Forms Document and no Appendix entitled "Changes To Form Document" is attached.
- No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Forms Document."

R2004 0435 MAR 16 2004

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

MAINTAINING AGENCY APPROVED AS TO FORM AND LEGAL SUFFICIENCY Marlene R. [Signature]  
 ASSISTANT COUNTY ATTORNEY

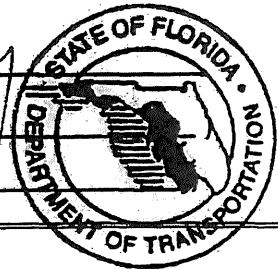
BY: (Signature) [Signature] ATTEST [Signature]  
 (Typed Name: Karen T. Marcus DOROTHY H. WILKENS )  
 (Typed Title: Chair CLERK Deputy Clerk )



DATE: \_\_\_\_\_  
 Approved as to Terms and Conditions  
 By: [Signature]

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

BY: (Signature) [Signature]  
 (Typed Name: GERRY O'REILLY P.E.)  
 (Typed Title: DIRECTOR OF TRANSPORTATION DEVELOPMENT)



DATE: 4/19/04

FDOT Legal Review

BY: (Signature) [Signature]  
 District Counsel  
 (Typed Name: DAWN RADLAW)

DATE: April 19, 2004

**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: Construction of intersection improvements at SR-809/Military Trail and Forest Hill Blvd.  
Project #: 437878-1-52-01; 437878-1-62-01/02  
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, BY AND THROUGH ITS  
BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_  
NAME: DAVE KERNER  
TITLE: MAYOR  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
F-596-000-785-149  
Federal Employer I.D. Number

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY

BY: \_\_\_\_\_  
ASSISTANT COUNTY ATTORNEY

FDOT Legal Review:

\_\_\_\_\_

\_\_\_\_\_  
For FDOT (signature)

\_\_\_\_\_  
Name and Title

59-3024028  
Federal Employer I.D. Number

\_\_\_\_\_  
Date

ATTEST:  
JOSEPH ABRUZZO

\_\_\_\_\_  
CLERK OF THE CIRCUIT  
COURT & COMPTROLLER (SEAL)

APPROVED AS TO TERMS AND  
CONDITIONS:

BY:  \_\_\_\_\_  
DIVISION DIRECTOR

\_\_\_\_\_  
For Escrow Agent (signature)

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date