

DUNS No.: 80-939-7102  
CSFA No.: N/A

Contract No.: \_\_\_\_\_  
FM No: 229664-2-C8-40  
FEID No: VF-596-000-785

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
JOINT PARTICIPATION AGREEMENT

THIS Joint Participation Agreement (hereinafter referred to as "AGREEMENT"), entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the State of Florida Department of Transportation hereinafter called the DEPARTMENT, and Palm Beach County, located at 2300 North Jog Road, West Palm Beach, Florida 33411, hereinafter referred to as the COUNTY.

WITNESSETH

WHEREAS, the DEPARTMENT and the COUNTY are desirous of having the COUNTY provide mitigation services in connection with Financial Management (FM) Number 229664-2-C8-40 (Funded in Fiscal Year 2015/2016) for the mitigation needs of the Federally- endangered Everglades Snail Kite for SR-7 construction and reconstruction from Okeechobee Blvd. to Northlake Blvd. in Palm Beach County, Florida. Refer to **Exhibit A**, Scope of Services, attached hereto and made of part hereof; and

WHEREAS, for purposes of this Agreement, the mitigation services as stated above are hereinafter referred to as the Project; and

WHEREAS, the DEPARTMENT is required to transfer certain rights in 216.62 acres of right-of-way, hereinafter referred to as the Property Interest, to the COUNTY as mitigation for impacts to the endangered Everglades snail kite shown in **Figure 1** attached hereto and made a part hereof; and

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

WHEREAS, the COUNTY by Resolution No. \_\_\_\_\_ adopted on \_\_\_\_\_, 20\_\_\_\_, a copy of which is attached hereto and made a part hereof, authorizes the proper officials to enter into this Agreement.

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

1. The recitals set forth above are true and correct and are deemed incorporated herein.

2. The COUNTY shall be responsible for assuring that the Project complies with all applicable Federal, State and Local laws, rules, regulations, guidelines and standards. The COUNTY shall also be responsible for the administration and overall coordination required for the Project.
3. The DEPARTMENT agrees to make all previous studies, maps, drawings, surveys and other data, and information pertaining to the Project available to the COUNTY at no extra cost.
4. The COUNTY shall have the sole responsibility for resolving claims and requests for additional work for the Project. The COUNTY will make best efforts to obtain the DEPARTMENT's input in its decisions.
5. Except as otherwise set forth herein, this Agreement shall continue in effect and be binding to both the COUNTY and the DEPARTMENT until the Project is completed as evidenced by the written acceptance of the DEPARTMENT or June 30, 2021, whichever occurs first.
6. The DEPARTMENT agrees to pay the COUNTY for services as described in **Exhibit A**. The total DEPARTMENT's share towards this Project is an amount not to exceed ONE MILLION FIVE HUNDRED SEVENTY NINE THOUSAND SEVEN HUNDRED TWENTY DOLLARS AND NO CENTS (\$1,579,720.00). Payment to the COUNTY will be made as a one-time lump sum payment after all the deliverables, shown in **Exhibit B** attached hereto and made a part hereof, are received by the DEPARTMENT.
7. The COUNTY acknowledges and agrees that the DEPARTMENT'S obligation to pay the sum set forth herein is contingent upon an annual appropriation by the Florida Legislature.
8. The COUNTY shall be responsible for the perpetual maintenance of the area known as the "Rangeline", as described in **Figure 1**. In addition to the foregoing, the DEPARTMENT and the COUNTY shall comply with the provisions set forth in the Memorandum of Agreement (MOA), which is attached hereto and made a part hereof as **Exhibit C**. The terms of this paragraph shall survive the termination of this Agreement.
9. In the event the Project costs or Project modifications increase or exceed the amount authorized in paragraph 6, the DEPARTMENT and the COUNTY shall meet and attempt to mutually agree to the amount and distribution of the additional funding needed to complete the Project. Any funding increase or 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, then the increase in the Project costs will be the sole responsibility of the COUNTY.

10. The COUNTY shall provide the following quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The deliverables for the Project are shown in **Exhibit B**. The COUNTY will need written approval from the DEPARTMENT, if deviating from the Deliverables set forth in **Exhibit B**.
11. The COUNTY will be paid upon the DEPARTMENT receiving the deliverables as set forth in this Agreement. The COUNTY will submit quarterly written progress report by the 15<sup>th</sup> day of the month, following the end of each quarter (January 15<sup>th</sup>, April 15<sup>th</sup>, July 15<sup>th</sup>, October 15<sup>th</sup>) attesting to the actual services performed.
12. Invoices shall be submitted by the COUNTY in detail sufficient for proper preaudit and postaudit thereof, based on the quantifiable, measurable, and verifiable units of deliverables as established in **Exhibit B**. Deliverables must be received and accepted in writing by the COUNTY's Project Manager prior to payments.  
  
Supporting documentation must establish that the deliverables were concurred with in writing by the COUNTY and that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Paragraph 10 has been met.
13. There shall be no reimbursement for travel expenses under this Agreement.
14. The COUNTY must submit the final invoice to the DEPARTMENT within 180 days after the final acceptance of the Project. Invoices submitted after the 180 day time period may not be paid. The final balance due under this Agreement will be reimbursed upon the completion of all Project services and receipt of final cost documentation and proper submission of a detailed invoice and when the Project has been inspected, approved, and accepted to the satisfaction of the DEPARTMENT in writing.
15. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under *Chapters 215 and 216, F.S.* If the DEPARTMENT determines that the performance of the COUNTY is unsatisfactory, the DEPARTMENT shall notify the COUNTY of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the DEPARTMENT. The COUNTY shall, within five days after notice from the DEPARTMENT, provide the DEPARTMENT with a

corrective action plan describing how the COUNTY will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the DEPARTMENT, the COUNTY shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the COUNTY resolves the deficiency. If the deficiency is subsequently resolved, the COUNTY may bill the DEPARTMENT for the retained amount during the next billing period. If the COUNTY is unable to resolve the deficiency, the funds retained may be forfeited at the end of the Agreement's term.

16. The COUNTY agrees to comply with **Section 20.55(5), F.S.**, and to incorporate in all subcontracts the obligation to comply with **Section 20.55(5), F.S.**
17. The COUNTY providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt of an invoice from the COUNTY, the DEPARTMENT has five (5) business days to inspect and approve the goods and services where business day is defined as any day of the week excluding Saturday, Sunday and any legal holiday as designated in Section 110.117, Florida Statutes. The DEPARTMENT has twenty (20) calendar days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) calendar days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
18. If payment is not available within forty (40) calendar days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the COUNTY. Interest penalties of less than one (1) dollar will not be enforced, unless the COUNTY requests payment. Invoices that have to be returned to the COUNTY because of COUNTY preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.
19. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Division of Consumer Services at 1-877-693-5236.
20. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs

incurred includes the COUNTY's general accounting records and the Project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the Project, and all other records of the contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.

21. In the event this contract is for services in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the department that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year."

22. The COUNTY will comply with all Federal, State, and Local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under the Agreement.
23. The COUNTY warrants that it has not employed or obtained any company or person, other than bona fide employees of the COUNTY, to solicit or secure this Agreement, and it has not paid or agreed to pay any company, corporation, individual or firm, other than a bona fide employee employed by the COUNTY. For breach or violation of this provision, the DEPARTMENT shall have the right to terminate the Agreement without liability.
24. The COUNTY agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants who perform with in connection with this agreement

To the fullest extent permitted by law the COUNTY's contractor shall indemnify and hold harmless the COUNTY, the DEPARTMENT, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's

fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of contractor and persons employed or utilized by contract in performance of this contract.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the DEPARTMENT's and the COUNTY's sovereign immunity.

To the fullest extent permitted by law the COUNTY's consultant shall indemnify and hold harmless the COUNTY, the DEPARTMENT, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused, in whole or in part, by the professional negligence, error or omission, recklessness, or intentional wrongful misconduct of the consultant and persons employed or utilized by the consultant in performance of this Agreement.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the DEPARTMENT's and the COUNTY's sovereign immunity.

25. The COUNTY / Vendor/ Contractor:
  - a. shall utilize the U.S. Department of Homeland Security's E-verify system to verify the employment eligibility of all new employees hired by the COUNTY / Vendor/Contractor during the term of the contract; and
  - b. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
26. In the event it becomes necessary for the DEPARTMENT or COUNTY to institute suit for the enforcement of the provisions of this Agreement, each party shall be responsible to pay their own attorney fees and court costs. Venue with respect to any such litigation shall be in Broward County.
27. This Agreement is governed by and construed in accordance with the laws of the State of Florida.
28. 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.

29. 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.
30. Any or all notices (except invoices) given or required under this Agreement shall be in writing and either personally delivered with receipt acknowledged or sent by certified mail, return receipt requested. All notices delivered shall be sent to the following addresses:

If to the DEPARTMENT:

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

If to the COUNTY:

Palm Beach County  
Environmental Resources Management  
2300 North Jog Road, 4<sup>th</sup> Floor  
West Palm Beach, Florida 33411  
Attn: Rob Robbins, Director  
With A Copy to: County Attorney

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**THIS SPACE IS INTENTIONALLY LEFT BLANK**

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

PALM BEACH COUNTY, Florida, A  
Political Subdivision of the State of Florida  
BOARD OF COUNTY COMMISSIONERS

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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

ATTEST:  
SHARON R. BOCK

LEGAL REVIEW:

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

BY: \_\_\_\_\_  
OFFICE OF THE GENERAL COUNSEL

APPROVED AS TO FORM

APPROVED:

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

BY: \_\_\_\_\_  
DISTRICT PROGRAM MGMT ADMINISTRATOR

APPROVED AS TO TERMS AND CONDITIONS:

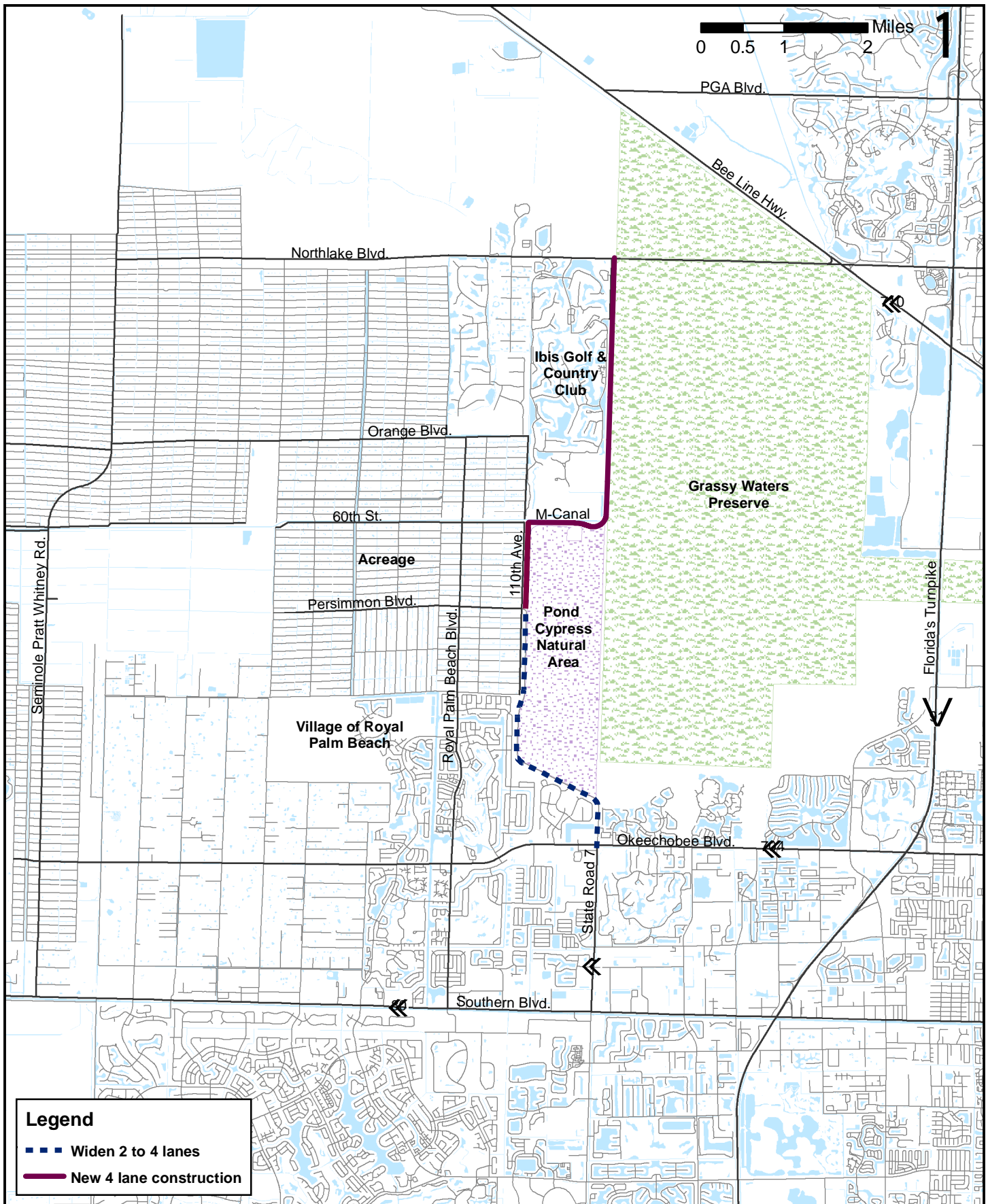
BY: \_\_\_\_\_  
DIRECTOR, ENVIRONMENTAL RESOURCES MANAGEMENT



**EXHIBIT “A”**  
**SCOPE OF SERVICES**

The County ERM will provide mitigation services for referenced the Property Interest in accordance with the maintenance management guidelines used of the Loxahatchee Slough. Management activities include are not limited to the following:

- Removal of exotic vegetation
- Burn regiment
- Monitoring of vegetation
- Trapping and removal of feral domestic animals
- Security and Law Enforcement
- Administrative tasks and oversight



## SR 7 Corridor Extension PD&E Study Project Location Map

**Figure 1**

**EXHIBIT “B”**  
**METHOD OF COMPENSATION & DELIVERABLES**

The following four items Environmental Permits listed below are the deliverables for the Project. The DEPARTMENT shall not release payment until the deliverables are accepted in writing by the DEPARTMENT and the challenge periods have expired.

1. SFWMD ERP App No.: 150410-5  
Cost \$394,930.00 (25%)
2. Modifications to existing ERP: 50-05422-P  
Cost \$394,930.00 (25%)
3. USACE application No.: SAJ-2015-01094  
Cost \$394,930.00 (25%)
4. Modifications to existing USACE permit: SAJ-2002-8273  
Cost \$394,930.00 (25%)

## **EXHIBIT C**

# **MEMORANDUM OF AGREEMENT WITH PALM BEACH COUNTY**

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
PALM BEACH COUNTY ENVIRONMENTAL RESOURCES  
MANAGEMENT**

THIS Memorandum of Agreement (hereinafter referred to as "AGREEMENT"), entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the State of Florida Department of Transportation hereinafter called the DEPARTMENT, and Palm Beach County Department of Environmental Resources Management, located at 2300 North Jog Road, West Palm Beach, Florida 33411, hereinafter referred to as the COUNTY ERM,

**WITNESSETH**

**WHEREAS**, the DEPARTMENT and the COUNTY ERM are considered the PARTIES for purposes of this Agreement, and

**WHEREAS**, the DEPARTMENT has a project for the extension of S.R. 7 to Northlake Boulevard (Project FM # 229664-2); and

**WHEREAS**, the DEPARTMENT completed a Project Development and Environment (PD&E) Study which evaluated alternatives for the construction of a corridor extension of State Road (SR) 7 in Palm Beach County, from Okeechobee Boulevard (SR 704) to Northlake Boulevard, a distance of approximately 8.5 miles, as depicted on the Location Map attached and incorporated herein as **Exhibit "A"** and hereinafter referred to as the PROJECT, and

**WHEREAS**, in 1948 and 1952 the DEPARTMENT was deeded the right of way corridor as along the Section Range Line, which begins at Okeechobee Boulevard (SR 704) and extends to the north of the Bee Line Highway (SR 710), as depicted on **Exhibit "B"**, an area totaling 170.592 acres,

**WHEREAS**, in 1942 the DEPARTMENT was granted an easement for transportation purposes from the Trustees of the Internal Improvement Trust Fund (TIITF) over parcels totaling 46.028 acres, along the Range Line extending north of SR 786 (PGA Boulevard) as depicted on **Exhibit "B"**, and

**WHEREAS**, the U.S. FISH AND WILDLIFE SERVICE (USFWS) has indicated that the proposed project may create direct and indirect impacts to the Federally-endangered Everglades Snail Kite (*Rostrhamus sociabilis*), (Snail Kite) if not otherwise addressed, and

**WHEREAS**, to minimize the Project's adverse effects to the Snail Kite, the DEPARTMENT proposes to provide certain property rights of 216.62 acres of suitable Snail Kite habitat located along the Range Line from SR 704/Okeechobee Boulevard to the M-Canal, and Northlake Boulevard to Jupiter Farms (**Exhibit "B"**). Certain rights to the 216.62 acres along the Range

Line (hereinafter referred to as the **Property Interest**) will be transferred to the COUNTY ERM and placed under a conservation easement as authorized in Section 704.06 (2), F.S., and listing the USFWS as having third party rights (i.e., the ability to ensure the conservation easement is enforced). The COUNTY ERM will maintain the Property Interest in perpetuity as habitat for the Everglades Snail Kite, and

**WHEREAS**, the COUNTY ERM has requested the transfer of the Property Interest for conservation mitigation purposes and this transfer is mutually agreed upon as being in the best interest of the DEPARTMENT and the COUNTY ERM, and

**WHEREAS**, the DEPARTMENT will provide to the COUNTY ERM, via a Joint Participation Agreement (JPA), a payment to provide for the mitigation services for the Property Interest,

**NOW, THEREFORE, THIS INDENTURE WITNESSETH:** in consideration of the mutual covenants and promises herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the COUNTY ERM and the DEPARTMENT agree as set forth below:

This Agreement sets forth the terms and conditions under which the COUNTY ERM and the DEPARTMENT will abide. The commencement of jurisdictional and maintenance responsibilities of COUNTY ERM is the date of the execution of the Property Interest transfer by the Department.

1. Purpose of this Agreement. The purpose of this AGREEMENT is for the COUNTY ERM to maintain property transferred to the COUNTY ERM to fulfill the DEPARTMENT's commitments associated with the construction of the Project and for the DEPARTMENT to compensate the COUNTY ERM as provided in the JPA (**Exhibit "C"**). This will fulfill the requirements set forth by the USFWS in the Biological Opinion, dated November 13, 2014.

a) It is understood by the Parties that the transfer of the Property Interest and payment will not occur until the applicable Federal and State permitting agencies have notified FDOT that they intend to issue the environmental permits listed below and the challenge periods have expired.

1. SFWMD ERP App No.: 150410-5
2. Existing ERP which FDOT is modifying: 50-05422-P
3. SFWMD water use permit
4. USACE application No.: SAJ-2015-01094
5. Existing USACE permit which FDOT is modifying: SAJ-2002-8273

b) Management activities within the transferred property interest will follow the COUNTY ERM's plan for maintenance and management of the Loxahatchee Slough Natural Area.

- c) In that time is of the essence, the COUNTY ERM shall take steps immediately to subject the property to a conservation easement. It is understood by the Parties that construction of the Project cannot commence until the subject Property Interest is placed in a perpetual conservation easement. A copy of the signed conservation easement will be provided to the USFWS prior to construction.
- d) The COUNTY ERM accepts all responsibility for the subject Property Interest and for all maintenance required to maintain the conservation easement.
- e) The DEPARTMENT gives up and the COUNTY ERM accepts all rights and obligations to the subject Property Interest as conditioned upon 1(a), above.
2. Term and Effective Date. This AGREEMENT shall commence upon execution by the PARTIES (the "Effective Date") and shall continue in effect and be binding on the PARTIES until the Project is completed and payment is received by the COUNTY ERM as evidenced by the written acceptance by the COUNTY ERM, unless said AGREEMENT is extended or earlier terminated.
3. Responsibilities of the DEPARTMENT.
- A. The DEPARTMENT shall make all previous studies, maps, drawings, surveys and other data and information pertaining to the Project available to the COUNTY ERM upon request.
4. Responsibilities of the COUNTY ERM.
- A. The COUNTY ERM shall place the property under a conservation easement and thereafter shall assume the long-term management responsibilities of the transferred Property Interest and maintain the Property Interest as habitat for the Snail Kite.
- B. The COUNTY ERM shall be solely responsible for assuring that the maintenance activities for the Property Interest area complies with all applicable federal, state, and local laws, rules, regulations, guidelines and standards.
- C. The COUNTY ERM shall take necessary action to restrict the TIITF parcel for mitigation purposes.
5. Enforcement Costs. In the event it becomes necessary for a PARTY to institute suit for the enforcement of the provisions of this AGREEMENT, each PARTY shall be responsible to pay its own attorney fees and court costs.

6. Assignment and Transfer. This AGREEMENT and any interest herein shall not be assigned, transferred or otherwise encumbered by the COUNTY ERM under any circumstance without the prior written consent of the DEPARTMENT. However, this AGREEMENT shall run to the DEPARTMENT and its successors.
7. Notice. Any or all notices given or required under this AGREEMENT shall be in writing and either personally delivered with receipt acknowledged or sent by certified mail, return receipt requested. All notices delivered shall be delivered to the following addresses:

If to the DEPARTMENT:

Florida Department of Transportation – District Four  
3400 West Commercial Blvd.  
Fort Lauderdale, Florida 33309-3421  
Attn: Stacey Miller, Director of Transportation Development  
With a copy to: Lynn Kelley  
A second copy to: District General Counsel

If to the COUNTY ERM:

Palm Beach County Department of Environmental Resources Management  
2300 North Jog Road  
West Palm Beach, Florida 33411-2743  
Attn: Robert Robbins, Director

Palm Beach County Attorney's Office  
301 North Olive Avenue, 6<sup>th</sup> Floor  
West Palm Beach, Florida 33401  
Attn: Shannon Fox, Assistant County Attorney

8. Records. Records related to this AGREEMENT shall be maintained by the PARTIES and made available upon request at all times during the period of this AGREEMENT and for five (5) years after final payment is made or after termination as otherwise provided herein. Copies of these documents and records shall be furnished to a PARTY upon request. Records that must be maintained include but are not limited to general accounting records and the Project records, together with supporting documents, records of all contractors and subcontractors performing work on the Project, and all other records of the PARTIES or any contractor or subcontractor necessary for a proper audit.
9. Indemnification. Each PARTY shall be liable for its own actions and negligence, and to the extent allowed by the Laws of Florida.



10. Termination. As stated in 1(a), this Agreement is dependent upon the issuance of applicable environmental permits for the project. If any permitting agency determines that the project is not able to be permitted, then this Agreement will be null and void. In such case, FDOT will maintain ownership of the Property Interest, there will be no transfer of the property and no funds will be due to the COUNTY ERM. If any PARTY fails to fulfill its obligations under this AGREEMENT in a timely and proper manner, any other PARTY shall give written notice of any deficiency. The PARTY in default shall then have sixty (60) calendar days from receipt of notice to correct the deficiency. If the defaulting PARTY fails to correct the deficiency within this time, the non-defaulting PARTY shall have the option to terminate this AGREEMENT at the expiration of the sixty (60) day time period. Notwithstanding any other provision of this AGREEMENT, each PARTY shall be entitled to all remedies that are available to the non-defaulting PARTY under law and/or equity.
11. Non-Discrimination. The PARTIES hereby assure that no person shall be excluded on the grounds of race, color, religion, sex, age, disability, marital status, sexual orientation, national origin or ancestry from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this AGREEMENT.
12. Relationship Between the PARTIES. The PARTIES shall be considered independent contractors, and no PARTY shall be considered an employee or agent of any other PARTY. Nothing in this AGREEMENT shall be interpreted to establish any relationship other than that of independent contractor between the PARTIES and their respective employees, agents, subcontractors, or assigns during or after the performance of this AGREEMENT.
13. Beneficiaries of Agreement. It is the intent and understanding of the PARTIES that this AGREEMENT is solely for the benefit of the PARTIES and for the Department to satisfy the USFWS Biological Opinion dated November 13, 2014.
14. Non-Waiver. Failure(s) to insist on strict performance of any covenant, condition, or provision of this AGREEMENT by a PARTY, its successors and assigns, shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other PARTY from performing any subsequent obligations strictly in accordance with the terms of this AGREEMENT. No waiver shall be effective unless in writing and signed by the PARTY against whom enforcement is sought. Such waiver shall be limited to provisions of this AGREEMENT specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.
15. Severability. Should any term or provision of this AGREEMENT be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof

by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this AGREEMENT, to the extent that the AGREEMENT shall remain operable, enforceable and in full force and effect to the extent permitted by law.

16. Non-Exclusivity of Remedies. No remedy herein conferred upon any PARTY is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any PARTY of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

17. Construction of Agreement.

A. The titles, captions and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, limit or expand the scope or content of this AGREEMENT or any provision hereto.

B. This AGREEMENT shall be construed without regard to any presumption or other rule requiring construction against the PARTY causing this AGREEMENT to be drafted.

C. In the event any provision of this AGREEMENT conflicts, or appears to conflict with any other provision of this AGREEMENT, the AGREEMENT, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any such conflict or inconsistency.

18. Exhibits. The Exhibits referred to and attached to this AGREEMENT are incorporated herein in full by this reference.

19. Amendments.

This AGREEMENT may only be amended by written agreement executed by all of the PARTIES hereto with the same formality used to execute this AGREEMENT.

20. Entire Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the PARTIES agree that there are no commitments, agreements or understandings concerning the subject matter of the 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.

21. The COUNTY / Vendor/ Contractor:

- a. shall utilize the U.S. Department of Homeland Security's E-verify system to verify the employment eligibility of all new employees hired by the COUNTY/ Vendor/ Contractor during the term of the contract; and
- b. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

22. LIST OF EXHIBITS

Exhibit A – Project Location Map

Exhibit B – Location Map of Range Line Segments

Exhibit C – JPA between the Department and COUNTY ERM

(Remainder of page has been intentionally left blank.)

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

**IN WITNESS WHEREOF**, this AGREEMENT is to be executed by the parties below for the purposes specified herein.

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

APPROVED: (AS TO FORM)

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

BY: \_\_\_\_\_  
OFFICE OF THE GENERAL COUNSEL

ATTEST:  
SHARON R. BOCK  
AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA  
FOR ITS BOARD OF COUNTY CLERK  
COMMISSIONERS

BY: \_\_\_\_\_  
DEPUTY CLERK

BY: \_\_\_\_\_  
SHELLEY VANA, MAYOR

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

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

BY: \_\_\_\_\_  
ROBERT ROBBINS, DIRECTOR,  
ENVIRONMENTAL RESOURCES  
MANAGEMENT

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE