Memorandum

MIAMI-DADE COUNTY

Agenda Item No. 8(M)(1)(A)

Date: May 3, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution authorizing a $900,000 Local Agency Program Supplemental Agreement with the Florida Department of Transportation for a portion of Black Creek Segment A Construction

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Recommendation

It is recommended that the Board approve the attached resolution authorizing a supplemental agreement (Attachment A) with the Florida Department of Transportation for $900,000 in grant funds for construction of a one mile section connecting the Black Creek Trail Segment-A to Larry and Penny Thompson Park and further authorizing the County Mayor or County Mayor's designee to receive and expend funds and execute contracts and amendments as required.

Scope

Black Creek Trail Segment A is located in South Miami-Dade in Commission Districts 8 and 9, running from SW 244 Street at Black Point Park and Marina along the Black Creek. Funding will add an approximately one mile connection between the trail and Larry and Penny Thompson Park at SW 134 Avenue.

Fiscal Impact/Funding Source

The Local Agency Program Supplemental Agreement will provide $900,000 for the one mile connecting section. Maintenance costs of this one mile of trail are estimated to be $9,200 per year and will be budgeted after June 2013 as labor costs under General Fund - South Region Roving Crew (5A) PRERE545620.

Track Record/Monitor

The grant will be administered by Rahul Shrivastava, Grants Administrator at MDPR. Florida Department of Transportation has awarded more than $12,000,000 to MDPR for planning, design and construction of various trails projects throughout the County.

Background

This $900,000 is not new funding, it is a transfer of an existing FDOT grant from Black Creek Trail Segment B to Black Creek Trail Segment A (Attachment B). Black Creek Trail Segment A has a higher priority and is progressing faster. This transfer of funds will assure that the grant will be fully spent before the expiration date, 6-30-13.

Alex Muñoz
Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: May 3, 2011

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(M)(1)(A)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(M)(1)(A)
5-3-11

RESOLUTION NO. _____

RESOLUTION AUTHORIZING A LOCAL AGENCY PROGRAM SUPPLEMENTAL AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR $900,000 IN GRANT FUNDS FOR BLACK CREEK TRAIL SEGMENT A CONSTRUCTION AND FURTHER AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO ACCEPT AND EXPEND THE FUNDS, AND TO EXERCISE THE PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, authorizes the County Mayor or County Mayor's designee to execute a supplemental agreement with the Florida Department of Transportation for $900,000 in grant funds for construction of a one mile section connecting the Black Creek Trail Segment A to Larry and Penny Thompson Park and further execute contracts and amendments as required.

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:

Joe A. Martinez, Chairman
Audrey M. Edmonson, Vice Chairwoman

Bruno A. Barreiro
Jose "Pepe" Diaz
Barbara J. Jordan
Dennis C. Moss
Sen. Javier D. Souto
Lynda Bell
Sally A. Heyman
Jean Monestime
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of May, 2011. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Monica Rizo

Memorandum

MIAMI-DADE COUNTY

Date: 2/18/2011

To: George M. Burgess
County Manager

From: Jack Kardys
Director, Miami-Dade County Park and Recreation Department

Subject: Resolution authorizing a $900,000 Local Agency Program Supplemental Agreement with the Florida Department of Transportation for Black Creek Trail Segment A Construction

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- This supplemental agreement from FDOT will provide $900,000 in construction funding for a one mile portion of Black Creek Trail Segment A which will connect the trail to Larry and Penny Thompson Park. This is in line with our Open Space System Master Plan which aims to connect parks and trails to each other and destinations along the way.

- This $900,000 is not new funding; it is a transfer of an existing FDOT grant which originally was for Black Creek Trail Segment B and is being transferred to Black Creek Trail Segment A which has a higher priority and is progressing faster. This transfer of funds will assure that the grant will be fully spent before the grant expiration date, 6-30-13.

- Other work on the Black Creek Trail Segment A will be unaffected by this project.

- The project is located in South Miami-Dade in Commission Districts 8 and 9, but has countywide impact.

- The annual operating impact (trail maintenance) for this one mile of trail is $9,200 per year. After the construction is completed in June 2013; maintenance will be charged to Index Code # PRERE5458620.

- Without this funding, construction of the one mile connecting section will be delayed.

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ATTACHMENT A

525-010-32
PRODUCTION SUPPORT
02/09

SUPPLEMENTAL NO. DUNS NO. 80-939-7102	STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION **LOCAL AGENCY PROGRAM SUPPLEMENTAL AGREEMENT**	FPN FM251265-3 CONTRACT NO. APW69

The MIAMI-DADE COUNTY PARK AND RECREATION DEPARTMENT desires to supplement the original Agreement entered into and executed on APRIL 21, 2010 as identified above. All provisions in the original Agreement and supplements, if any, remain in effect except as expressly modified by this supplement.

The changes to the Agreement and supplements, if any, are described as follows:

PROJECT DESCRIPTION

Name SOUTH DADE GREENWAYS NETWORK (BLACK CREEK TRAIL Segment A) Length 8.46 MILES

Termini BLACK POINT PARK AND MARINA (SW 244 ST) TO LARRY & PENNY THOMPSON PARK (SW 134 AVE)

Description of Work:
The construction package for Black Creek Trail Segment-A Phase I (SW 97 Ave to SW 244 St. at Black Point Park and Marina) and Phase II (SW 134 Av. at Larry and Penny Thompson Park to SW 127 Av.) and Phase III (SW 127 Av. to SW 97 Av.) is scheduled to commence construction in August 2011. The work consists of building a 10' wide paved shared-use trail within SFWMD right-of-way and includes wayfinding signs, regulatory signs, shelters, bike racks, and landscaping.

Reason for Supplement:
As of September 01, 2010, work program amendment AM 11-06-006 concerning FM 420916-1 has been approved by the Executive Office of the Governor. This amendment drops the FM 420916-1 project in its entirety and approves utilization of the funds and budget made available on FM 251265-3 to construct Black Creek Trail Segment A as per termini referenced above. The reprogramming of construction funds from FM 420916-1 to FM 251265-3 was requested by the Agency in order to facilitate the priority construction of Black Creek Trail Segment -A. The execution of this Supplemental Agreement will commit and make available to the Agency the additional project funds described at page 2/3 of this Agreement.

SUPPLEMENTAL NO. DUNS NO. 80-939-7102	STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION **LOCAL AGENCY PROGRAM SUPPLEMENTAL AGREEMENT**	FPN FM251265-3 CONTRACT NO. APW69

TYPE OF WORK By Fiscal Year	FUNDING				
	(1) PREVIOUS TOTAL PROJECT FUNDS	(2) ADDITIONAL PROJECT FUNDS	(3) CURRENT TOTAL PROJECT FUNDS	(4) TOTAL AGENCY FUNDS	(5) TOTAL STATE & FEDERAL FUNDS
Planning					
2007-2008					
2008-2009					
2009-2010					
2010-2011					
Total Planning Cost	$0.00	$0.00	$0.00	$0.00	$0.00
Project Development & Environment (PD&E)					
2007-2008					
2008-2009					
2009-2010					
2010-2011					
Total PD&E Cost	$0.00	$0.00	$0.00	$0.00	$0.00
Design					
2007-2008					
2008-2009					
2009-2010					
2010-2011					
Total Design Cost	$0.00	$0.00	$0.00	$0.00	$0.00
Right-of-Way					
2007-2008					
2008-2009					
2009-2010					
2010-2011					
Total Right-of-Way Cost	$0.00	$0.00	$0.00	$0.00	$0.00
Construction					
2007-2008					
2008-2009					
2009-2010	$1,880,000.00		$1,880,000.00		$1,880,000.00
2010-2011		$900,000.00	$900,000.00		$900,000
Total Construction Cost	$1,880,000.00	$900,000.00	$2,780,000.00	$0.00	$2,780,000.00
Construction Engineering and Inspection (CEI)					
2007-2008					
2008-2009					
2009-2010					
2010-2011					
Total CEI Cost	$0.00	$0.00	$0.00	$0.00	$0.00
Total Construction & CEI Costs	$1,880,000.00	$900,000.00	$2,780,000.00	$0.00	$2,780,000.00
TOTAL COST OF THE PROJECT	**$1,880,000.00**	**$900,000.00**	**$2,780,000.00**	**$0.00**	**$2,780,000.00**

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SUPPLEMENTAL NO. DUNS NO. 80-939-7102	STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION **LOCAL AGENCY PROGRAM SUPPLEMENTAL AGREEMENT**	FPN FM251265-3 CONTRACT NO. APW69

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

AGENCY MIAMI-DADE COUNTY PARK & RECREATION

By:_____
Name: Alex Munoz
Title: Assistant County Manager

Attest:_____
Name: Jack Kardys
Title: Director

Date: _____

As to form:

_____
Attorney

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

By:_____
Name:
Title:

Attest:_____
Name:
Title:

Date:_____

As to form:

_____
District Attorney

See attached Encumbrance Form for date of funding approval by Comptroller.

EXHIBIT "A"

PROJECT DESCRIPTION AND RESPONSIBILITIES

FPN: 251265-3

This exhibit forms an integral part of the Agreement between the State of Florida, Department of Transportation and

Miami-Dade County Park and Recreation Department

Dated_____

PROJECT LOCATION:

The project ____ is X___ is not on the National Highway System.

The project ____ is X___ is not on the State Highway System.

PROJECT DESCRIPTION:

SPECIAL CONSIDERATIONS BY AGENCY:

The audit report(s) required in the Agreement shall include a Schedule of Project Assistance that will reflect the Department's contract number, the Financial Project Number (FPN), the Federal Authorization Number (FAN), where applicable, the amount of state funding action (receipt and disbursement of funds), any federal or local funding action, and the funding action from any other source with respect to the project.

The Agency is required to provide a copy of the design plans for the Department's review and approval to coordinate permitting with the Department, and notify the Department prior to commencement of any right-of-way activities.

The Agency shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

a) Phase 18 (Planning) was completed on 11/14/2003.
b) Phase 38 (Design) was completed on 01/22/2010.
c) Right-of-Way requirements identified and provided to the Department by 3/30/2010.
d) Right-of-Way to be certified by 06/30/2010.
e) Phase 58 (Construction) contract to be let by 09/19/2010.
f) Construction to be completed by 09/29/2012.

If this schedule cannot be met, the Agency will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of federal funding.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

EXHIBIT "R"

ADVANCE PROJECT REIMBURSEMENT

Paragraph 2.02, second and third sentences are deleted and the following substituted:

> This Agreement shall continue in effect and be binding on all parties until the project is completed, any subsequent litigation is complete and terminated, final costs are known, and legislatively appropriated reimbursements, if approved, are made by the Department.

Paragraph 7.00, first sentence is deleted and the following substituted:

> The Department agrees to reimburse the Agency in accordance with Section 339.12, Florida Statutes, an amount not to exceed the total cost specified in paragraph 3.01 beginning in the Department's Fiscal Year 2009-2010. If the funding is from the Federal Highway Administration (FHWA), the payment will be made in a lump sum in the year(s) the project is scheduled in the Department's Work Program as of the date of this Agreement. If the FHWA funding is programmed in the Department's Adopted Work Program over a multi-year period, an annual amount equal to the amount programmed will be reimbursed in each of these years. If the project is for resurfacing, is estimated over $2,000,000 and is state-funded, payments will be made in 6 equal quarterly payments beginning in the year the project was originally programmed. For all other state-funded construction contracts estimated over $2,000,000, payments will be made in 10 equal quarterly payments beginning in the year the project was originally programmed. All payments will be made in accordance with paragraph 6.00 of this Agreement.

If there is a required local match of the non-federal share, the reimbursement will be reduced by the required amount. The Department further agrees to request appropriation of said amounts from the Legislature prior to each fiscal year in question.

EXHIBIT "B"

SCHEDULE OF FUNDING

AGENCY NAME & BILLING ADDRESS	FPN: 251265-3
Miami-Dade County Park and Recreation Department 275 NW 2nd Street Miami, FL 33128	

PROJECT DESCRIPTION

Name: South Dade Greenways Network (Black Creek Trail Segment A) Length: 9.1 miles

Termini: Black Creek Trail Segment A: Black Point Park and Marina (SW 244 St.) to Larry and Penny Thompson Park (SW 134 Av.) 9.1miles

TYPE OF WORK By Fiscal Year		FUNDING (1) TOTAL PROJECT FUNDS	(2) AGENCY FUNDS	(3) STATE & FEDERAL FUNDS
Planning	2007-2008			
	2008-2009			
	2009-2010			
	Total Planning Cost			
Project Development & Environment (PD&E)				
	2007-2008			
	2008-2009			
	2009-2010			
	Total PD&E Cost			
Design	2007-2008			
	2008-2009			
	2009-2010			
	Total Design Cost			
Right-of-Way	2007-2008			
	2008-2009			
	2009-2010			
	Total Right-of-Way Cost			
Construction	2009-2010	$1,880,000		$1,880,000
	2010-2011			
	2011-2012			
	2012-2013			
	Total Construction Cost	$1,880,000		$1,880,000
Construction Engineering and Inspection (CEI)				
	2006-2007			
	2007-2008			
	2008-2009			
	Total CEI Cost			
	Total Construction and CEI Costs	$1,880,000		$1,880,000
	TOTAL COST OF THE PROJECT	$1,880,000		$1,880,000

The Department's fiscal year begins on July 1. For this project, funds are not projected to be available until after the 1st of July of each fiscal year. The Department will notify the Agency, in writing, when funds are available.

ATTACHMENT B

Florida Department of Transportation

CHARLIE CRIST
GOVERNOR

1000 NW 111th Avenue
Miami, FL 33172

STEPHANIE C. KOPELOUSOS
SECRETARY

April 28th, 2010

Mr. Greg Pessolano, Grants Section
Miami-Dade Parks & Recreation Department
275 NW 2nd Street, 5th floor
Miami, Florida 33128

RE: LAP Agreement: South-Dade Greenways Network (Black Creek Trail A)
Notice to Proceed
FM No.: 251265-3, Fed. Aid No. 4042-384, Contract No. APW69

Dear Mr. Pessolano:

Attached are the executed LAP Agreements for the above referenced LAP Projects. The Miami-Dade Park and Recreation Department is now authorized to proceed with work with the terms of the Agreements.

If you have any questions, please, feel free to contact me at (305) 470-5289.

Sincerely,

Danny Iglesias PE

Danny Iglesias, P.E.
District LAP Administrator

DI:JS:gs

cc: File

LOCAL AGENCY PROGRAM AGREEMENT

FPN: 251265-3	Fund:	FLAIR Approp:
Federal No: 4042-384	Org Code: 550640/0612	FLAIR Obj: 790092
FPN:	Fund:	FLAIR Approp:
Federal No:	Org Code:	FLAIR Obj:
FPN:	Fund:	FLAIR Approp:
Federal No:	Org Code:	FLAIR Obj:
FPN:	Fund:	FLAIR Approp:
Federal No:	Org Code:	FLAIR Obj:
County No: Miami-Dade	Contract No: APW 69	Vendor No: F596000573666

Data Universal Number System (DUNS) No: 80-939-7102

Catalog of Federal Domestic Assistance (CFDA): 20.205 Highway Planning and Construction

THIS AGREEMENT, made and entered into this 21 day of April, 2010 by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter called the Department, and Miami-Dade County Park and Recreation Department hereinafter called the Agency.

WITNESSETH:

WHEREAS, the Agency has the authority to enter into this Agreement and to undertake the project hereinafter described, and the Department has been granted the authority to function adequately in all areas of appropriate jurisdiction including the implementation of an integrated and balanced transportation system and is authorized under Section 339.12, Florida Statutes, to enter into this Agreement;

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

1.00 Purpose of Agreement: The purpose of this Agreement is to provide for the Department's participation in South Dade Greenways Network (Black Creek Trail Segment A) and as further described in Exhibit "A" attached hereto and by this reference made a part hereof, hereinafter called the "project," and to provide Department financial assistance to the Agency and state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the project will be undertaken and completed.

1.01 Attachments: Exhibit(s) A, B & R are attached and made a part hereof.

2.01 General Requirements: The Agency shall complete the project as described in Exhibit "A" with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The project will be performed in accordance with all applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Agency Program Manual, which by this reference is made a part hereof as if fully set forth herein. Time is of the essence as to each and every obligation under this Agreement.

A full time employee of the Agency, qualified to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of this Agreement shall be in charge of each project.

Removal of Any Unbilled Funds

If Agency fails to timely perform its obligations in submitting invoices and documents necessary for the close out of the project, and said failure results in a loss of the remaining unbilled funding either by Federal withdrawal of funds or loss of State appropriation authority (which may include both federal funds and state funds, if any state funds are on the project), Agency will be responsible for the remaining unbilled funds on the project. No other funds will be provided by the Department. Agency waives the right to contest such removal of funds by the Department, if said removal is directly related to Federal (FHWA) withdrawal of funds or loss of State appropriation authority due to Local Agency's failure or nonperformance. In addition to loss of funding, the Department will consider de-certification of said Agency for future LAP projects.

Removal of All Funds

If all funds are removed from the project, including amounts previously billed to the Department and reimbursed to the Agency, and the project is off the state highway system, then the department will have to request repayment for the previously billed amounts from the Local Agency. No state funds can be used on off-system projects.

2.02 Expiration of Agreement: The Agency agrees to complete the project on or before June 30, 2013. If the Agency does not complete the project within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the project. The cost of any work performed after the expiration date of this Agreement will not be reimbursed by the Department.

2.03 Pursuant to Federal, State, and Local Laws: In the event that any election, referendum, approval, permit, notice or other proceeding or authorization is requisite under applicable law to enable the Agency to enter into this Agreement or to undertake the project hereunder or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters so requisite.

2.04 Agency Funds: The Agency shall initiate and prosecute to completion all proceedings necessary, including federal-aid requirements, to enable the Agency to provide the necessary funds for completion of the project.

2.05 Submission of Proceedings, Contracts, and Other Documents: The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the project as the Department and the Federal Highway Administration (FHWA) may require.

3.00 Project Cost:

3.01 Total Cost: The total cost of the project is $ 1,880,000. This amount is based upon the schedule of funding in Exhibit "B." The Agency agrees to bear all expenses in excess of the total cost of the project and any deficits involved. The schedule of funding may be modified by mutual agreement as provided for in paragraph 4.00.

3.02 Department Participation: The Department agrees to participate, including contingencies, in the project cost to the extent provided in Exhibit "B." This amount includes federal-aid funds which are limited to the actual amount of federal-aid participation.

3.03 Limits on Department Funds: Project costs eligible for Department participation will be allowed only from the date of this Agreement. It is understood that Department participation in eligible project costs is subject to:

a) Legislative approval of the Department's appropriation request in the work program year that the project is scheduled to be committed;

b) Availability of funds as stated in paragraphs 3.04 and 3.05 of this Agreement;

c) Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement; and

d) Department approval of the project scope and budget at the time appropriation authority becomes available.

3.04 Appropriation of Funds: The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. See Exhibit "B" for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.

3.05 Multi-Year Commitment: In the event this Agreement is in excess of $25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"(a) 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 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 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 Department which are for an amount in excess of $25,000 and which have a term for a period of more than 1 year."

3.06 Notice-to-Proceed: No cost may be incurred under this Agreement until the Agency has received a written Notice-to-Proceed from the Department.

3.07 Limits on Federal Participation: Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State laws, the regulations in 23 Code of Federal Regulations (C.F.R.) and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of FHWA. Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the project or part thereof involving such cost (23 C.F.R. 1.9 (a)). If FHWA or the Department determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported and the Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, Federal funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA or the Department may deny participation in parcel or project costs in part or in total.

For any amounts determined to be ineligible for federal reimbursement for which the Department has advanced payment, the Agency shall promptly reimburse the Department for all such amounts within 90 days of written notice.

4.00 Project Estimate and Disbursement Schedule: Prior to the execution of this Agreement, a project schedule of funding shall be prepared by the Agency and approved by the Department. The Agency shall maintain said schedule of funding, carry out the project, and shall incur obligations against and make disbursements of project funds only in conformity with the latest approved schedule of funding for the project. The schedule of funding may be revised by mutual written agreement between the Department and the Agency. If revised, a copy of the revision should be forwarded to the Department's Comptroller and to the Department's Federal-aid Program Office. No increase or decrease shall be effective unless it complies with fund participation requirements of this Agreement and is approved by the Department's Comptroller.

5.00 Records:

5.01 Establishment and Maintenance of Accounting Records: 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 5 years after the final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the project records, together with supporting documents and records of the Agency and all subcontractors performing work on the project and all other records of the Agency and subcontractors considered necessary by the Department for a proper audit of costs. If any litigation, claim or audit is started before the expiration of the 5-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

5.02 Costs Incurred for Project: The Agency shall charge to the project account all eligible costs of the project except costs agreed to be borne by the Agency or its contractors and subcontractors. Costs in excess of the programmed funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs.

5.03 Documentation of Project Costs: All costs charged to the project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.

5.04 Audit Reports: Recipients of federal and state funds are to have audits done annually using the following criteria:

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

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

Audits

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

1. In the event that the recipient expends $500,000 or more in federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. Exhibit "1" of this Agreement Indicates federal resources awarded through the Department by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department. The determination of amounts of federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.

2. In connection with the audit requirements addressed in Part I, paragraph 1 the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

3. If the recipient expends less than $500,000 in federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. However, if the recipient elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than federal entities).

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

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

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of $500,000 in any fiscal year of such recipient, the recipient must have a state single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes, applicable rules of the Executive Office of the Governor and the CFO, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Exhibit "1" to this Agreement indicates state financial assistance awarded through the Department by this Agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other non-state entities. State financial assistance does not include federal direct or pass-through awards and resources received by a non-state entity for federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2) (d), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the recipient expends less than $500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. However, if the recipient elects to have audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

4. State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

Part III - Other Audit Requirements: The recipient shall follow up and take corrective action on audit findings. Preparation of a Summary Schedule of Prior Year Audit Findings, including corrective action and current status of the audit findings is required. Current year audit findings require corrective action and status of findings.

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

Part IV - Report Submission:

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

   a) The Department at each of the following address(es):

      Florida Department of Transportation, 1000 NW 111 Avenue, Room 6202-B, Miami, FL 33172
      Attn: Michelle L. Meaux

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

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

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

2. In the event that a copy of the financial reporting package required by Part I of this Agreement and conducted in accordance with OMB Circular A-133, as revised, is not required to be submitted to the Department for reasons pursuant to Section .320 (e)(2), OMB Circular A-133, as revised, the recipient shall submit the required written notification pursuant to Section .320 (e)(2) and a copy of the recipient's audited Schedule of Expenditures of Federal Awards <u>directly</u> to each of the following:

   Florida Department of Transportation, 1000 NW 111 Avenue, Room 6202-B, Miami, FL 33172
   Attn: Michelle L. Meaux

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

   Florida Department of Transportation, 1000 NW 111 Avenue, Room 6202-B, Miami, FL 33172
   Attn: Michelle L. Meaux

3. Copies of the financial reporting package required by Part II of this Agreement shall be submitted by or on behalf of the recipient directly to each of the following:

   a) The Department at each of the following address(es):

      Florida Department of Transportation, 1000 NW 111 Avenue, Room 6202-B, Miami, FL 33172
      Attn: Michelle L. Meaux

   b) The Auditor General's Office at the following address:

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

4. Copies of reports or the Management Letter required by Part III of this Agreement shall be submitted by or on behalf of the recipient directly to:

   a) The Department at each of the following address(es):

      Florida Department of Transportation, 1000 NW 111 Avenue, Room 6202-B, Miami, FL 33172
      Attn: Michelle L. Meaux

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

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

Part V - Record Retention: The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of at least 5 years from the date the audit report is issued and shall allow the Department or its designee, the state CFO or Auditor General access to such records upon request. The recipient shall ensure that the independent audit documentation is made available to the Department, or its designee, the state CFO or Auditor General upon request for a period of at least 5 years from the date the audit report is issued, unless extended in writing by the Department.

5.05 Inspection: The Agency shall permit, and shall require its contractors to permit, the Department's authorized representatives and authorized agents of FHWA to inspect all work, workmanship, materials, payrolls, and records and to audit the books, records, and accounts pertaining to the financing and development of the project.

The Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency or any contractor, sub-contractor or materials vendor to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement (Section 287.058(1)(c), Florida Statutes).

5.06 Uniform Relocation Assistance and Real Property Statistical Report: For any project requiring additional right-of-way, the Agency must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project. Activities shall be reported on a federal fiscal year basis, from October 1 through September 30. The report must be prepared using the format prescribed in 49 C.F.R. Part 24, Appendix B, and be submitted to the Department no later than October 15 of each year.

6.00 Requisitions and Payments: Requests for reimbursement for fees or other compensation for services or expenses incurred shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof (Section 287.058(1)(a), Florida Statutes).

All recipients of funds from this Agreement, including those contracted by the Agency, must submit bills for any travel expenses, when authorized by the terms of this Agreement, in accordance with Section 112.061, Florida Statutes, and Chapter 3-"Travel" of the Department's Disbursement Operations Manual, Topic 350-030-400 (Section 287.058(1)(b), Florida Statutes).

If, after project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.

7.00 Department Obligations: Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment if:

7.01 Misrepresentation: The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof or in or with respect to any document of data furnished therewith or pursuant hereto;

7.02 Litigation: There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the project, the Agreement or payments to the project;

7.03 Approval by Department: The Agency shall have taken any action pertaining to the project which, under this Agreement, requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

7.04 Conflict of Interests: There has been any violation of the conflict of interest provisions contained here in paragraph 12.06 or 12.07.

7.05 Default: The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

7.06 Federal Participation: The Department may suspend or terminate payment for that portion of the project which the FHWA, or the Department acting in lieu of FHWA, may designate as ineligible for federal-aid.

7.07 Disallowed Costs: In determining the amount of the payment, the Department will exclude all projects costs incurred by the Agency prior to the effective date of this Agreement or the date of authorization, costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding in Exhibit "B" for the project, costs agreed to be borne by the Agency or its contractors and subcontractors for not meeting the project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

7.08 Final Invoices: The Agency must submit the final invoice on the project to the Department within 120 days after the completion of the project. Invoices submitted after the 120-day time period may not be paid.

8.00 Termination or Suspension of Project:

8.01 Termination or Suspension Generally: The Department may, by written notice to the Agency, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected or the Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.

If the Department determines that the performance of the Agency is not satisfactory, the Department shall have the option of (a) immediately terminating this Agreement or (b) suspending this Agreement and notifying the Agency of the deficiency with a requirement that the deficiency be corrected within a specified time; otherwise this Agreement will be terminated at the end of such time. Suspension of this Agreement will not affect the time period for completion of the project.

If the Department requires termination of this Agreement for reasons other than unsatisfactory performance of the Agency, the Department shall notify the Agency of such termination, with instructions as to the effective date of termination or specify the stage of work at which this Agreement is terminated.

If this Agreement is terminated before performance is completed, the Agency shall be paid for the work satisfactorily performed. Payment is to be on the basis of substantiated costs.

8.02 Action Subsequent to Notice-of-Termination or Suspension: Upon receipt of any final termination or suspension notice under this paragraph, the Agency shall proceed promptly to carry out the actions required therein which may include any or all of the following: (a) necessary action to terminate or suspend, as the case may be, project activities and contracts and such other action as may be required or desirable to keep to a minimum the costs upon the basis of which the financing is to be computed; (b) furnish a statement of the project activities and contracts and other undertakings the cost of which are otherwise includable as project costs. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and cost as approved by the Department or upon the basis of terms and conditions imposed by the Department upon the failure of the Agency to furnish the schedule, plan, and estimate within a reasonable time. The closing out of federal financial participation in the project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

9.00 Contracts of Agency:

9.01 Third Party Agreements: Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same.

9.02 Compliance with Consultants' Competitive Negotiation Act: It is understood and agreed by the parties hereto that participation by the Department in a project with the Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency's complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. At the discretion of the Department, the Agency will involve the Department in the consultant selection process for all projects. In all cases, the Agency's attorney shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.

10.00 Disadvantaged Business Enterprise (DBE) Policy and Obligation: It is the policy of the Department that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement.

The Agency and its contractors agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

11.00 Compliance with Conditions and Laws: The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this project. Execution of this Agreement constitutes a certification that the Agency is in compliance with, and will require its contractors and subcontractors to comply with, all requirements imposed by applicable federal, state, and local laws and regulations, including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions," in 49 C.F.R. Part 29, when applicable.

12.00 Restrictions, Prohibitions, Controls, and Labor Provisions:

12.01 Equal Employment Opportunity: In connection with the carrying out of any project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that

employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Agency shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development of operation of the project, except contracts for the standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves installation, construction, demolition, removal, site improvement or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

12.02 Title VI - Civil Rights Act of 1964: The Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, the regulations of the U.S. Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto.

The Agency shall include provisions in all contracts with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, and related statutes and regulations.

12.03 Americans with Disabilities Act of 1990 (ADA): The Agency will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and assurance by the Agency pursuant thereto.

12.04 Public Entity Crime: 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 36 months from the date of being placed on the convicted vendor list.

12.05 Discrimination: In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide 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.

12.06 Suspension, Revocation, Denial of Qualification or Determination of Contractor Non-Responsibility: An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.

12.07 Prohibited Interests: Neither the Agency nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the project or any property included or planned to be included in the project in which any member, officer or employee of the Agency or the locality during tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the Agency, the Agency, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the Agency or the locality relating to such contract, subcontract or arrangement.

The Agency shall insert in all contracts entered into in connection with the project or any property included or planned to be included in any project, and shall require its contractors to insert in each of their subcontracts, the following provision:

> "No member, officer or employee of the Agency or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

The provisions of this paragraph shall not be applicable to any agreement between the Agency and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

12.08 Interest of Members of, or Delegates to, Congress: No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

13.00 Miscellaneous Provisions:

13.01 Environmental Regulations: The Agency will be solely responsible for compliance with all the applicable environmental regulations, for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith. The Agency will be responsible for securing any applicable permits.

13.02 Department Not Obligated to Third Parties: The Department shall not be obligated or liable hereunder to any individual or entity not a party to this Agreement.

13.03 When Rights and Remedies Not Waived: In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

13.04 How Agreement Is Affected by Provisions Being Held Invalid: If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.

13.05 Bonus or Commission: By execution of the Agreement, the Agency represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

13.06 State Law: Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the project.

13.08 Plans and Specifications: In the event that this Agreement involves constructing and equipping of facilities on the State Highway System, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the project. The Department will review all plans and specifications and will issue to the Agency a written approval with any approved portions of the project and comments or recommendations covering any remainder of the project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency a written approval with said remainder of the project. Failure to obtain this written approval shall be sufficient cause of nonpayment by the Department.

13.09 Right-of-Way Certification: Upon completion of right-of-way activities on the project, the Agency must certify compliance with all applicable federal and state requirements. Certification is required prior to advertisement for or solicitation of bids for construction of the project, including those projects for which no right-of-way is required.

13.10 Agency Certification: The Agency will certify in writing, prior to project closeout, that the project was completed in accordance with applicable plans and specifications, is in place on the Agency's facility, adequate title is in the Agency's name, and the project is accepted by the Agency as suitable for the intended purpose.

13.11 Agreement Format: All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

13.12 Execution of Agreement: This Agreement may be simultaneously executed in a minimum of two counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

13.13 Restrictions on Lobbying:

Federal: The Agency agrees that no federally-appropriated funds have been paid, or will be paid by or on behalf of the Agency, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federally-appropriated funds have been paid by the Agency to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Agency shall require that the language of this paragraph be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

State: No funds received pursuant to this contract may be expended for lobbying the Legislature, the judicial branch or a state agency.

13.14 Maintenance: The Agency agrees to maintain any project not on the State Highway System constructed under this Agreement. If the Agency constructs any improvement on Department right-of-way, the Agency ☐ will ☐ will not maintain the improvements made for their useful life.

13.15 Vendors Rights: Vendors (in this document identified as the Agency) providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has 5 working days to inspect and approve the goods and services unless the bid specifications, purchase order or contract specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 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 40 days after receipt of the invoice and the receipt, inspection, and approval of goods and services, a separate interest penalty in accordance with Section 215.422(3)(b), Florida Statutes, will be due and payable in addition to the invoice amount to the Agency. Interest penalties of less than one $1 will not be enforced unless the Agency requests payment. Invoices which have to be returned to the Agency because of Agency 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.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from the Department. The Vendor Ombudsman may be contacted at 850-410-9724 or by calling the State Comptroller's Hotline, 1-800-848-3792.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

AGENCY Miami-Dade County Park & Recreation Dept.

By: _____
Name: Alex Muñoz
Title: Assistant County Manager

Attest: _____
Title: Jack Kardys, Director

As to form:

Monica Rizo
Attorney

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

By: _____
Name: Alice Bravo
Title: Director of Transportation Development

Attest: _____
Title: Executive Assistant to the Director of Transportation Development

As to form:

_____
District Attorney

See attached Encumbrance Form for date of funding approval by Comptroller.

EXHIBIT "A"

PROJECT DESCRIPTION AND RESPONSIBILITIES

FPN: 251265-3

This exhibit forms an integral part of the Agreement between the State of Florida, Department of Transportation and

Miami-Dade County Park and Recreation Department

Dated_____

PROJECT LOCATION:

The project ____ is X___ is not on the National Highway System.

The project ____ is X___ is not on the State Highway System.

PROJECT DESCRIPTION:

SPECIAL CONSIDERATIONS BY AGENCY:

The audit report(s) required in the Agreement shall include a Schedule of Project Assistance that will reflect the Department's contract number, the Financial Project Number (FPN), the Federal Authorization Number (FAN), where applicable, the amount of state funding action (receipt and disbursement of funds), any federal or local funding action, and the funding action from any other source with respect to the project.

The Agency is required to provide a copy of the design plans for the Department's review and approval to coordinate permitting with the Department, and notify the Department prior to commencement of any right-of-way activities.

The Agency shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

a) Phase 18 (Planning) was completed on 11/14/2003.
b) Phase 38 (Design) was completed on 01/22/2010.
c) Right-of-Way requirements identified and provided to the Department by 3/30/2010.
d) Right-of-Way to be certified by 06/30/2010.
e) Phase 58 (Construction) contract to be let by 09/19/2010.
f) Construction to be completed by 09/29/2012.

If this schedule cannot be met, the Agency will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of federal funding.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

Legislative Notes

Agenda Item:	**8M1A**
File Number:	**110506**
Committee(s) of Reference:	**Board of County Commissioners**
Date of Analysis:	**April 19, 2011**
Type of Item:	**Resolution**

Summary

This resolution authorizes a Local Agency Program Supplemental Agreement with the Florida Department of Transportation (FDOT) for $900,000 in grant funds for Black Creek Trail Segment A.

Black Creek Trail contains two parts; Segment A and Segment B. Segment A of Black Creek Trail is comprised of three (3) phases and Segment B does not have phases established.

The $900,000 in FDOT grant funds will allow for construction of one mile of trail within Black Creek Trail Segment A. According to the Miami-Dade Park and Recreation Department (MDPR), no new trail miles are being added as a result of this grant fund transfer.

Background and Relevant Legislation

The Black Creek Trail is one of ten (10) proposed new trails or proposed improvements to existing trails in Miami-Dade County's South Dade Greenway Network Master Plan (SDGNMP). The SDGNMP is an organized system of interconnecting linear corridors, crossing south Miami-Dade County from Kendall Drive at the north to Monroe County at the south, and from the Everglades to Biscayne Bay. The ten distinct corridors that make up SDGN include the following: Biscayne Trail, Black Creek Trail, Princeton Trail, Mowry Trail, Everglades Trail, Krome Trail, South Dade Trail, Southern Glades Trail, and Tallahassee Connector.

The SDGNMP calls for the development of 194 total trail miles; 147.4 miles of paved trails and 46.6 miles of unpaved trails. Within the 194 total trail miles, 36 miles comprise the use of wide shoulder or shared lanes on roadways, and the remaining 158.8 miles will be off-road, separated from automobile traffic.

The Black Creek Trail is a canal trail that crosses from the northwest to the southeast. The portion of the trail west of Krome Trail is to remain unpaved for hikers, mountain bikes and equestrians. Trail users on this portion of the trail will pass farms, cut through the eastern parts of farmland where crops are grown, and pass the Hammocks community, which has its own bike paths. The Black Creek Trail is the

closest connection of the SDGN to the West Kendall residential area. The south part of the canal is located at the western edge of the Kendall-Tamiami Executive Airport and the remainder of the trail travels through residential developments, the Cutler Ridge area, past the South Dade Government Center, and then into Black Point Park and Marina. The Black Creek Trail has a total of 17 trail miles and will be located in or impact several Miami-Dade County Commission Districts (District 7, 8, 9, 10 and11).

On January 20, 2011, the BCC approved Resolution R-21-11, authorizing a Declaration of Trail Maintenance Responsibilities (DOTM) of MDPR for improvements to the Black Creek Trail within South Florida Water Management District (SFWMD) property.

Budgetary Impact

The total project budget to design, permit and construct the Black Creek Greenway Trail, Segment A, which consists of three phases, is $3,973,000 (Resolution R-21-11).

The funding source is comprised of the following:

- $1,880,000 of Surface Transportation Program Grant funds; and
- $2,093,000 of Building Better Communities General Obligation Bonds (BBC-GOB) Project No. 51.

The proposed resolution is providing $900,000 in addition to the $3,973,000 project budget.

Additionally, the annual expenditure to maintain the facility (Segment A only) is $69,552 funded through the General Fund.

The cost of future trail maintenance is calculated per mile and on an annual basis (mi/yr) as follows:

Trail Maintenance	Cost
Landscape - (16 cycles/year to include mowing, pruning, tree care, mulching and litter removal)	$7400/mi/yr
Hardscape - Annually includes trail patching & crack filling, graffiti removal and sign repair)	$1800/mi/yr
Total	**$9200/mi/yr**

Segment A of Black Creek annual expenditure is calculated as follows: $9200 / mile/ yr x 7.56 miles = $69,552.

According to the Park and Recreation Department, an additional 9.5 miles is envisioned in the SDGNMP for the remaining portion of Black Creek Trail (Segment B). However, no funding is currently available for Segment B. Additionally, the current development of Segment A does not require the future development to be functional.

Questions

The following questions were posed to MDPR followed by their response:

- The $900,000 FDOT grant transfer is derived from funds allocated to Black Creek Trail Segment B to pay for Segment A; will this adversely affect the future of Segment B construction?

MDPR has not secured all the funding necessary to begin Segment B so this transfer will not affect the project.

- Is it possible that Segment B will be eliminated if funding is not available?
  No, this project is considered to be a part of a long range development.
- Is funding established for all three phases in order to complete Segment A?
  Information not available at time of printing this analysis.

Additional Information

The Park and Recreation Department has provided additional information relating to the Black Creek Trail Segment A budget to include the following:

- The $3,973,000 cost reflected in the Manager's Memo for the Maintenance Agreement approved under Resolution R-21-11 is the **base construction contract cost only**.
- Budget for the Black Creek Trail Segment A total is $6,175,000,
- Funding for Black Creek Trail Segment A **assumes approval of the grant reprogramming** ($900,000).

Funding for Black Creek Trail Segment A (including grant reprogramming):

FDOT - FM2512652 FY2004/05 (Design)	$150,000
FDOT - FM2512653 FY2009/10 (Construction)	$1,880,000
FDOT - FM4209161 FY2010/11 (Construction)	$900,000
GOB Site 51-70362	$2,970,000
GOB Site 145-70409	$275,000
TOTAL	$6,175,000

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