

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

Meeting Date:	February 1, 2022	<input checked="" type="checkbox"/>	Consent	<input type="checkbox"/>	Regular
		<input type="checkbox"/>	Workshop	<input type="checkbox"/>	Public Hearing

Department:	Engineering & Public Works Department
Submitted By:	Engineering & Public Works Department
Submitted For:	Roadway Production Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: adopt a Resolution to approve a Highway Maintenance and Right-of-Way Acquisition Memorandum of Agreement (MOA) with the Florida Department of Transportation (FDOT) for the right-of-way acquisition, construction, operation, and maintenance of the I-95 interchange improvements impacting 6th Avenue South from west of Grove Street to east of South C Street (Project).

SUMMARY: Adoption of this Resolution approving the MOA will support the right-of-way acquisition and construction planned by FDOT for the Project. 6th Avenue South, a Palm Beach County (County) roadway, will be improved as part of the Project. These improvements will include longer turn lanes on 6th Avenue South, dedicated right turn lanes for eastbound and westbound I-95 on ramps, designated bike lanes, and signal replacements. The MOA is required to address Project impacts to County road right-of-way, and to allow FDOT to convey right-of-way it acquires for the Project to the County, upon completion of the Project. The County will also accept operation and maintenance of the improvements along 6th Avenue South upon completion. Construction and right-of-way acquisition will be entirely funded by FDOT. Districts 3 & 7 (YBH)

Background and Justification: Construction of the Project will impact County road right-of-way and will include roadway milling and resurfacing, reconstruction, and widening to support capacity and safety improvements on 6th Avenue South at the interchange with I-95. The Engineering Department has determined that the improvements are beneficial to the County. FDOT requires execution of this MOA to provide authority for FDOT to construct improvements within County road right-of-way, for the County to accept conveyance of the acquired non-limited access right-of-way along 6th Avenue South, and for the County to maintain the improvements along 6th Avenue South after completion of the Project.

Attachments:

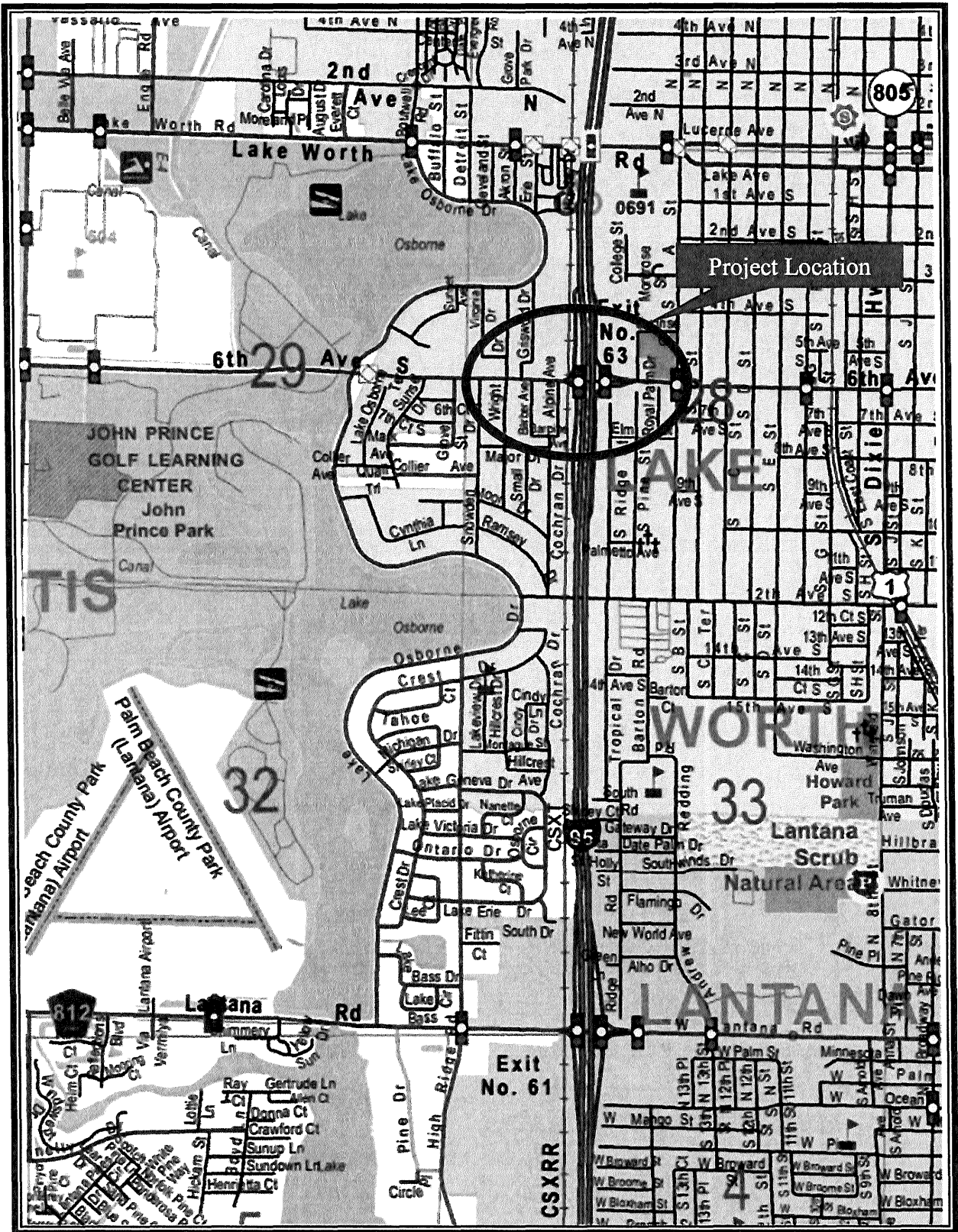
1. Location Map
2. Resolution (5)
3. FDOT MOA with Exhibits A, B, and C (5)

Recommended by: <i>wsc TMB</i> <i>Kuf</i> YBH/TEL	 County Engineer	12/23/2021 Date
Approved By: _____	 Assistant County Administrator	1/6/22 Date

PROJECT LOCATION

SR 9/ I-95 AT 6TH AVENUE SOUTH INTERCHANGE IMPROVEMENTS

FDOT NUMBER 436963-1-52-01



LOCATION MAP

RESOLUTION NO. R-2021-

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, APPROVING THE HIGHWAY MAINTENANCE AND RIGHT OF WAY ACQUISITION MEMORANDUM OF AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION CONCERNING THE I-95 AND 6TH AVENUE SOUTH INTERCHANGE PROJECT.

WHEREAS, the Florida Department of Transportation (FDOT) intends to construct improvements of the interchange at State Road 9/I-95 and 6th Avenue South (“Project”); and

WHEREAS, the FDOT is the owner of I-95, and Palm Beach County (County) is the owner of 6th Avenue South; and

WHEREAS, the Project will involve the acquisition of various property interests along I-95 and portions of 6th Avenue South; and

WHEREAS, upon completion of the Project, FDOT intends to transfer property interests acquired along 6th Avenue South to the County; and

WHEREAS, the Highway Maintenance and Right-of-Way Acquisition Memorandum of Agreement (MOA) establishes the terms under which the FDOT will transfer acquired property interests to the County, and the terms under which the County will accept property interests along 6th Avenue South; and

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

(Intentionally Left Blank)

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. The recitations set forth herein above are true, accurate and correct and are incorporated herein.
2. The BCC hereby approves the MOA with the FDOT.
3. This Resolution will take effect upon its adoption.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Commissioner, Robert S. Weinroth, Mayor	-
Commissioner Gregg K. Weiss, Vice Mayor	-
Commissioner Maria G. Marino	-
Commissioner Dave Kerner	-
Commissioner Maria Sachs	-
Commissioner Melissa McKinlay	-
Commissioner Mack Bernard	-

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____ 2022.

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

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

JOSEPH ABRUZZO,
CLERK OF THE CIRCUIT COURT
& COMPTROLLER

By: ybh/tel
Assistant County Attorney
Yelizaveta B. Herman

By: _____
Deputy Clerk

APPROVED AS TO TERMS
AND CONDITIONS

BY: Kate O'Connell
Division Director
Morton L. Rose

ATTACHMENT 3

SECTION No.: 93220-2482
FM No.: 436963-1-52-01
AGENCY: Palm Beach County
C.R. No.: 6th Avenue South

**DISTRICT FOUR
HIGHWAY MAINTENANCE AND RIGHT-OF-WAY ACQUISITION
MEMORANDUM OF AGREEMENT**

THIS AGREEMENT made and entered into this _____ day of _____, 2021, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT** and **PALM BEACH COUNTY**, a political subdivision of the State of Florida, and a municipal corporation existing under the Laws of Florida, hereinafter called **AGENCY**, collectively referred to as Parties.

WITNESSETH:

WHEREAS, the **DEPARTMENT** has jurisdiction over SR 9 / I-95 and the **AGENCY** has jurisdiction over 6th Avenue South, as part of the **PALM BEACH COUNTY** roadway system from Congress Avenue to South Dixie Highway; and

WHEREAS, pursuant to Sections 339.07, 339.08 and 339.12, Florida Statutes and Federal funding provisions, the **DEPARTMENT** is authorized to undertake projects within the **AGENCY**'s geographical limits and the **AGENCY** is desirous of having this improvement constructed; and

WHEREAS, pursuant to such authority, the **DEPARTMENT** and the **AGENCY** are desirous of having the **DEPARTMENT** construct certain improvements more particularly described as Financial Project ID 436963-1, which involves improvement of the interchange at SR 9 / I-95 at 6th Avenue South; hereinafter referred to as the "Project", as depicted in **Exhibit B**, and more particularly described in **Exhibit A**; and

WHEREAS, the Parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each Party; and

WHEREAS, the Project will involve the acquisition of various property interests along the Project corridor, including along 6th Avenue South; and

WHEREAS, the **DEPARTMENT** plans to construct the Project and conduct right of way acquisition and related activities, including eminent domain proceedings, on the Project for and on behalf of the **AGENCY** to prepare the Project for construction; and

WHEREAS, the **DEPARTMENT** will conduct its right of way acquisition activities in accordance with its right of way procedures and applicable federal acquisition requirements; and

WHEREAS, the Parties agree that it is in the best interest of the public to promote a cooperative effort between the **DEPARTMENT** and the **AGENCY** for the successful completion of the Project.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, this Agreement sets forth and outlines the following agreements between the DEPARTMENT and the AGENCY concerning the performance of acquisition and maintenance activities by the AGENCY and the DEPARTMENT for the DEPARTMENT'S Project:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. **Right of Way:** Upon completion of its acquisition and construction activities for the Project, the DEPARTMENT will convey and the AGENCY will accept a clear markable title for properties acquired along the AGENCY facilities, except for areas designated as limited access right of way shown in **Exhibit C**. If for some reason the DEPARTMENT does not construct the Project, any acquired property, except for areas designated as limited access right-of-way, shall be conveyed to the AGENCY and the AGENCY shall accept the property and comply with all regulations. Acquired property shall be conveyed by Quit Claim Deed containing a reverter clause limiting the use to highway purposes including constructing, installing, operating, and maintaining, with regard to roadway facilities, utilities, and related facilities on the property (collectively "Facilities"). Facilities shall include roadways, earth embankment fill, drainage facilities for transporting water, both above ground (swales) and buried (pipes and structures) to or from water retention areas, sidewalks, utilities, and traffic control devices and foundations in accordance with all federal and state regulations.
3. **Utilities**
 - a. The AGENCY agrees and affirms that the DEPARTMENT may pursue any available legal remedies, including those in Sections 337.403-404, Florida Statutes, against any utility that the DEPARTMENT finds to be unreasonably interfering with the Project. The DEPARTMENT shall prepare, in consultation with the AGENCY, any notice pursuant to Section 337.403 (Notice) and the AGENCY will assist, if necessary, in giving the Notice to the interfering utility or its agent. The AGENCY shall not be responsible for any costs related to any utility relocation required or as a result of the Project. The Agency agrees to enter into utility subordination agreements or accept assignment thereof, with the affected utility owners having facilities within existing utility easements, thereby assuming liability for future utility relocations within the AGENCY right of way and proposed right of way.
 - b. Notwithstanding any other provision herein to the contrary, the DEPARTMENT shall not be responsible for any costs or attorney fees arising out of any liabilities or obligations incurred regarding the right of way after the transfer of property.
4. The DEPARTMENT has undertaken and obtained the approval of Federal participation for the Project. The AGENCY is responsible for additional Project costs determined to be Federal Aid Non-Participating. The AGENCY grants to the DEPARTMENT all rights necessary to enter and construct the Project.

5. The AGENCY shall allow the DEPARTMENT and its contractors to enter onto the existing AGENCY property. No additional permit or agreement from the Agency shall be required to construct this Project.
6. In accordance with Title 23, U.S. Code, Section 116, and Federal Highway Administration regulations issued pursuant thereto, there must be an agreement with the AGENCY to maintain the project.
7. Maintenance prior to and during construction:

The following shall apply to areas designated in **Exhibit C** as non-limited access right-of-way (areas outside limited access right-of-way):

Prior to construction of the Project by the DEPARTMENT, the AGENCY shall continue to maintain the existing roadway (6th Avenue South from west of Grove Street to South C Street) and any property owned by the AGENCY until the DEPARTMENT begins construction of the PROJECT. The DEPARTMENT will not be responsible for mowing and litter removal outside of the limited access areas.
8. Upon "final acceptance" by the DEPARTMENT of the Project, (as "final acceptance" is described in the Standard Specifications for Roadway and Bridge Construction dated July 2019, as amended), and Notice thereof to the AGENCY, the AGENCY shall maintain the Project, at its own cost, in accordance with the following Federally and State accepted standards: (a) FDOT Design Manual (FDM), current edition (b) Florida Green Book dated 2016, as amended (c) Governing standards and specifications: FDOT Design Standards dated FY 2019-20, as amended (d) Standard Specifications for Roadway and Bridge Construction dated July 2019, as amended by contract documents, (e) Manual on Uniform Traffic Control Devices (MUTCD), current edition, or as amended, and (f) Palm Beach County Traffic Signal Installation Standards and Details 2019. Maintenance of said Project includes but is not limited to maintaining roadway improvements. The Department shall give the AGENCY ten (10) days' notice before final acceptance inspection. The AGENCY will have the opportunity to inspect and identify corrections to the PROJECT within ten (10) days' notice and the DEPARTMENT agrees to undertake those corrections prior to final acceptance so long as the corrections comply with the plans and specifications previously approved by both the DEPARTMENT and the AGENCY.
9. Warranties: The DEPARTMENT shall transfer any applicable warranties to the AGENCY.
10. Environmental permitting: If requested by the DEPARTMENT, the AGENCY shall sign as a joint applicant and be responsible for the permits related to the Project. Further the AGENCY shall be in compliance with all permits after the construction is complete and the right of way is transferred to the AGENCY. To the extent permitted by law, the AGENCY shall indemnify the DEPARTMENT for any violations by the AGENCY of any permits issued to the Department or jointly to the AGENCY and the DEPARTMENT after construction is complete. The AGENCY shall

execute all documentation required by the permitting agencies in a timely manner to accept transfer of the Project. For various occupancy permits the AGENCY shall be the applicant.

11. Utilities: The AGENCY shall cooperate with the DEPARTMENT, to the extent necessary, to accomplish utility relocations for this Project. This shall include, but not be limited to, entering into utility subordination agreements with the affected utility owners, thereby assuming liability for future utility relocations within the AGENCY right of way and proposed right of way. This shall also include having the AGENCY require the utility to relocate or adjust if the utility is there by permit, as necessary.
 - a. AGENCY'S Utilities: The AGENCY shall relocate and adjust its own utilities including connection with utility customers.
12. Signals: The AGENCY shall cooperate with the DEPARTMENT to effect signal and interconnect connections for the Project.
13. Unforeseen issues: If unforeseen issues shall arise, the AGENCY shall cooperate with the DEPARTMENT to the extent necessary to construct the Project. This shall include but not be limited to the execution of documents; allowing the Department and/or their contractors/consultants to enter upon the real property owned, leased, possessed and/or controlled by the Agency upon which the Project is to be constructed or any property adjacent thereto.
14. E-verify requirements: The AGENCY:
 - 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 AGENCY during the term of the contract; and
 - b. shall expressly require any contractors 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 contractor during the contract term.
15. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings as represented in the Final Proposed Construction plans. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.
16. This Agreement shall be governed, interpreted, and construed according to the laws of the State of Florida.
17. The DEPARTMENT will provide the AGENCY with as-builts as part of the final acceptance package.
18. The DEPARTMENT shall obtain any required railroad permits and cover the costs of all modifications to railroad signals, gates and approaches as required by the Project.

19. Additional Insured: The DEPARTMENT shall include the following paragraph as part of Section 7-13.2 of the Standard Specifications for Road and Bridge Construction, Division 1, General Requirements and Covenants (January 2021), as amended, applicable to this Project: Cause Palm Beach County to be an additional insured party on the Contractor's Public Liability and Property Damages Liability Insurance policies that insure the Contractor for the described work that it performs under the Contract.

20. List of Exhibits

- Exhibit A: Project Scope
- Exhibit B: Location Map
- Exhibit C: Areas Designated as Limited Access

21. All notices given or required under this Agreement shall be in writing and either hand-delivered with receipt acknowledged or sent by certified mail, return receipt requested. All notices delivered shall be directed as follows:

As to the DEPARTMENT:

Dan Marwood, Deputy Right of Way Manager - Production
Florida Department of Transportation
3400 West Commercial Boulevard
Fort Lauderdale, Florida 33309-3421
Phone: (954) 777-4238

With copy to:

Robin Brisebois, Right of Way Project Manager
Florida Department of Transportation
3400 West Commercial Boulevard
Fort Lauderdale, Florida 33309-3421
Phone: (954) 777-4249

As to the AGENCY:

David Ricks, PE, County Engineer
Palm Beach County
2300 N. Jog Road, 3rd Floor
West Palm Beach, FL 33411-2745

With copy to:

Morton L. Rose, PE, Director of Roadway Production
Palm Beach County Engineering
2300 N Jog Road, 3rd Floor
West Palm Beach, Florida 33411-2745

Multiple copies of this Agreement may be fully executed by all Parties, each of which shall be deemed to be an original. The date entered above where indicated shall be the date the last Party signed this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year provided below.

AGENCY

ATTEST:
Joseph Abruzzo,
Clerk of the Circuit Court
and Comptroller

PALM BEACH COUNTY, A POLITICAL SUBDIVISION
OF THE STATE OF FLORIDA, by and through its
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Robert S. Weinroth, Mayor

Approved as to terms and conditions.

Approved as to form and legal sufficiency.

By: *Kate O. Janelle*
Morton L. Rose, P.E.
Roadway Production Division Director

By: _____
Yelizaveta B. Herman
Assistant County Attorney

DEPARTMENT

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

ATTEST:

By: _____
Executive Secretary
(SEAL)

By: _____
Director of Transportation Development
_____ day of _____, 20____

Approval:

Office of the General Counsel (Date)

SECTION No.: 93220-2482
FM No.: 436963-1-52-01
AGENCY: Palm Beach County
C.R. No.: 6th Avenue South

EXHIBIT A

PROJECT SCOPE

6th Avenue South from south of West Grove Street to South C Street - Roadway widening, roadway reconstruction, milling & resurfacing, sidewalk, and drainage improvements.

ADA: Existing features along 6th avenue south will be checked for compliance with ADA standards. Adequate sidewalks and curb ramps at intersections will be constructed.

DRAINAGE: Re-grade existing dry retention areas and relocation of exiting drainage structures due to widening.

LIGHTING: Replace existing lighting impacted by the proposed improvements

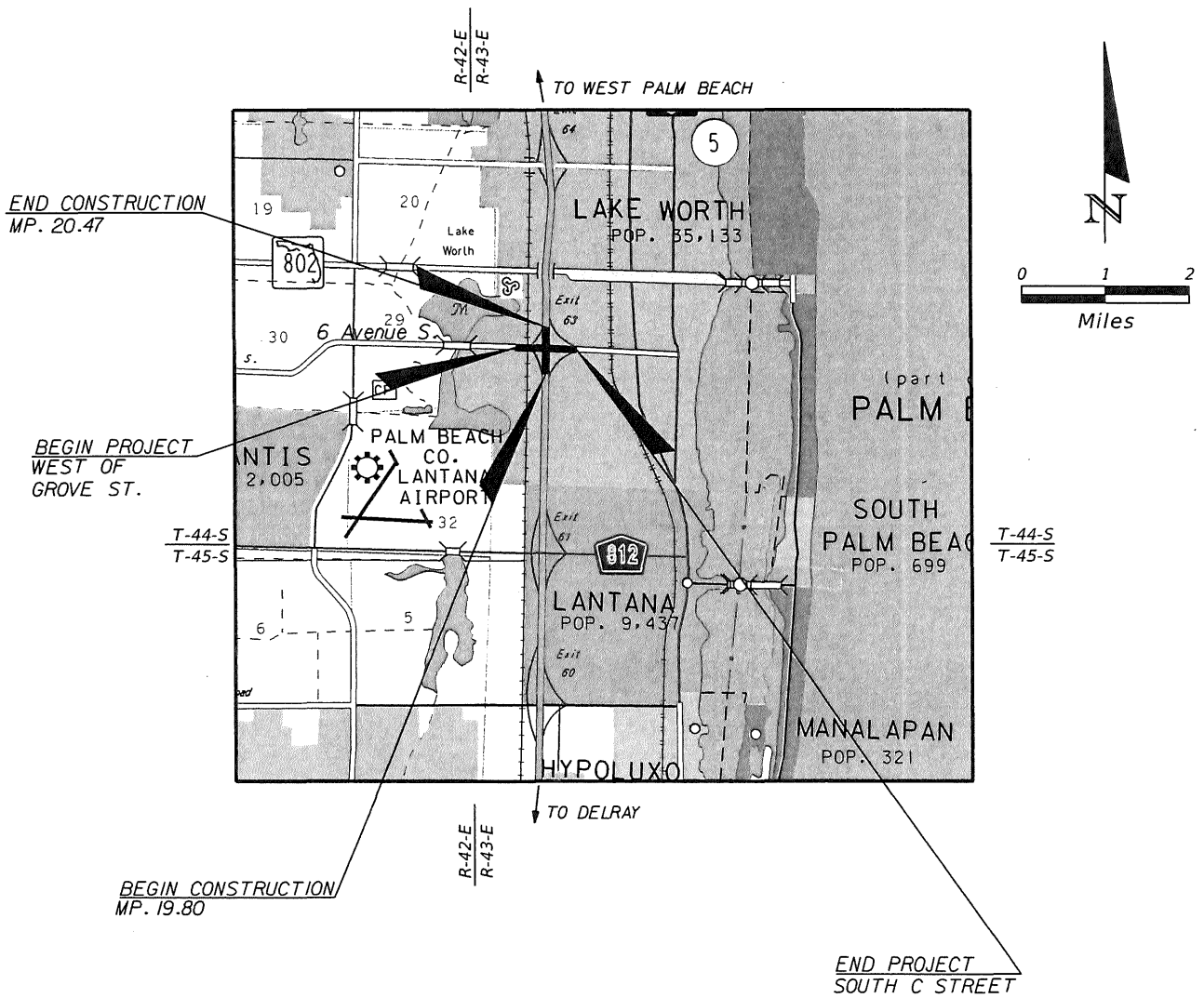
SIGNALIZATION: Replace all existing signal infrastructure at 6th Avenue South and I-95 SB exit/entrance ramps and NB I-95 exit/entrance ramps; replace one mast arm signal at 6th Avenue South and A Street.

SIGNING AND MARKING: Install new signing and pavement marking as required. Replace overhead cantilever sign structures on 6th avenue south.

RAILROAD: The existing overhead structures and gates will be replaced due to widening.

PERMITS: The FDOT will acquire in the AGENCY's name.

EXHIBIT "B" LOCATION MAP



(VICINITY MAP)
NOT TO SCALE

FLORIDA DEPARTMENT OF TRANSPORTATION
NOT A SURVEY

6TH AVENUE SOUTH

PALM BEACH COUNTY

				BY	DATE	PREPARED BY:	DATA SOURCE: N/A
				DRAWN			
REVISION	BY	DATE	CHECKED			FPID: 436963-1-52-01	COVER SHEET



I-95 AND 6TH AVE SOUTH
 FM NO. 436963-1-52-01

EXHIBIT C Page 1 of 1
 AREAS DESIGNATED AS LIMITED ACCESS