

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ -0-	-0-	-0-	-0-	-0-

ADDITIONAL FTE

POSITIONS (Cumulative) _____

Is Item Included in Current Budget? _____

Yes _____

No _____

Budget Acct No.: Fund _____ Dept. _____ Unit _____ Object _____
Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

This item has no additional fiscal impact.

At the time of actual construction contract award, the financial responsibilities of both parties will be determined and provided for in the funding of that contract. This will be presented to the Board for approval at that time.

C. Departmental Fiscal Review: _____

R.D. Ward

10/11/06

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

[Signature] *10-31-06*

OFMB

[Signature] *11/1/06*

Contract Dev. and Control

B. Approved as to Form and Legal Sufficiency:

[Signature] *11/02/06*

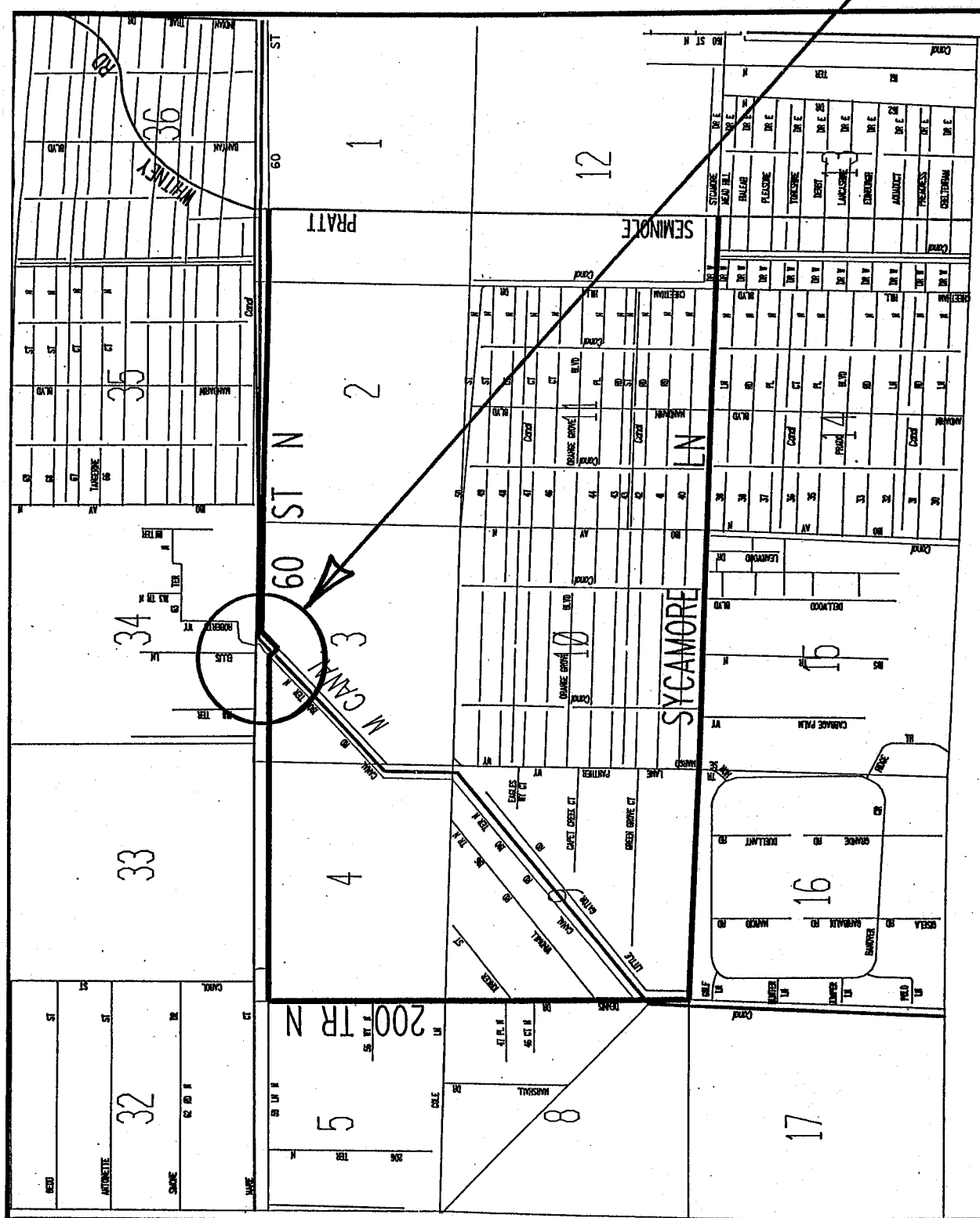
Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.



LOCATION SKETCH

AGREEMENT BETWEEN PALM BEACH COUNTY
AND
THE CITY OF WEST PALM BEACH
FOR
JOINT PROJECT PARTICIPATION
OF THE
"M" CANAL CROSSING AT 60TH STREET NORTH PROJECT

THIS AGREEMENT, hereinafter referred to as the AGREEMENT, made and entered into this _____ day of _____, 2006, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as the "COUNTY", and the CITY OF WEST PALM BEACH, hereinafter referred to as "CITY",

WITNESSETH:

WHEREAS, the COUNTY and the CITY are authorized to enter into this AGREEMENT pursuant to Section 163.01, Florida Statutes, as amended, which permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage; and

WHEREAS, the COUNTY has caused to be prepared an Alignment Study for 60th Street North from east of the City of West Palm Beach "M" Canal, west to 200th Trail North, herein after referred to as STUDY; and

WHEREAS, a portion of the STUDY involves various options for the 60th Street North crossing of the "M" Canal; and

WHEREAS, the CITY desires to improve the cross section of the "M" Canal, which would require that the existing crossing be reconstructed as part of the CITY'S canal improvement project; and

WHEREAS, the COUNTY and the CITY declare that it is in the public's interest to construct the "M" Canal crossing at a common location and to construct the "M" Canal improvements associated with the 60th Street North crossing as one contract, herein after referred to as PROJECT;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the COUNTY and the CITY do hereby agree as follows:

1. The recitals set forth above are hereby adopted and incorporated herein by this reference.
2. The COUNTY agrees to:
 - A. Design and obtain all required permits, including the CITY permit, for the PROJECT.
 - B. Develop the PROJECT with alternate crossings of the "M" Canal based on both bridge and culvert construction.

- C. Advertise and submit to bid the PROJECT plans and specifications. The COUNTY shall select and enter into a contract in its name with the lowest responsive, responsible bidder according to the COUNTY'S procurement procedures. However, prior to the award of the Contract, the COUNTY shall advise the CITY in writing of the proposed award, for its consideration and approval. If the CITY approval is withheld, the CITY must notify the COUNTY ten (10) days after receipt of the notification of the proposed award.
 - D. Obtain written concurrence from the CITY for payment of all Change Orders and Contractor pay applications, related to the construction of the CITY'S portion of the PROJECT.
- 3. The CITY agrees to reimburse the COUNTY for the design and construction of the CITY'S portion of the PROJECT, and agrees to not unduly withhold any CITY'S permits. The CITY'S portion includes the "M" Canal excavation cost, and the cost to the CITY if they were to replace the existing culvert crossing. It is presently estimated that the City's portion will be approximately 50% of the PROJECT cost. Final determination of costs will be developed based on actual bid prices received for the PROJECT. Present estimated CITY cost is approximately \$200,000.
 - 4. All provisions of this Agreement calling for the expenditure of ad valorem tax money by either the COUNTY or the CITY are subject to annual budgetary funding and should either Party involuntarily fail to fund any of their respective obligations pursuant to the AGREEMENT, this Agreement may be terminated. However, once the construction of the PROJECT has commenced, it shall be prosecuted to completion and this AGREEMENT shall be binding upon the parties and neither party shall have the right to terminate the subject AGREEMENT for the reason that sufficient funds are not available for the construction of the PROJECT.
 - 5. The COUNTY shall notify the CITY, in writing, of any change orders which increase the cost attributable to the construction of the CITY'S portion of the PROJECT to an amount greater than the contract amount. The CITY shall have 10 days to provide the COUNTY with written notice of its approval or disapproval of the change order. CITY approval is not to be unduly withheld. Any delay cost associated with the CITY'S failure to respond in writing, within the proscribed number of days set forth above, shall be the responsibility of the CITY.
 - 6. In the event that additional work and funding are required, the additional cost attributable to said construction of the CITY'S portion of the PROJECT, as outlined in the specifications for this project, is the responsibility of the CITY, unless such additional work is caused by the COUNTY, in which case such additional cost shall be borne by the COUNTY. In the event of an under run attributable to said construction of the CITY'S portion of the work, as outlined in the specifications, the CITY will be credited the excess amount.
 - 7. Costs shall be adjusted upon actual contract costs at completion of the project using contract unit prices and actual constructed quantities, said quantities being measured by the Palm Beach County Engineering and Public Works Department and the CITY. The CITY shall provide payment of any additional funds with 30 days of receipt of official notice from the COUNTY.

8. The CITY shall indemnify, defend, and hold harmless the COUNTY against any actions, claims, or damages arising out of the CITY'S negligence in connection with this AGREEMENT to the extent permitted by law. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement to indemnify the COUNTY for the COUNTY'S negligent acts or omissions.
9. The COUNTY shall indemnify, defend, and hold harmless the CITY against any actions, claims, or damages arising out of COUNTY'S negligence in connection with this AGREEMENT to the extent permitted by law. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement to indemnify the CITY for the CITY'S negligent acts or omissions.
10. MISCELLANEOUS PROVISIONS:

Notices. All notices, requests, consents and other communications required or permitted under this AGREEMENT shall be in writing and shall be hand delivered by prepaid express overnight courier or messenger service, or mailed by registered or certified mail to the following addresses:

As to COUNTY: Palm Beach County Engineering Department
Attention: Tanya McConnell, P. E.
Deputy County Engineer
PO Box 21229
West Palm Beach, FL 33416
Phone: 561-684-4019
Fax: 561-684-4167

As to CITY: City of West Palm Beach
Attention: Ken Rearden, P. E.
Director of Public Utilities
P O Box 3506
West Palm Beach, FL 33402
Phone: 561- 494-1040
Fax: 561- 494-1115


If either party changes its mailing address or designated recipient for notices, such change shall be communicated in writing to the other party within thirty (30) days of the change.

11. This AGREEMENT shall be construed by and governed by the laws of the State of Florida. Venue for any and all legal actions necessary to enforce the AGREEMENT shall be held in Palm Beach County, Florida.

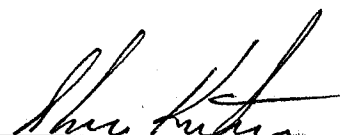
12. No remedy herein conferred upon any party is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
13. This AGREEMENT constitutes the entire contract between the parties hereto and supersedes all prior understandings if any. There are no other oral or written promises, conditions, representations, understanding or terms of any kind as conditions of inducement to the execution hereof and none have been relied upon by either party. Any subsequent conditions, representations, warranties or agreement shall not be valid and binding upon the parties unless they are in writing and signed by both parties and executed in the same manner as this AGREEMENT.
14. In the event any terms or provisions of this AGREEMENT shall be held invalid, such invalid terms or provisions shall not affect the validity of any other term or provision hereof and all such other terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid terms or provisions had never been a part of this AGREEMENT.
15. The COUNTY shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for as least three (3) years after completion of the PROJECT. The CITY shall have access to all books, records and documents as required in this section for the purpose of inspection or audit during normal business hours.
16. The parties hereto expressly covenant and agree that in the event either party is in default of its obligations herein, the party not in default shall provide to the party in default, thirty (30) days written notice to cure said default before exercising any of its rights as provided for in this AGREEMENT.
17. Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this AGREEMENT shall be borne by the respective parties, provided, however, that this clause pertains only to the parties to this AGREEMENT.
18. This AGREEMENT shall become effective upon its execution by the COUNTY and the CITY.
19. This AGREEMENT may be terminated, in writing, by either party if the PROJECT has not commenced within twelve (12) months of execution of this AGREEMENT by the respective parties.

IN WITNESS WHEREOF, the County of Palm Beach, Florida, has caused this AGREEMENT to be signed by the Chairman of the Board of County Commissioners and the seal of said Board to be affixed hereto and attested by the Clerk of this Board, pursuant to authority granted by said Board, and the City of West Palm Beach has caused this AGREEMENT to be signed in its name by its MAYOR and its seal to be affixed hereto, attested by its CLERK, the date and year first above written.

CITY OF WEST PALM BEACH

By: 
Lois Frankel, Mayor

ATTEST:

By: 
Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:  9/25/06
CITY Attorney

PALM BEACH COUNTY
ITS' BOARD OF COUNTY
COMMISSIONERS

By: _____
Addie L. Greene, Chairperson

ATTEST:

SHARON R. BOCK, CLERK &
COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
COUNTY Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: 
ENGINEERING