PALM BEACH COUNTY **BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting 1	Date:
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03-13-07

[X] Consent

[] Regular

Department:

[] Workshop

[] Public Hearing

Submitted By:

County Administration

County Administration

Submitted For:

Economic Development Office

I. EXECUTIVE BRIEF

Motion and title: Staff recommends motion to approve: A) an Interlocal Agreement with the City of South Bay totaling \$60,000 for the South Bay Park of Commerce for predevelopment costs; B) a budget transfer of \$60,000 from the Office of Community Revitalization Fund (3900) to the Economic Development Fund (1539); and C) a budget amendment of \$60,000 to recognize the transfer from Community Revitalization and appropriated to the City of South Bay.

Summary: The Interlocal Agreement will provide for the pre-development costs required for the purchase of the South Bay Park of Commerce by a master developer. (DW)

Background and Policy Issues:

In July 2005, the City of South Bay submitted a request for a business master developer to purchase a total of 100+ remaining parcels in the business park. Twelve proposals were submitted to the City. A Canadian based company, Milani Group, was awarded the contract which is in process. October 18, 2005, the Board approved the Countywide Community Redevelopment Team (CCRT) funds totaling \$60,000 for the South Bay Park of Commerce. The City will complete the surveying, quiet title to the front parcels, environmentals studies, site cleanup and other pre-development activities in order to prepare the site for purchase.

Attachments:

- 1. Interlocal Agreement
- 2. **Budget Transfer**
- 3. **Budget Amendment**

Recommended By: conomic Development Director Assistant County Administrator

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	20 <u>07</u>	20 <u>08</u>	20 <u>09</u>	20 <u>10</u>	20 <u>11</u>		
Capital Expenditures Operating Costs External Revenues Program Income (PBC) In-Kind Match (PBC)	0 \$60,000 0 0	0 0 0 0	0 0 0 0	0 0 0 0	0 0 0 0		
NET FISCAL IMPACT	<u>\$60,000</u>	-					
# ADDITIONAL FTE POSITIONS (Cumulative)						
Is Item Included In Current Budget? Yes X No							
Dudad Assessed No. D. 10000 D.							

Budget Account No: Fund 3900 Department 366 Unit X114 Object Reporting Category

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

C. Departmental Fiscal Review: ______ Mallota

III. REVIEW COMMENTS

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

01 3-5-07 0FMB (N) 07

B. Legal Sufficiency:

Assistant County Attorney

Contract Dev. and Control

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.

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INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY OF SOUTH BAY

THIS Interlocal Agreement, (hereinafter "Agreement"), is made as of the _____ day of _____, 2007, by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter "COUNTY") and the City of South Bay, a municipal corporation existing under the laws of Florida, (hereinafter "SOUTH BAY"), each one constituting a public agency defined in Part I of Chapter 163, Florida Statutes.

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969", authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage, thereby providing services and facilities that will harmonize geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into Interlocal Agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS SOUTH BAY has requested COUNTY to fund an amount not to exceed <u>sixty thousand dollars (\$60,000.00)</u> for predevelopment costs associated with the South Bay Park of Commerce within the City of South Bay; and

WHEREAS, both the COUNTY and SOUTH BAY support the predevelopment/site preparation costs for the South Bay Park of Commerce; and

WHEREAS, improvements serve a public purpose for future business and job opportunities.

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

Section 1. Recitals.

The above recitals are true and correct and are incorporated herein.

Section 2. <u>Term.</u>

The term of this Agreement shall be effective on the date of execution of this Agreement by both parties and shall continue in full force and effect until **September 30, 2009**, unless otherwise terminated as provided herein. The COUNTY reserves the right to extend this Agreement for good cause. Any extensions shall be in writing and executed by both parties.

Section 3. Project to be Completed by SOUTH BAY:

SOUTH BAY shall provide predevelopment/site preparation services to the South Bay Park of Commerce (hereinafter the "Project") as more specifically described in the Scope of Work, which is attached hereto and incorporated herein as Exhibit "A". The Project, as set forth in this Agreement, shall be performed on 100+ acres off Highway 27.

Section 4. Responsibilities and Duties:

- A. COUNTY shall reimburse SOUTH BAY an amount not to exceed Sixty Thousand Dollars (\$60,000.00) for the Project, provided SOUTH BAY performs pursuant to the terms and conditions of this Agreement. SOUTH BAY agrees that the extent of COUNTY'S responsibility under this Agreement shall be limited solely to funding, as stated above.
- B. SOUTH BAY shall secure all necessary work for the South Bay Park of Commerce in accordance with this Agreement.

- C. SOUTH BAY shall perform the Project in accordance with Exhibit "A".
- D. SOUTH BAY shall use its own personnel and/or subcontractors to perform this Agreement.
- E. Upon termination or expiration of this Agreement, SOUTH BAY shall continue to market and assist in the development of the South Bay Park of Commerce.

Section 5. <u>Rates, Fees and Charges:</u>

SOUTH BAY shall not assess any property owners for the predevelopment activities. In the event the funding provided to SOUTH BAY by COUNTY does not cover all of SOUTH BAY'S expenses to complete the Project, SOUTH BAY shall seek all available grant opportunities for any remaining costs.

Section 6. <u>Payments/Invoicing and Reimbursement:</u>

The County shall reimburse SOUTH BAY upon completion of each task as identified in Exhibit "A". SOUTH BAY shall submit all invoices to the COUNTY identifying the Project, including SOUTH BAY'S total expenditure for the Project, and identifying the amount due and payable to SOUTH BAY. Invoices shall be itemized in sufficient detail for prepayment audit and shall be supported by copies of the corresponding paid consultant, contractor, and/or vendor invoices which substantiate proof of payment and performance. SOUTH BAY shall supply any further documentation such as copies of paid receipts, canceled checks, invoices and other documents deemed necessary by the COUNTY within seven (7) calendar days of request by the COUNTY. Invoices received from SOUTH BAY will be reviewed and approved by the County's Economic Development Office, indicating that expenditures have been made in conformity with this Agreement and will then be sent to the COUNTY'S Finance Department for final approval and payment. Invoices will normally be paid within thirty (30) days following approval. Failure to submit completed reports within the specified timeframe will result in a delay in payment. In no event shall COUNTY provide advance funding to SOUTH BAY.

The project will be initiated by SOUTH BAY on October 1, 2006. Only those costs incurred by SOUTH BAY subsequent to the date of said Project initiation and prior to the expiration date of this Agreement are eligible for reimbursement by County pursuant to the terms and conditions hereof. In the event SOUTH BAY ceases or suspends the Project for any reason, any remaining unpaid portion of this Agreement shall be retained by COUNTY and COUNTY shall have no further obligation to honor reimbursement requests submitted by SOUTH BAY. The determination that SOUTH BAY has ceased or suspended the Project shall be made by COUNTY and SOUTH BAY agrees to be bound by COUNTY'S determination.

Section 7. Access and Audits:

SOUTH BAY shall maintain books, records, and documents to justify all charges, expenses and costs incurred under this Agreement and in performing the Project, in accordance with Generally Accepted Accounting Principles (GAAP), as promulgated by the Government Finance Officers Association from time to time. The COUNTY shall have access to all books, records, and documents as required in this Agreement, and for at least three (3) years after completion of the Project. In the event any work is subcontracted by SOUTH BAY, SOUTH BAY shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.

Section 8. <u>Independent Contractor:</u>

SOUTH BAY is, and shall be, in the performance of all work, services and activities under this Agreement an Independent Contractor and not an employee, agent or servant of COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to SOUTH BAY'S sole direction, supervision, and control.

SOUTH BAY shall exercise control over the means and manner in which it and its employees perform the work, and in all respects SOUTH BAY'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

SOUTH BAY does not have the power or authority to bind the COUNTY in any promise, Agreement or representation.

Section 9. <u>Personnel:</u>

SOUTH BAY represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereinunder shall be performed by SOUTH BAY or under its supervision, and personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

All of SOUTH BAY'S personnel and all subcontractors while on County premises will conduct themselves in an acceptable manner and follow acceptable safety and security procedures.

Section 10. <u>Indemnification:</u>

Each party shall be liable for its own actions and negligence and, to the extent permitted by law, SOUTH BAY shall indemnify, defend, and hold harmless COUNTY against any and all actions, claims, or damages arising out of SOUTH BAY'S actions in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by either party to be sued by a third party.

This indemnification provision shall survive the expiration or termination of this Agreement.

Section 11. <u>Annual Appropriation:</u>

The obligations of the COUNTY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of County Commissioners of Palm Beach County.

Section 12. <u>Insurance</u>:

- A. Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, SOUTH BAY acknowledges it is either self-insured under State Sovereign Immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature, which the COUNTY shall recognize as acceptable coverage for General Liability and Automobile Liability insurance; or
- B. In the event that SOUTH BAY does not rely exclusively on sovereign immunity as provided by Section 768.28, Florida Statutes, SOUTH BAY shall maintain third-party Commercial General Liability and Automobile Liability at limits not less than \$1,000,000 Per Occurrence. With respect to Commercial General Liability, SOUTH BAY shall add the COUNTY as an "Additional Insured."
- C. SOUTH BAY agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statutes, Chapter 440.
- D. SOUTH BAY shall provide a statement or Certificate of Insurance evidencing insurance,

self-insurance and/or sovereign immunity status, which COUNTY agrees to recognize as acceptable for the above required coverages. The Certificate Holder will be: Palm Beach County.

Section 13. Breach and Opportunity to Cure:

The parties expressly covenant and agree that in the event either party is in default of its obligations under this Agreement, each party shall have thirty (30) days written notice before exercising any of its rights.

Section 14. Enforcement Costs:

Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties.

Section 15. Notice:

All notices required to be given under this Agreement shall be in writing, and deemed sufficient to each party when sent by United States Mail, postage prepaid, to the following:

As to the "COUNTY":

Kevin Johns, Director Economic Development Office 301 N. Olive Avenue, 10th FL West Palm Beach, Florida 33401

with a copy to:

Dawn Wynn, Assistant County Attorney County Attorney's Office 301 N. Olive Avenue, 6th Floor West Palm Beach, Florida 33401

As to the "SOUTH BAY":

Tony Smith, City Manager City Hall 335 SW Second Avenue South Bay, Florida 33493

Section 16. <u>Modification and Amendment:</u>

Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith.

Section 17. Remedies:

This Agreement shall be governed by and in accordance with the laws of the State of Florida. Any legal action necessary to enforce this Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity 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.

Section 18. <u>Joint Preparation:</u>

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial constraint, be construed more severely against one of the parties than the other.

Section 19. Equal Opportunity:

COUNTY and SOUTH BAY agree that no person shall on the grounds of race, color, creed, sex, national origin, disability, religion, ancestry, marital status, or sexual orientation be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement. SOUTH BAY will ensure that all contracts let for the project pursuant to the terms of this Agreement will contain a similar non-discrimination and equal opportunity clause.

Section 20. Arrears:

SOUTH BAY shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. SOUTH BAY further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

Section 21. Execution:

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 22. Filing:

A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

Section 23. Termination:

This Agreement may be terminated by either party to this Agreement upon sixty (60) days written notice to the other party.

Section 24. Compliance with Codes and Laws:

SOUTH BAY shall abide by all applicable federal, state and local laws, orders, rules and regulations when performing under this Agreement. SOUTH BAY further agrees to include this provision in all subcontracts issued as a result of this Agreement.

Section 25. <u>Public Entity Crime Certification:</u>

As provided in F.S. 287.132-133, as may be amended from time to time, by entering into this Agreement or performing any work in furtherance hereof, SOUTH BAY shall have its contractors certify that their affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3)(a).

Section 26. Severability:

If any section, paragraph, sentence, clause or provision of this Agreement is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding

shall not affect the remaining portions of this Agreement.

Section 27. Entirety of Agreement:

COUNTY and SOUTH BAY agree that this Agreement sets forth the entire Agreement between the parties, and there are no promises or understandings other than those stated herein.

Remainder of this page intentionally left blank

IN WITNESS WHEREOF, the undersigned parties have executed this Interlocal Agreement on the day and year first written above.

ATTEST: SHARON R. BOCK, CLERK & COMPTROLLER	PALM BEACH COUNTY, FLORIDA, BY its BOARD OF COUNTY COMMISSIONERS
By: Deputy Clerk	By:Addie L. Greene, Chairperson
Approved as to Form and Legal Sufficiency: By: Assistant County Attorney	Approved as to Terms and Conditions: By: Kevin Johns, Director Economic Development Office
ATTEST: CITY OF SOUTH BAY, I By: Virginia & Walker Gry Clerk	BY ITS CITY COUNCIL By: Mayor Mayor
Approved as to Form and Legal Sufficiency: By: City Attorney	

Exhibit A

Scope of Services

This contract covers all work performed by the City of South Bay for predevelopment of the South Bay Park of Commerce for future occupants. Costs may cover but are not limited to the following:

Acquisition of Front Parcels (May Be Necessary)
Adequate Access on/off Hwy 27/SR 25 to the Park.
Environmental Studies
Site Cleanup from Previous Usage
Soils Tests
Surveying
Title Search

AUTHORIZED REPRESENTATIVE

*MIT-CERT (10/96)

OFMB Department - Posted

BOARD OF COUNTY COMMISSIONERS PALM BEACH COUNTY, FLORIDA

BUDGET TRANSFER

BGEX 610-022807*1130

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Board of County Commissioners

FUND 3900 Capital Outlay Fund

Use this form to provide budget for items not anticipated in the budget.

ACCT.NUMBE	RACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF	REMAINING BALANCI
EXPENDITURE	E <u>S</u>							
366-X006-9909	South Bay	60,000	60,000		60,000	0	0	(
821-9100-9909	Transfer to Eco. Development	0	0	60,000	0	60,000	0	60,00
	•	0	0		0	0	0	(
	Total Appropriations & Expenditures			60,000	60,000			
Office of Comm	unity Revitalization	Signatures		Date		By Board of County Commiss At Meeting of		Commissioners
	DEPARTMENT/DIVISION Budget Department Approval	Control It	sling	3-5-07	<u></u> -		Deputy Clerk to the	

W. 30/01

BUDGET AMENDMENT

BOARD OF COUNTY COMMISSIONERS PALM BEACH COUNTY, FLORIDA

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Fund 1539

Economic Development Fund

Advantage Document Numbers:

EVOENDED

BGEX BGRV

Use this form to provide budget for items not anticipated in the budget.

ACCT.NUMBER ACCOUNT NAME	ADOPTED BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 2/20/2007	REMAINING BALANCE
Revenues							
1539-800-8000-8207 Transfer from OCR Capital Outlay Fund 3900	2,398,186	2,662,186	60,000	0	2,722,186	0	2,722,186
Total Receipts and Balances	7,021,003	7,272,542	60,000	0	7,332,542		
Expenditures							
1539-764-1190-6505 Design, Engineering & Management	0	0	60,000	0	60,000	0	60,000
Total Appropriations & Expenditures	7,021,003	7,272,542	60,000	0	7,332,542		
	Signatures			Date		By Board of County (Commissioners
Economic Development						At Meeting of	
INITIATING DEPARTMENT/DIVISION		John				March 13, 2007	
OCR BUDGET DEPARTMENT APPROVAL	Edway	W10./s	My	2/26/6		Deputy Clerk to the Board of County Com	missioners
OFMB Department - Posted		_				,	