

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X
 Budget Account No.: Fund _____ Department _____ Unit _____ Object _____
 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact: Future cost incurred by the County for this type of project will be funded in the Beach Improvement Fund w/20% reimbursable by the Town and 50% reimbursable by FDEP.

C. Department Fiscal Review: *J*

Annual fiscal impact to be determined upon completion of project schedule, which will be approved by the Board through the Budget process or through an agenda item mid-year.

III. REVIEW COMMENTS

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

Estm Total Project Cost is \$6.8 million

[Signature] 5-8-07
 OFMB
 5/4/07

[Signature] 5/8/07
 Contract Development and Control

B. Legal Sufficiency:

This Contract complies with our contract review requirements.

[Signature]
 Assistant County Attorney

C. Other Department Review:

 Department Director

Background and Justification (continued from Page 1):

The study indicated that the shoreline has gone through cycles of accretion and erosion with the long-term trend being erosion. It evaluated multiple engineering alternatives (no action, beach nourishment, groins and breakwaters) and their respective environmental impacts. As part of the project permitting process, an Environmental Impact Statement (EIS) is required under the National Environmental Policy Act (NEPA). The EIS process will provide for input from the public, commenting agencies and permitting agencies in further evaluating the proposed project alternatives. The County and the Town of South Palm Beach will then select an appropriate engineering alternative and the County will prepare a project schedule. The schedule will be used as a guideline for funding requests through 2032. The County's obligation to perform is contingent upon annual appropriation of funds of approximately \$6.8 million over a period of twenty-five (25) years.

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY
AND THE TOWN OF SOUTH PALM BEACH**

THIS AGREEMENT is made and entered into on the ____ day of _____, 2007, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "COUNTY") and the TOWN OF SOUTH PALM BEACH, a municipal corporation in the State of Florida, (the "TOWN"), each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes, and both being hereinafter referred to collectively as the "parties".

WITNESSETH

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 and thereby to provide 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 that such agencies share in common and that each might exercise separately; and

WHEREAS, pursuant to Chapter 125.01, Florida Statutes, the Board of County Commissioners is empowered to establish and administer programs of beach erosion control and to enter into agreements with other governmental agencies within or outside the boundaries of the COUNTY for joint performance, or performance of one unit on behalf of the other, of any of either governmental entity's authorized functions; and

WHEREAS, pursuant to Chapter 166, Florida Statutes, the TOWN is empowered to exercise any governmental, corporate, and proprietary power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the COUNTY and the TOWN intend to make the most efficient use of their powers by cooperating with each other on the South Palm Beach Erosion Control Project (the "PROJECT") within the municipal limits of the Town of South Palm Beach, Florida; and

WHEREAS, the COUNTY and the TOWN desire to establish their respective roles in the PROJECT to make the most efficient use of their respective resources; and

WHEREAS, the TOWN wishes to cost share with the County, by reimbursing 20% of the total eligible PROJECT costs to the County.

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

1. Recitals. The above recitals are true and correct and incorporated herein.
2. Purpose of the Agreement. The purpose of this Agreement is to provide a mechanism for funding the PROJECT, and to set forth the terms, conditions and obligations of each of the respective parties hereto.
3. The PROJECT.
 - A. Description. The PROJECT consists of an undetermined erosion control alternative which shall be located within the boundaries of the Town of South Palm Beach. The total PROJECT cost is estimated to be 6.8 million dollars.
 - B. PROJECT components. PROJECT components include project management; engineering; design; permitting; construction; mitigation; and environmental and project performance monitoring.
4. Term. The term of this Agreement shall be from the date of execution through September 30, 2032, unless otherwise provided herein. Work conducted on this PROJECT by the County and its consultants/contractors beginning on or after April 1, 2007 shall be eligible for reimbursement by the TOWN.
5. Funding. The parties agree that the TOWN will cost share in the eligible expenses for the eligible PROJECT area as described in this Agreement. Each party agrees to diligently pursue the approval and procurement of its funding obligation.
6. COUNTY Obligations.
 - A. The COUNTY shall pay all expenses of the PROJECT in anticipation of partial reimbursement from the TOWN.
 - B. The COUNTY shall submit invoices for payment to the TOWN not more frequently than quarterly. For reimbursement to occur, the COUNTY shall submit invoices to the TOWN that shall include a reference to this Agreement, identify the PROJECT, identify the amount due and payable to the COUNTY and include a statement certifying that the invoice amount includes only eligible expenses and said eligible expenses have been incurred and paid. Invoices shall be in sufficient detail for pre-audit and post-audit review. The COUNTY shall provide any further documentation deemed necessary by the TOWN.

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- C. The COUNTY shall maintain adequate records to justify all charges, expenses and costs represented by the invoice amounts for at least three (3) years after completion of the PROJECT or termination of the Agreement, whichever occurs last. The TOWN shall have access to all books, records, and documents related to the PROJECT as required in this paragraph for purposes of inspection or audit during normal business hours.
 - D. The County shall submit requests for State funding assistance, provide a copy of any such submittal to the TOWN, and seek the TOWN's support.
 - E. The COUNTY shall provide the TOWN with copies of all contracts, plans and specs. The COUNTY shall invite the TOWN to pre-bid and pre-construction meetings.
 - F. The COUNTY shall provide the TOWN with a copy of the PROJECT schedule and all revisions thereto.
 - G. The COUNTY shall properly prepare and submit any and all applications for State and Federal permits required for the PROJECT and provide a copy thereof to the TOWN.
 - H. The COUNTY shall be responsible for management, design, construction and monitoring of the PROJECT.
 - I. The COUNTY shall secure competitive bids by advertisement for work to be performed by contractors in accordance with the COUNTY Purchasing Ordinance.
 - J. Notwithstanding any other provision herein, the COUNTY's obligation to perform under this Agreement is contingent upon an appropriation for its purpose by its Board in its annual fiscal year budget during the term of this Agreement.

7.

TOWN Obligations.

- A. The TOWN shall cost share with the COUNTY on a reimbursement basis. Cost sharing responsibility shall be limited to twenty percent (20%) of the eligible PROJECT cost.
- B. The TOWN shall appropriate adequate funds to cover the TOWN's share of the eligible PROJECT cost, which is estimated to be 6.8 million dollars. Eligible costs are limited to: project management; engineering; design;

permitting; construction; mitigation; and environmental and project performance monitoring.

C. Invoices received from the COUNTY and approved by the TOWN shall be paid within thirty (30) days of receipt. All payments made to the COUNTY shall be by check made payable to the Palm Beach County Board of County Commissioners and shall be clearly marked to identify the PROJECT. Payments shall be submitted to the Palm Beach County Department of Environmental Resources Management.

D. Notwithstanding any other provision herein, the TOWN'S obligation to pay under this Agreement is contingent upon an appropriation for its purpose by its Council in its annual fiscal year budget during the term of this Agreement.

8. Party Representatives.

A. The COUNTY's representative/contract monitor during the term of this Agreement shall be the Director of the Department of Environmental Resources Management whose telephone number is (561) 233-2400.

B. The TOWN'S representative/contract monitor during the term of this Agreement shall be the TOWN Manager, whose telephone number is (561) 588-8889.

9. Notices. All formal notices between the parties shall be deemed received if sent by certified mail, return receipt requested, to the party's Representative identified above in Section 8, at the below cited address. A copy of all such notice shall also be sent to the following counsel by U.S. Mail. Should any party change its address, written notice of such new address shall promptly be sent to the other party.

Palm Beach County Department of Environmental Resources Management 2300 North Jog Road, 4 th Floor West Palm Beach, FL 33411-2743	Town Manager Town of South Palm Beach 3577 S. Ocean Blvd. South Palm Beach, FL 33480	Palm Beach County Attorney's Office 301 North Olive Avenue 6 th floor West Palm Beach, FL 33401
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10. Default and Termination.

A. If a party fails to fulfill its obligations under this Agreement in a timely and proper manner, the party not in default shall have the right to terminate this Agreement by giving written notice of any deficiency and its intent to terminate. The party in default shall then have thirty (30) days from receipt of notice to correct the stated deficiency. If the defaulting party fails to correct the deficiency within this time and unless otherwise

agreed by the parties, this Agreement shall terminate at the expiration of the thirty (30) day time period.

B. Either party may terminate this Agreement at any time for convenience upon ninety (90) calendar days prior written notice to the other party and upon payment of all costs incurred and due under the terms of this Agreement as of the date of termination.

11. Delegation. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or municipal officers.
12. Filed. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.
13. Amendments. This Agreement may only be amended by written Agreement executed by the parties hereto with the same formality used to execute this Agreement.
14. Indemnification. Each party shall be liable for its own actions and negligence, and to the extent permitted under Section 768.28, Florida Statutes, the COUNTY shall indemnify, defend and hold harmless the TOWN against any actions, claims, or damages arising out of the COUNTY's negligence in connection with this Agreement, and the TOWN shall indemnify, defend and hold harmless the COUNTY against any actions, claims or damages arising out the TOWN's negligence 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 indemnify the other party for such other party's negligent, willful or intentional acts or omissions.
15. Insurance. The parties shall maintain a fully funded insurance or self-insurance program pursuant to Section 768.28, Florida Statutes. The COUNTY agrees to require any contractor performing work on the PROJECT to maintain adequate insurance coverage, naming both the TOWN and COUNTY as additional insured.
16. Equal Opportunity. The COUNTY and the TOWN agree that no person shall, on the grounds of age, race, color, 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 the Agreement.
17. Severability. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement, and the same shall

remain in full force and effect.

18. Waiver of Breach. It is hereby agreed to by the parties that no waiver of breach of any of the covenants or provisions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or any other covenant or provision.
19. Disputes. Disputes under this Agreement may be resolved by the parties' Representatives named in Paragraph 8. If the Representatives are unable to reach a resolution, the parties may select a mediator mutually acceptable to both parties to conduct a mediation of the issues involved and make a recommendation to both parties. The parties agree to be responsible for their respective costs and fees incurred during the mediation and that the mediator's fees and costs shall be paid in equal amounts by each party.
20. Independent Contractor. The COUNTY recognizes that it is an independent contractor and not an agent or servant of the TOWN. No person employed by any party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law, except through and against the entity by whom they are employed.
21. Enforcement Costs. Except as otherwise provided herein, 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. This provision pertains only to the parties to the Agreement.
22. Remedies. This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will 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 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.
23. Captions. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.
24. Construction. No party shall be considered the author of this Agreement since the parties hereto have participated in drafting this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

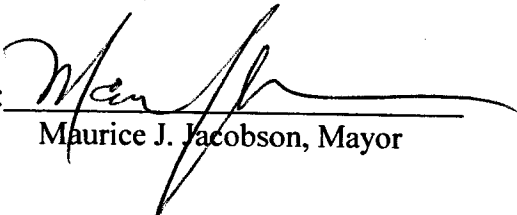
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25. Incorporation by Reference. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.
 26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.
 27. Entirety of Agreement. The TOWN and COUNTY agree that this Agreement, together with any attached exhibits, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms or obligations in the Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the County of Palm Beach, Florida has caused this Agreement to be signed by the Chairperson of the Board of County Commissioners and the seal of said Board to be affixed hereto and attested by the Clerk of said Board, pursuant to authority granted by said Board, and the Town of South Palm Beach has caused this Agreement to be signed in its corporate name by its mayor and its corporate seal to be affixed hereto, attested by its Town Clerk, the date and year first above written.

TOWN OF SOUTH PALM BEACH,
FLORIDA

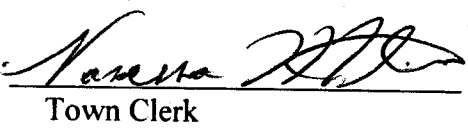
PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: 
Maurice J. Jacobson, Mayor

By: _____
Addie L. Greene, Chairperson

ATTEST:

ATTEST:
Sharon R. Bock, Clerk & Comptroller

By: 
Town Clerk

By: _____
Deputy Clerk

DATE: 3/27/07

DATE: _____

(Seal)

(Seal)

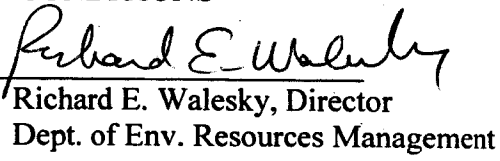
APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Town Attorney

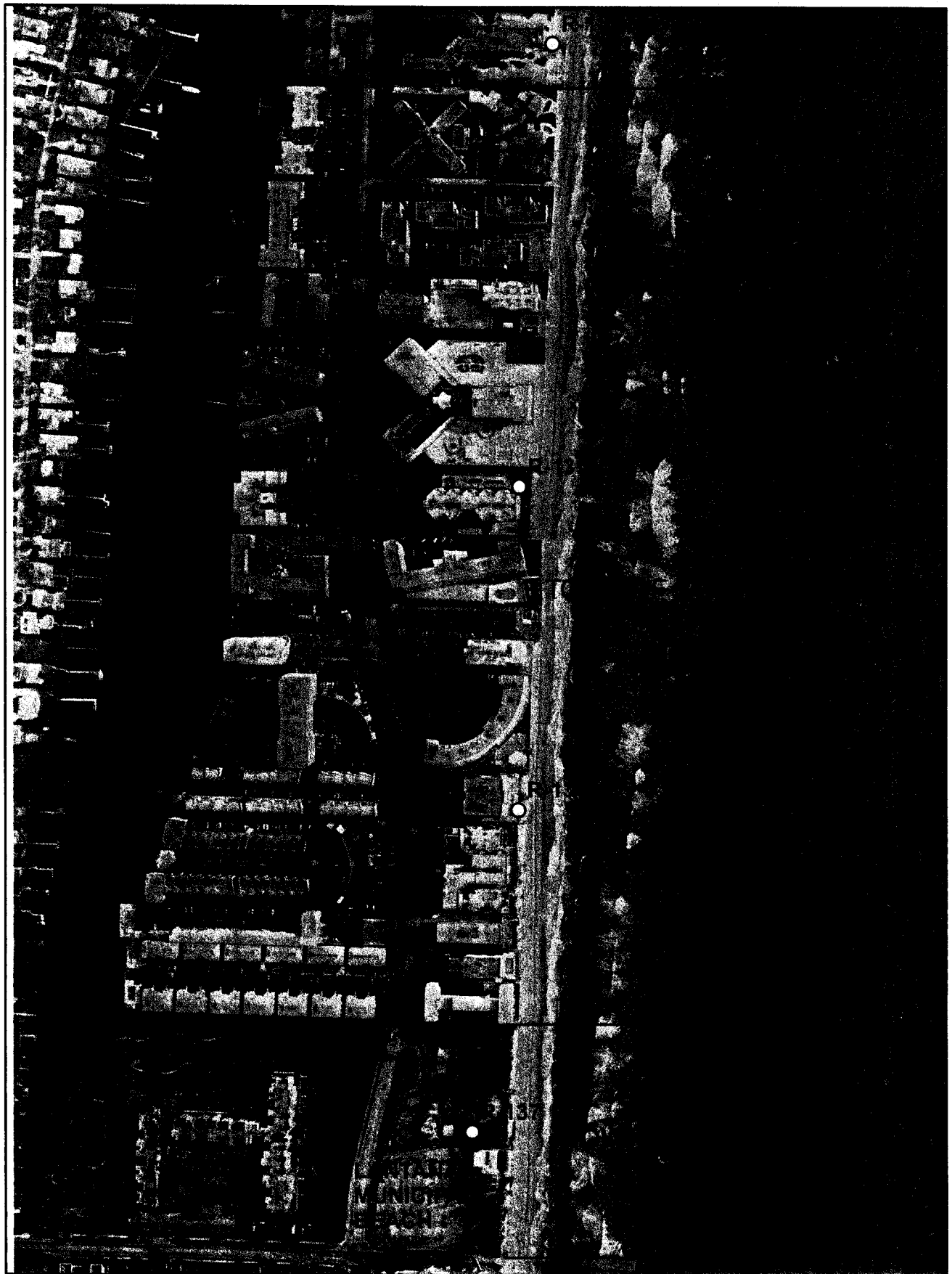
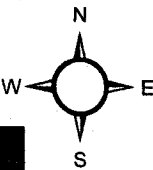
By: _____
Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

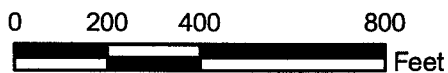
By: 
Richard E. Walesky, Director
Dept. of Env. Resources Management

Attachment 2

LOCATION MAP :
Town of South Palm Beach & Town of Lantana



SCALE: 1" = 400'



Attachment #2

