

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: August 21, 2007 (X) Consent () Regular
() Workshop () Public Hearing

Department

Submitted By: Environmental Resources Management
Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

A) Amendment to the Interlocal Agreement with the City of West Palm Beach (City) and the South Florida Water Management District (SFWMD) (R2006-0140) for the C-51 Canal Sediment Management Project, increasing SFWMD's and the County's project cost share from \$1 Million up to \$1.5 Million.

B) Budget Amendment of \$500,000 in the Capital Outlay Fund to recognize revenue from the agreement.

Summary: The Amendment will provide for additional \$500,000 from the SFWMD for the C-51 Canal Sediment Management Project bringing the SFWMD cost share to \$1.5 million. The County's matching share of \$1.5 million is already budgeted in the Project budget. District 2 & 3 (SF)

Background and Justification: Interlocal Agreement (R2006-0140), executed on February 1, 2006, provides for fifty percent (50%) cost share of Project costs from SFWMD and the County, not to exceed \$1 million. The additional funding would be used to cover increased costs listed in the revised scope of work, including transportation and sediment management costs as well as increased costs for contract and construction management.

Attachments:

1. Amendment to Interlocal Agreement
2. Budget Amendment (3900)
3. Interlocal Agreement

Recommended by:

Richard E. W. [Signature]
Department Director

8/1/07
Date

Approved by:

[Signature]
County Administrator

8/1/07
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	\$500,000	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<\$500,000>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u> 0 </u>	_____	_____	_____	_____
# 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:
 SFWMD \$ 500,000

C. Department Fiscal Review: *[Signature]*

III. REVIEW COMMENTS

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

Elizabeth Cloese 8/13/07
[Signature] 8/13/07
[Signature] 8/13/07
[Signature] 8/14/07
 Contract Development and Control
[Signature] 8/14/07

B. Legal Sufficiency:
[Signature]
 Assistant County Attorney

This amendment complies with our review requirements.

C. Other Department Review:

 Department Director

**AMENDMENT TO THE
INTERLOCAL AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
THE CITY OF WEST PALM BEACH
AND
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
FOR
SEDIMENT MANAGMENT WITHIN THE C-51 CANAL**

THIS AMENDMENT TO THE INTERLOCAL AGREEMENT, is entered into on this _____ day of _____, 2007, between the **City of West Palm Beach**, a municipality incorporated under the laws of the State of Florida (hereinafter "City"), **Palm Beach County**, a political subdivision of the State of Florida (hereinafter "County"), and the **South Florida Water Management District**, a public corporation of the State of Florida (hereinafter "District"), collectively referred to hereinafter as the "Parties".

WITNESSETH

WHEREAS, on February 1, 2006, the Parties entered into an Interlocal Agreement (County Interlocal Agreement #R2006-0140 and District Interlocal Agreement #CP060614) for sediment management within the C-51 Canal; and

WHEREAS, the Parties now wish to amend the Interlocal Agreement as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein contained, the Parties agree to amend the Interlocal Agreement as follows:

1. Paragraph 2 is hereby replaced with the following: **Purpose of the Agreement.** The purpose of this Agreement is to commence a Sediment Management Project ("Project"), in accordance with the Scope of Work attached as Exhibit A, within the C-51 canal. Under this Agreement, the County will be responsible for managing and completing the initial phase of the Project, estimated to begin in February of 2006 and to end in March of 2008. After the County completes the initial phase of the Project, as described in the Scope of Work, the District and the County shall evaluate the effectiveness of the Project and the District will determine whether the Project will continue under the management and operation of the District. The intent of this Agreement is for the County to commence a Sediment Management Project that, if successful, will be continued by the District.

This Agreement sets forth each Party's obligations with regard to project

management, cost-sharing, and the provision of easements necessary to complete the Project and sets forth each Party's duties and obligations with regard to the Project.

2. Paragraph 7.1 is hereby replaced with the following: The District agrees to fund 50 % of the total cost of the project, not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00), provided said funding is included in the approved District budget for Fiscal Year 2006-2007 or, if required, a future year. The District agrees that staff will include in the 2006/2007 budget or, if required, a future year budget, a provision to fund this agreement. Of this amount, Five Hundred Thousand Dollars (\$500,000) was received by the District from the State of Florida through an appropriation for this project.
3. Paragraph 7.5 is hereby replaced with the following: The District and the County shall, within three (3) years of the Effective Date of this Agreement, conduct an assessment of the Project to evaluate its effectiveness in removing sediments, shall consider recommendations for improving methodology, and shall evaluate the feasibility of expanding the Project to benefit both the Lake Worth Lagoon and the Chain of Lakes.
4. Paragraph 7.6 is hereby replaced with the following: Should the District determine that the project is effective pursuant to Paragraph 7.5, and desires to continue the Project past the initial two-year term, the District shall assume the duties of the County and become responsible for the operation, management and maintenance of the Project subject to the terms of this Agreement.
5. Paragraph 8.2 is hereby replaced with the following: The County agrees to fund 50% of the total cost of the Project and shall be responsible for all Project costs in excess of One Million Five Hundred Thousand (\$1,500,000.00). The County shall not request reimbursement from the District for the first year amount of One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00) until after the District's FY2006/2007 is approved. The County shall not request reimbursement from the District for the second year amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00) until after the District's FY2007/2008 is approved.
6. The following shall be added to the Interlocal Agreement as Paragraph 8.9: The District and the County shall, within three (3) years of the Effective Date of this Agreement, conduct an assessment of the Project to evaluate its effectiveness in removing sediments, shall consider recommendations for improving methodology, and shall evaluate the feasibility of expanding the Project to benefit both the Lake Worth Lagoon and the Chain of Lakes.
7. Exhibit A to the Interlocal Agreement is hereby replaced with the Revised Exhibit A attached hereto, and all references in the Interlocal Agreement to

Exhibit A shall refer to the Scope of Work attached hereto.

- 8. Except as expressly amended herein, all terms and conditions of the Interlocal Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, each of the Parties, by and through its duly authorized representatives, has caused this Amendment to the Interlocal Agreement to be signed in its name by its chair and its seal to be affixed hereto, attested to by its Clerk, on the date and year first above written.

ATTEST: Sharon R. Bock, Clerk & Comptroller

**PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

Date: _____, 2007

APPROVED AS TO TERMS
AND CONDITIONS:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: Richard E. Walubey
Department Director

By: Mark Jay
Assistant County Attorney

ATTEST:

**SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
GOVERNING BOARD**

By: _____

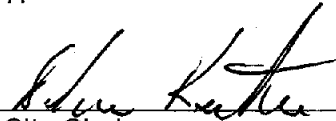
By: _____
Eric Buermann, Chair

Date: _____, 2007


APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
District Attorney

ATTEST:

By: 
City Clerk

CITY OF WEST PALM BEACH, FLORIDA

By: 
Lois J. Frankel, Mayor

Date: Aug 13, 2007

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: WJN 8-13-07
City Attorney's Office

INTERLOCAL AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
THE CITY OF WEST PALM BEACH
AND
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT A
C-51 SEDIMENT MANAGEMENT PILOT PROJECT
REVISED SCOPE OF WORK

Objective

Palm Beach County ("County"), the South Florida Water Management District ("District") and the City of West Palm Beach ("City") agree to work cooperatively to secure and improve property at the West Palm Beach Municipal Golf Course as described in Exhibits B and C ("Parcel 1"), for long-term spoil management. The District and the County shall fund the initial phase of the Project; and during that phase, the County shall dredge, process and remove approximately 100,000 cubic yards of sediment from a deep-water section of the C-51 canal.

Permitting

The work is anticipated to be considered maintenance work. The County will apply for any required permits.

Site Preparation

Except for a buffer of trees adjacent to the golf course and berm vegetation along the canal, which will be maintained for aesthetic purposes, the site will be cleared to construct a series of distillation ponds and to provide a site for dewatering equipment. Upon City approval of a landscape buffer plan, the County will replace the existing vegetation along the golf course within Parcel 1 with vegetation as provided in the landscaping plan.

Construction Contract

The District requires that the County utilize J. F. Brennan Co., Inc, of La Crosse, WI as the contractor for the Sediment Management Project. The Parties acknowledge that J. F. Brennan is the best qualified source to complete this Project because it recently accomplished a similar project on time, on budget, and using proprietary technology for sediment removal that will expedite this Project. Therefore, the County shall be required to utilize J. F. Brennan to accomplish the initial phase of the Sediment Management Project, provided the contractual terms and conditions contained in the contract with J. F. Brennan are the same as those used in Palm Beach County Project No. 2004058, Lake Osborne Muck Dredging Contract.

Project Management

The County shall be responsible for the satisfactory completion of the initial two-year phase of the Project, as outlined below under **Projected Timeline and**

Costs, and may retain a consultant through a competitive bidding process to provide any professional services needed. During the initial phase of the Project, the County shall be responsible for contract oversight, budget management, and quality control. During the initial phase of the Project, the County shall be responsible for all work included in any subcontract and for the payment of all monies due under any subcontract.

Sediment Removal

Sediment will be excavated from the C-51 canal to a depth of up to -18 feet MWL using a hydraulic cutterhead dredge. The resulting slurry will be piped to the processing site for dewatering and removal.

Processing Site

The Project shall utilize an ingress/egress access Corridor to access three parcels of land adjacent to the C-51 canal to process and stockpile the spoil for removal. The dredged slurry will be mechanically screened to remove inorganic and coarse sediments, treated with flocculants, and piped to shallow ponds for final distillation. The dried sediments will be trucked from the site during the hours of 8:00 A.M. and 6:00 P.M., weekdays.

Transportation and Handling

A portion of the sediment will be transported offsite by truck and handled at the place of disposition by heavy equipment.

Project Evaluation and Assessment

The District and the County shall conduct an assessment of the Project to evaluate its effectiveness in removing sediments, shall consider recommendations for improving methodology, and shall evaluate the feasibility of expanding the Project to benefit both the Lake Worth Lagoon and the Chain of Lakes.

Projected Timeline and Costs

Activity	Estimated Cost (\$)	Estimated Start/ Completion Date
Site Preparation	178,000	February 2006
Landscape Buffer Design & Construction	22,000	February 2006/March 2006
Notice to Proceed		February 2006
Survey	200,000	
Dredging, Dewatering & Spoil Removal (includes demobilization and site restoration)	1,450,000	February 2006/ December 2007
Transportation & Handling	550,000	August 2006/ December 2007
Contract & Construction Management	300,000	January 2006/ March 2008
Project Evaluation & Assess.	300,000	January 2007/December 2010
TOTAL	3,000,000	

Deliverables

The County shall provide copies of the Notice to Proceed for the Project construction contract and a Project Construction Substantial Completion Certification to the District. The County shall submit quarterly financial reports to the District providing a detailed accounting of all expenditures incurred throughout the initial phase of the Project. The County shall submit quarterly progress reports to the District detailing the status of the Project. When all responsibilities of the County for the initial phase of the Project are complete, the County shall submit a final report to notify the District that the County has fulfilled its obligations under the Agreement.

RESOLUTION NO. 322-07

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY OF WEST PALM BEACH AND SOUTH FLORIDA WATER MANAGEMENT DISTRICT FOR SEDIMENT MANAGEMENT WITHIN THE C-51 CANAL; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, by Resolution No. 25-06, the City Commission approved an Interlocal Agreement (#R2006-0140) with Palm Beach County and the South Florida Water Management District to remove sediments in the C-51 canal that implements projects related to Comprehensive Everglades Restoration Plan ("CERP") and enhance the environmental condition of the Lake Worth Lagoon to increase native habitat and improve fisheries. With funding from SFWMD, the County intends to dredge, process and remove sediment from a deep water section of the C-51 Canal adjacent to the West Palm Beach Golf Course; and

WHEREAS, the County and District have requested the City execute an Amendment to the Interlocal Agreement which modifies only the original project dates, and minor revisions to the obligations between the County and the District, which have no affect on the City; and

WHEREAS, the City Commission of the City of West Palm Beach finds it in the public interest to approve the amendment to the Interlocal Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, THAT:

SECTION 1: The City Commission of the City of West Palm Beach, Florida, hereby authorizes the Mayor to execute that Amendment to the Interlocal Agreement Between Palm Beach County and the City of West Palm Beach and South Florida Water Management District for Sediment Management Within the C-51 Canal (the "Amendment"), in form and substance similar to that attached hereto as **Exhibit "A"**.

SECTION 2: Upon execution of four (4) originals of the Amendment by the Mayor, all originals shall be forwarded to the Assistant City Administrator to obtain execution by the County and District. A fully-executed original of the Amendment shall be provided to and retained by the City Clerk as a public record of the City.

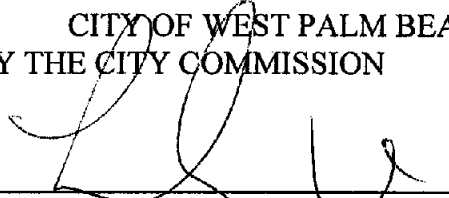
SECTION 3: This Resolution shall take effect as provided by law.

RESOLUTION NO. 322-07

PASSED AND ADOPTED THIS 13th DAY OF August, 2007.

(CORPORATE SEAL)

CITY OF WEST PALM BEACH
BY THE CITY COMMISSION



PRESIDING OFFICER

ATTEST:



CITY CLERK

CITY ATTORNEY'S OFFICE
Approved as to form and legal sufficiency
By: WJN Date: 8-3-07

2007 - 1303

BGEX - 380 - 07160700000000001936

BGRV - 380 - 07160700000000000596

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA

BUDGET AMENDMENT
FUND 3900, Capital Outlay

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENCUMBERED / Expended as of 7/16/07	REMAINING BALANCE
<u>REVENUES</u>							
<u>Environmental Restoration - C51 canal</u>							
381-E111 3703- Other Local Govt -Phys Env Capital	1,000,000	1,000,000	500,000	0	1,500,000		
TOTAL RECEIPTS & BALANCES	38,521,780	47,442,817	500,000	0	47,942,817		
<u>EXPENDITURES</u>							
<u>Environmental Restoration - C51 canal</u>							
381-E111 6504 - IOTB Non Infrastructure	1,621,885	2,291,571	500,000	0	2,791,571	2,289,169	502,402
TOTAL APPROPRIATIONS & EXPENDITURES	38,521,780	47,442,817	500,000	0	47,942,817		

Environmental Resources
Management

Signatures & Dates

BY BOARD OF COUNTY COMMISSIONERS
AT MEETING OF

INITIATING DEPARTMENT/DIVISION
Administration/Budget Department Approval
OFMB Department - Posted

Richard E. ...
Elizabeth ... 8/13/07
8/17/07

August 21, 2007

Deputy Clerk to the
Board of County Commissioners

ATT. # 2

JAN 24 2006

Attachment 3

**INTERLOCAL AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
THE CITY OF WEST PALM BEACH
AND
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
FOR
SEDIMENT MANAGEMENT WITHIN THE C-51 CANAL**

This Interlocal Agreement (hereinafter "Agreement") is made this _____ day of JAN 24 2006, 2006, between the **City of West Palm Beach**, a municipality incorporated under the laws of the State of Florida (hereinafter "City"), **Palm Beach County**, a political subdivision of the State of Florida (hereinafter "County"), and the **South Florida Water Management District**, a public corporation of the State of Florida (hereinafter "District"), each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes, and collectively referred to hereinafter 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 which such agencies share in common and which each might exercise separately; and

WHEREAS, pursuant to Chapter 125.01, Florida Statutes (2005), the Board of County Commissioners of Palm Beach County is empowered to establish and administer programs of conservation 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, Chapter 373, Florida Statutes, grants the District the authority to enter into this Agreement; and

WHEREAS, the Parties desire to enhance the environmental condition of Lake Worth Lagoon to increase native habitat and improve fisheries; and

WHEREAS, the Parties recognize that an improvement in water quality is essential to the

restoration of the Lake Worth Lagoon as a habitat for littoral and estuarine flora and fauna; and

WHEREAS, the Parties expect that the work to be conducted under this Agreement will improve the Lake Worth Lagoon's water quality; and

WHEREAS, the Parties have a mutual interest in implementing projects contained in the Comprehensive Everglades Restoration Plan (hereinafter "CERP"); and

WHEREAS, maintenance of the C-51 canal is a part of CERP approved by Congress in the Water Resources Development Act of 2000; and

NOW THEREFORE, in consideration of the mutual representations, terms, and covenants hereinafter set forth, the Parties hereby 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 commence a Sediment Management Project ("Project"), in accordance with the Scope of Work attached as Exhibit A, within the C-51 canal. Under this Agreement, the County will be responsible for managing and completing the initial phase of the Project, estimated to begin in February of 2006 and to end in March of 2008. After the County completes the initial phase of the Project, as described in the Scope of Work, the District shall evaluate the effectiveness of the Project to determine whether the Project will continue under the management and operation of the District. The intent of this Agreement is for the County to commence a Sediment Management Project that, if successful, will be continued by the District.
- This Agreement sets forth each Party's obligations with regard to project management, cost-sharing, and the provision of easements necessary to complete the Project and sets forth each Party's duties and obligations with regard to the Project.
3. **Effective Date.** The Effective Date of this Agreement shall be the date the Agreement, after prior approval by the City and the District, is ratified by the Palm Beach County Board of County Commissioners and filed with the Clerk of the County Court pursuant to Section 163.01(11), Florida Statutes (2005) (the "Effective Date"). The County shall provide the District and the City each with a fully executed original of the Agreement within ten (10) days of the Effective Date.
 4. **Term.** This Agreement shall continue in full force and effect for a period of fifty (50) years from the Effective Date, unless otherwise terminated as provided herein.
 5. **Representatives.** The Parties each hereby designate a Representative who will be responsible for the overall coordination and oversight relating to the performance of this Agreement. The Parties shall direct all matters arising in connection with the performance of this Agreement to the attention of the respective Representatives. The Representatives for each Party are identified below. Each Party shall provide immediate notice of the substitution of its Representative:

Palm Beach County:

Name: Kenneth S. Todd Jr., P.E., Water Resources Manager
Address: Palm Beach County Board of County Commissioners
County Administration
301 North Olive Street
West Palm Beach, FL 33401

Phone: (561) 355-4600

City of West Palm Beach:

Name: Ken Rearden, P.E., Assistant City Administrator

Address: City of West Palm Beach
P.O.Box 3506
West Palm Beach, FL 33402

Phone: (561) 822-1421

South Florida Water Management District:

Name: Mike Voich, P.E.

Address: South Florida Water Management District
P.O. Box 24680
West Palm Beach, FL 33406

Phone: (561) 682-6754

6. Responsibilities and Duties of the City.

6.1 The City will grant to the District and the County the right to enter on, across and through an area of real property owned by the City located at the West Palm Beach Municipal Golf Course consisting of approximately four acres for a period of fifty (50) years for use as a sediment treatment facility in connection with the Project, subject to the terms and conditions set forth herein. A map and legal description showing the location of the real property is attached hereto and incorporated herein as **Exhibit B** ("Parcel 1"). Within fifteen (15) days of the Effective Date of this Agreement, the City shall execute and deliver an Easement to the District and the County in substantially the form attached hereto as **Exhibit C** (the "Parcel 1 Easement").

6.2 The City will grant to the District and the County adequate access to Parcel 1 through a non-exclusive access easement and the right to enter on, across and through a corridor of real property owned by the City, located at the West Palm Beach Municipal Golf Course, subject to the terms and conditions contained herein. A map and legal description showing the location of the corridor property is attached hereto and incorporated herein as **Exhibit D** (the "Corridor"). Within fifteen (15) days of the Effective Date of this Agreement, the City shall execute and deliver an Access Easement located within the Corridor, as determined by the City, in substantially the form attached hereto as **Exhibit E** (the "Access Easement").

6.3 The City agrees to work with the County to develop a landscape buffer plan acceptable to the City for an area within Parcel 1 to buffer the Project from the City's Municipal Golf Course. The City shall allow the County to remove trees from Parcel 1 as necessary for Project operations.

7. Responsibilities and Duties of the District.

7.1 The District agrees to fund 50% of the total cost of the Project, not to exceed One Million Dollars, provided said funding is included in the approved District budget for Fiscal Year 2006-2007 or, if required, a future year. The District agrees that staff will include in the 2006/2007 budget a provision to fund this Agreement.

7.2 The District agrees to seek permission from the State of Florida Board of Trustees of the Internal Improvement Trust Fund to use, and if necessary, remove trees from an adjacent State-owned parcel as shown on the map depicted in **Exhibit F** (hereinafter "Parcel 2") for the purpose of spoil processing and containment as part of the Project.

7.3 The District agrees to grant the County access to its lands within and adjacent to the C-51 Canal as depicted in Exhibit G (hereinafter "Parcel 3") for the purpose of sediment management as part of the Project.

7.4 The District shall allow the County to remove trees from Parcels 2 and 3 as necessary for the Project operations.

7.5 The District shall, within two (2) years of the Effective Date of this Agreement, conduct an assessment of the Project to evaluate its effectiveness in removing sediments, shall consider recommendations for improving methodology, and shall evaluate the feasibility of expanding the Project to benefit both the Lake Worth Lagoon and the Chain of Lakes.

7.6 Should the District determine that the Project is effective pursuant to Paragraph 6.5, and desires to continue the Project past the initial two-year term, the District shall assume the duties of the County and become responsible for the operation, management and maintenance of the Project subject to the terms of this Agreement.

7.7 If the District is the agency responsible for issuing any permits that are necessary to perform the Project, the District shall use its best efforts to assist the County in obtaining such permits, with the understanding that the District cannot guarantee that any particular permit will be issued.

8. Responsibilities and Duties of the County.

8.1 The County shall design, construct, operate, manage and maintain the Project as described in Exhibit A.

8.2 The County agrees to fund 50% of the total cost of the Project and shall be responsible for all Project costs in excess of One Million Dollars. The County shall not request reimbursement from the District until after the District's FY2006/2007 budget is approved. ✓

8.3 The County shall be responsible for procuring the services of contractors, consultants and engineers for design, construction, project management and operation of the facilities needed to perform the Project, and for fully and timely performing all work items described in this Agreement and Exhibit A. The County shall obtain all necessary permits and shall perform the Project in accordance with applicable Local, State and Federal Statutes, Rules and Ordinances and regulatory agency permit requirements.

✓ 8.4 The County shall remove trees within the boundaries of Parcels 1, 2 and 3 as needed for the Project operations.

✓ 8.5 The County shall work with the City to develop a landscape buffer plan for an area adjacent to the City's Municipal Golf Course within Parcel 1. The County agrees to prepare any drawings needed to develop a landscape buffer plan and shall construct the buffer at its sole cost, provided that such costs do not exceed the amount provided in Exhibit A. The County shall obtain the City's written approval of the landscape buffer design prior to construction of the buffer.

8.6 The County shall continually haul away sediment, as provided in Exhibit A, and will not allow excessive sediment to accumulate on Parcel 1 to the point that it interferes with or becomes a nuisance to the West Palm Beach Municipal Golf Course as determined in the sole discretion of the City. In the event the District assumes Project operations, the District shall assume the obligations in

this Section 8.6.

8.7 The County shall periodically sample the sediment for pollutants and contaminants. The County will not put any contaminated sediment on Parcel 1 and in the event of contamination, will ensure the proper mitigation and clean-up of Parcel 1 at no expense to the City. In the event the District assumes Project operations, the District shall assume the obligations in this Section 8.7.

8.8 The County shall have no duties or responsibilities under this Agreement once the initial phase of the Project is complete.

9. Payments.

9.1 If the County advances payment of any of the District's 50% share of the cost of the Project, then, provided the District's share is approved in the District's budget for Fiscal Year 2006/2007, the County shall invoice the District as needed and the District shall provide payment to the County within forty-five (45) days of receipt of an invoice for work performed pursuant to the Scope of Work. If Project funds are not approved by the District in its 2006/2007 budget, the District will be invoiced at a later date when the District's share of the Project costs have been approved by the District's Board or as such funds may otherwise become available from the District.

9.2 All invoices to the District shall be accompanied by adequate documentation to support actual expenditures incurred by the County for work performed pursuant to the Scope of Work.

9.3 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 Identification No. 2004058. Payments shall be mailed to the Palm Beach County Department of Financial Management and Budget.

10. Funding Contingency. Completion of the Project under this Agreement is contingent upon each of the Parties approving and securing, as applicable, its funding obligation hereunder. Notwithstanding this contingency, each Party shall diligently pursue the approval and procurement of its funding obligation.

11. Operational Protocol. The Parties acknowledge that the District has the authority and responsibility for the operation and maintenance of the Central and Southern Florida Flood Control System, including the C-51 Canal. The County shall take all actions to ensure that the Project does not interfere with use of the C-51 Canal for flood control purposes.

12. Default, Termination and Opportunity to Cure.

12.1 If a Party fails to fulfill its obligations under this Agreement in a timely and proper manner, a 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.

12.2 Either the County or the District may terminate this Agreement at any time for convenience upon thirty (30) calendar days prior written notice to the other Parties. In the event of such termination by the District, the District, provided funding for the project is included in the approved

District budget for Fiscal Year 2006-2007 or, if required, a future year, shall compensate the County for the District's 50% share of all Project related costs, up to the One Million Dollar limit, expended through the date of termination and that result from the termination.

12.3 The District may order that all or part of the work stop if circumstances dictate that this action is in the District's best interest. Such circumstances may include, but are not limited to, unexpected technical developments, direction given by the District's Governing Board, a condition of immediate danger to any person or entity, or the possibility of damage to equipment or property. If this provision is invoked, the District shall notify the other Parties in writing of its intent to stop work as of a certain date and specify the reasons for the action, which shall not be arbitrary or capricious. The County shall then be obligated to suspend all of its work efforts as of the effective date of the notice and until further written direction from the District is received. In the event the District orders that work be stopped, the District, provided funding for the project is included in the approved District budget for Fiscal Year 2006-2007 or, if required, a future year, shall compensate the County for the District's 50% share of all Project related costs, up to the One Million Dollar limit, expended through the date that work is stopped and that result from the suspension of work. Prior to resumption of work, if deemed appropriate by the District, the District shall initiate an amendment to this Agreement to reflect any changes in the Scope of Work and or the project schedule.

12.4 All easements granted under this Agreement shall also terminate upon termination of this Agreement.

13. **Notice.** All formal notices between the Parties shall be deemed received if sent by certified mail, return receipt requested, to the Parties' Representative identified above in Section 4. A copy of all such notices 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 all Parties.

Palm Beach County:	Palm Beach County Attorney's Office 301 North Olive Avenue – 6 th floor West Palm Beach, FL 33401
District:	Office of General Counsel South Florida Water Management District 3301 Gun Club Road P. O. Box 23680 West Palm Beach, Florida 33416
City:	City Attorney's Office P.O. Box 3366 West Palm Beach, FL 33402

14. **Dispute Resolution.** As a condition precedent to any Party bringing a lawsuit for breach of this Agreement, that Party must first notify the other Party in writing of the nature of the purported breach and must seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third-party. The disputing Parties shall equally share the costs for dispute resolution services. The existence of a dispute shall not excuse the Parties from performance pursuant to this Agreement. All negotiations held pursuant to this provision shall be confidential to the extent permitted by law.

15. **Enforcement Costs.** 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.

16. Third-Party Claims. During the initial two-year phase of the Project, the County shall have the sole responsibility for resolving all claims made by third-parties relating to or arising out of the Project. To the extent possible, the County shall afford the District and the City the opportunity to review and comment on all such claims prior to resolution thereof.

17. Delegation of Duty.

17.1 Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of State, County, or City officers. No Party to this Agreement shall be considered an employee or agent of any other Party. Nothing in this Agreement shall be interpreted to establish any relationship other than that of independent contractor between the Parties and their respective employees, agents, subcontractors, or assigns during or after the performance of this Agreement.

17.2 It is the intent and understanding of the Parties that this Agreement is solely for the benefit of the Parties. No person or entity other than the Parties shall have any rights or privileges under this Agreement in any capacity whatsoever, either as third-party beneficiary or otherwise.

17.3 The Parties shall not assign, delegate, or otherwise transfer their rights and obligations as set forth in this Agreement without prior written consent of the other Parties. Any attempted assignment in violation of this provision shall be void.

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

19. Liability. No Party to this Agreement or its respective officers, agents or employees shall be deemed to assume any liability for the acts, omissions, or negligence of any other Party. Further, nothing herein shall be construed as a waiver of sovereign immunity by any Party, pursuant to Section 768.28, Florida Statutes. To the extent provided in Section 768.28, Florida Statutes, each Party assumes any and all risks of personal injury, bodily injury, and property damage attributable to the negligent acts or omissions of that Party and its own officers, employees, servants, and agents.

20. Insurance.

20.1 Each Party warrants and represents that it is self-insured for General Liability and Automobile Liability under Florida 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. In the event a Party maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under Section 768.28, Florida Statutes, that Party shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage. The Parties agree to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute 440.

20.2 The Parties further agree that nothing contained herein shall be construed or interpreted as (1) denying to any Party any remedy or defense available to such Party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or

(3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

20.3 In the event any Party subcontracts any part or all of the Project work hereunder to a third party, the contracting Party shall require each and every subcontractor to name the other Parties as "additional insureds" on all insurance policies as required by the contracting Party. Any contract awarded for work under this Agreement shall include a provision whereby the contracting Party's subcontractor agrees to defend, indemnify, and pay on behalf, save and hold the other Parties harmless from all damages arising in connection with said contract.

20.4 When requested, each Party shall provide any other Party with an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which all Parties agree to recognize as acceptable for the above mentioned coverages.

20.5 Compliance with the foregoing requirements shall not relieve any Party of its liability and obligations under this Agreement.

21. Compliance With Law.

21.1 The Parties shall comply with any applicable federal, state and local rules and regulations in providing services under this Agreement. The Parties further agree to include this provision in any subcontracts issued as a result of this Agreement.

21.2 The Parties by their execution of this Agreement, acknowledge and attest that neither they nor, to the best of their knowledge, any of their suppliers, contractors, or consultants who shall perform work on the Project is on the convicted vendor list. The Parties further understand and accept that this Agreement shall be either void or subject to immediate termination by the other Parties in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133, Florida Statutes. In the event of such termination, the Party not in default shall not incur any liability to the defaulting Party for any work or materials furnished.

21.3 The Parties warrant that they have not employed or retained any person, other than a bona fide employee working solely for the Party, to solicit or secure this Agreement. Further the Parties warrant that they have not paid or agreed to pay any person, other than a bona fide employee working solely for the Party, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this Agreement. For breach of this provision, any Party may terminate this Agreement without liability and, in its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.

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. **Time of the Essence.** The Parties expressly agree that time is of the essence in this Agreement. If any Party fails to timely perform its obligations as set forth within this Agreement within the time required or, if no time is prescribed, within a reasonable period of time, any other Party, who is not liable for the delay, may exercise its discretion to accept or reject belated performance and may

exercise any other rights or remedies available.

24. **Unavoidable Delays.** Notwithstanding any provisions of this Agreement to the contrary, the Parties shall not be held liable for any delay in the performance of this Agreement that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the Parties. Failure to perform shall be excused during the continuance of such circumstances, but this Agreement shall otherwise remain in effect.

25. **Equal Opportunity Provision.** The Parties agree that no person shall, on the grounds of race, color, sex, age, 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.

26. **Records.** The Parties shall maintain, in accordance with generally accepted governmental auditing standards, all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this Agreement including supporting documentation for any service rates, expenses, research or reports. The Parties shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this Agreement. Such examination may be made only within five (5) years from the date of final payment under this Agreement and upon reasonable notice, time and place. In the event that the Parties should become involved in a legal dispute with a third party arising from performance under this Agreement, the Parties shall extend the period of maintenance for all records relating to the Agreement until the final disposition of the legal dispute, and all such records shall be made readily available to the Parties.

27. **Waiver.** Failures or waivers to insist on strict performance of any covenant, condition, or provision of this Agreement by any Party its successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other Parties from performing any subsequent obligations strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the Party against whom enforcement is sought. Such waiver shall be limited to provisions of this Agreement specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

28. **Captions.** The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

29. **Severability.** In the event that any section, paragraph, sentence, clause, or provision of this Agreement is held by a court of competent jurisdiction to be invalid or is otherwise unenforceable, such provision shall be deemed null and void and shall be severable but shall not invalidate any other provision of this Agreement.

30. **Amendments.** This Agreement may only be amended by written Agreement executed by all of the Parties hereto with the same formality used to execute this Agreement.

31. **Entirety of Agreement.** This Agreement represents the entire understanding between the Parties, and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Agreement.

32. **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.

IN WITNESS WHEREOF, each of the Parties or its duly authorized representatives has caused this Agreement to be signed in its name by its chair and its seal to be affixed hereto, attested to by its Clerk, on the date and year first above written.

ATTEST: Sharon Bock, Clerk & Comptroller

By: [Signature]
Deputy Clerk

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY COMMISSIONERS

By: [Signature]
Tony Masilotti, Chairman

Date: JAN 24 2006, 2006

APPROVED AS TO TERMS
AND CONDITIONS:

By: [Signature]
Department Director

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: [Signature]
Assistant County Attorney

ATTEST:

By: [Signature]

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT GOVERNING BOARD

By: [Signature]
Chair

Date: 4/1/06, 2006



APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: [Signature]
District Attorney

[Remainder of signatures on following page]

ATTEST:

By: [Signature]
City Clerk

CITY OF WEST PALM BEACH, FLORIDA

By: [Signature]
Lois J. Frankel, Mayor

Date: JAN. 31, 2006

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: [Signature]
City Attorney's Office

EXHIBITS

- A Project Description/ Scope of Work
- B Parcel 1 – map and legal description
- C Parcel 1 Easement
- D Corridor – map and legal description
- E Corridor Easement
- F Parcel 2 map
- G Parcel 3 - map and legal description

INTERLOCAL AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
THE CITY OF WEST PALM BEACH
AND
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT A
C-51 SEDIMENT MANAGEMENT PILOT PROJECT
SCOPE OF WORK

Objective

Palm Beach County ("County"), the South Florida Water Management District ("District") and the City of West Palm Beach ("City") agree to work cooperatively to secure and improve property at the West Palm Beach Municipal Golf Course as described in Exhibits B and C ("Parcel 1"), for long-term spoil management. The District and the County shall fund the initial phase of the Project; and during that phase, the County shall dredge, process and remove approximately 130,000 cubic yards of sediment from a deep-water section of the C-51 canal.

Permitting

The work is anticipated to be considered maintenance work. The County will apply for any required permits.

Site Preparation

Except for a buffer of trees adjacent to the golf course and berm vegetation along the canal, which will be maintained for aesthetic purposes, the site will be cleared to construct a series of distillation ponds and to provide a site for dewatering equipment. Upon City approval of a landscape buffer plan, the County will replace the existing vegetation along the golf course within Parcel 1 with vegetation as provided in the landscaping plan.

Construction Contract

The District requires that the County utilize J. F. Brennan Co., Inc, of La Crosse, WI as the contractor for the Sediment Management Project. The Parties acknowledge that J. F. Brennan is the best qualified source to complete this Project because it recently accomplished a similar project on time, on budget, and using proprietary technology for sediment removal that will expedite this Project. Therefore, the County shall be required to utilize J. F. Brennan to accomplish the initial phase of the Sediment Management Project, provided the contractual terms and conditions contained in the contract with J. F. Brennan are the same as those used in Palm Beach County Project No. 2004058, Lake Osborne Muck Dredging Contract.

Project Management

The County shall be responsible for the satisfactory completion of the initial two-year phase of the Project, as outlined below under **Projected Timeline and Costs**, and may retain a consultant through a competitive bidding process to provide any professional services needed. The County shall be responsible for contract oversight, budget management, and quality control. The County shall be responsible for all work included in any subcontract and for the payment of all monies due under any subcontract.

Sediment Removal

Sediment will be excavated from the C-51 canal to a depth of up to -18 feet MWL using a hydraulic cutterhead dredge. The resulting slurry will be piped to the processing site for dewatering and removal.

Processing Site

The Project shall utilize an ingress/egress access Corridor to access three parcels of land adjacent to the C-51 canal to process and stockpile the spoil for removal. The dredged slurry will be mechanically screened to remove inorganic and coarse sediments, treated with flocculants, and piped to shallow ponds for final distillation. The dried sediments will be trucked from the site during the hours of 8:00 A.M. and 6:00 P.M., weekdays.

Projected Timeline and Costs

Activity	Estimated Cost (\$)	Estimated Start/ Completion Date
Site Preparation	40,000	February 2006
Landscape Buffer Design & Construction	40,000	February 2006/March 2006
Notice to Proceed		February 2006
Dredging, Dewatering & Spoil Removal	1,800,000	February 2006/ December 2007
Demobilization & site restoration	40,000	January 2008/February 2008
Contract & Construction Management	80,000	January 2006/ March 2008
TOTAL	2,000,000	

Deliverables

The County shall provide copies of the Notice to Proceed for the Project construction contract and a Project Construction Substantial Completion Certification to the District. The County shall submit quarterly financial reports to the District providing a detailed accounting of all expenditures incurred throughout the initial phase of the Project. The County shall submit quarterly

progress reports to the District detailing the status of the Project. When all responsibilities of the County for the initial phase of the Project are complete, the County shall submit a final report to notify the District that the County has fulfilled its obligations under the Agreement.