

Agenda Item: # 3-C-8

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: October 16, 2007

Consent Regular
 Workshop Public Hearing

Submitted By: Engineering and Public Works
Submitted For: County Engineer

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

A) A Budget Transfer of \$500,000 in the Transportation Improvement Fund from Reserve for District 3 to Imagining Howard Park/Stub Canal Storm Water Improvement – District 3.

B) An Interlocal Agreement to reimburse up to \$500,000 to the City of West Palm Beach (City) for Imagining Howard Park/Stub Canal Storm Water Improvements.

Summary: This Agreement will supply reimbursement funds to the City to make storm water improvements to the Stub Canal.

District: 3 (MRE)

Background and Justification: The City organized the Stub Canal Task Force to study methods to increase flood protection and improve storm water quality along the Stub Canal and in the region. They agreed to the improvements in Howard Park to allow for additional water quality detention and improved flood protection for City Place and the Palm Beach County Convention Center. The District Commissioner believes this serves the public interest.

Attachments:

1. Location Map
2. Authorization
3. Agreement (2)
4. Budget Transfer

Recommended by: ^{OJM} *M. A. Brownell* 8/24/07
Division Director Date

Approved by: *S. J. Wald* 9/26/07
County Engineer Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Grant Expenditures	<u>\$500,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>\$500,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

ADDITIONAL FTE
POSITIONS (Cumulative) _____

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

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

Transportation Improvement Fund
Reserve for District 3
Stub Canal Drainage Basin Study

C. Departmental Fiscal Review: R. J. Ward 8/23/07

III. REVIEW COMMENTS

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

[Signature] 10-2-07
OFMB
10-2-07
10-2-07
9/27/07

[Signature] 10/3/07
Contract Dev. and Control
10/3/07

B. Approved as to Form and Legal Sufficiency:

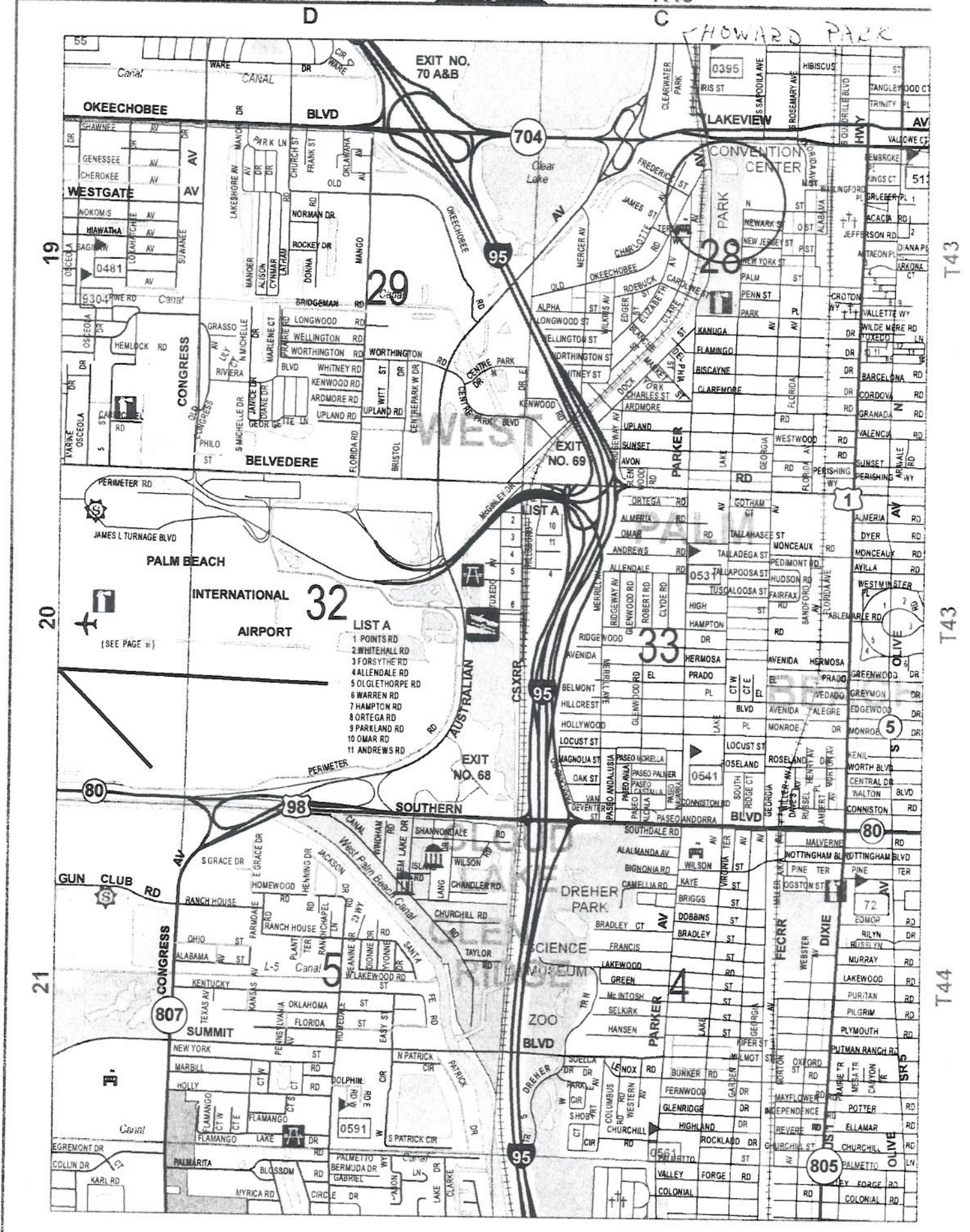
[Signature] 10/10/07
Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Department Review:

Department Director

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





Warren H. Newell

County Commissioner
District III

301 North Olive Avenue
12th Floor
West Palm Beach, FL 33401

(561) 355-2203

FAX: (561) 355-6344

June 4, 2007

Ms. F. Joan Goldberg
Mayor's Office
City of West Palm Beach
200 2nd Street
West Palm Beach, Florida 33401

Dear Ms. Goldberg:

Thank you for meeting with me and your correspondence requesting financial support for the 'Imagining Howard Park' project as part of the Stub Canal Stormwater Improvement Project.

As you may be aware, I have long been involved with stormwater improvement issues throughout Palm Beach County, and I am glad to have the opportunity to participate in this project as it is necessary and very important to the area.

As such, and by copy of this letter to Owen Miley, Special Projects Coordinator, Palm Beach County Engineering Department, I am authorizing \$500,000 from the District III Gas Tax Allocation funds for this purpose. Owen will contact you to initiate the appropriate documentation for the funds. He will also provide me with regular updates on its progress.

Should you have any other questions or concerns, do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Newell".

Warren H. Newell
Board of County Commissioners

C: Ken Todd, Palm Beach County Water Resources Manager
Tanya McConnell, Deputy County Engineer
Owen Miley, Special Projects Coordinator, Palm Beach County Engineering Department w/attachment

"An Equal Opportunity
Affirmative Action Employer"

printed on recycled paper

**REIMBURSEMENT AGREEMENT
WITH PALM BEACH COUNTY AND
THE CITY OF WEST PALM BEACH
FOR IMAGINING HOWARD PARK/STUB
CANAL STORMWATER IMPROVEMENT**

THIS REIMBURSEMENT AGREEMENT is made and entered into this _____ day of _____, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "**COUNTY**" and **THE CITY OF WEST PALM BEACH**, a municipal corporation of the State of Florida hereinafter referred to as "**CITY**"

WITNESSETH:

WHEREAS, the **CITY** is undertaking methods to increase flood protection and improve stormwater quality along the Stub Canal within the **CITY** limits, hereinafter referred to as "**IMPROVEMENTS**"; and

WHEREAS, the **IMPROVEMENTS** include using a portion of Howard Park as an additional water quality detention area within the **CITY** limits; and

WHEREAS, the **COUNTY** believes that the **IMPROVEMENTS** serve a public purpose in the enhancement and safety of the **CITY** and wishes to support the **IMPROVEMENTS** by providing supplemental reimbursement funding for the documented costs of the **IMPROVEMENTS** in an amount not to exceed **FIVE HUNDRED THOUSAND DOLLARS (\$500,000)**.

WHEREAS, after the installation of the **IMPROVEMENTS**, the **CITY** will be responsible for the subsequent maintenance of the **IMPROVEMENTS**.

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

1. The above recitals are true, correct and incorporated herein.
2. The **COUNTY** agrees to provide to the **CITY** reimbursement funding for documented costs of the **IMPROVEMENTS** in an amount not to exceed **FIVE HUNDRED THOUSAND DOLLAR (500,000)**.
3. The **COUNTY** agrees to reimburse the **CITY** the amount established in paragraph 2 for costs associated with the **IMPROVEMENTS**, upon the **CITY's** submission of acceptable documentation needed to substantiate its cost for the **IMPROVEMENTS**. The **COUNTY** will use its best efforts to provide said funds to the

CITY on a reimbursement basis within forty-five (45) days of receipt of all information required in paragraph 6, below.

4. The **COUNTY's** obligation is limited to its payment obligation and shall have no obligation to any other person or entity.

5. The **CITY** agrees to assume all responsibility for design, bidding, contract preparation, and contract administration necessary for the **IMPROVEMENTS**, including payment(s) to contractor(s) pursuant to all applicable governmental laws and regulations.

6. The **CITY** will obtain or provide all labor and materials necessary for the **IMPROVEMENTS**. The **CITY** shall furnish to the **COUNTY's** representative a request for payment supported by the following:

A Contract Payment Request Form and a Contractual Services Purchases Schedule Form, attached hereto and incorporated herein as Exhibit "A" (pages 1 & 2), which are required for each and every reimbursement to the **CITY**. Said information shall list each invoice payable by the **CITY** and shall include the vendor invoice number, invoice date, and the amount payable by the **COUNTY**. The **CITY** shall attach a copy of each vendor invoice paid by the **CITY** along with a copy of the respective check and shall make reference thereof to the applicable item listed on the Contractual Services Purchases Schedule Form. Further, the **CITY's** Financial Officer shall also certify that each invoice listed on the Contractual Services Purchases Schedule Form was paid by the **CITY** as indicated.

7. As it relates to this Agreement, the **COUNTY** may initiate a financial systems analysis and/or an internal fiscal control evaluation of the **CITY** by an independent auditing firm employed by the **COUNTY** or by the County Internal Audit Department at any time the **COUNTY** deems necessary.

8. The **CITY** agrees to be responsible for the subsequent maintenance of the **IMPROVEMENTS** following installation. The **CITY** shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations from any federal, state, regional, **COUNTY** or agency which are required for the **IMPROVEMENTS**.

9. The **IMPROVEMENTS** shall be completed and final invoices submitted to the **COUNTY** no later than November 30, 2010, and the **COUNTY** shall have no

obligation to the **CITY** or any other entity or person for any cost incurred thereafter unless the time for completion is extended by modification of this Agreement.

10. Each party shall be liable for its own actions and negligence and to the extent permitted by law; the **CITY** shall indemnify, defend and hold harmless the **COUNTY** against any actions, claims or damages arising out of the **CITY's** negligence in connection with this Agreement or the performance by the **CITY** as it may relate to this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 786.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligence, willful or intentional acts or omissions.

11. The **CITY** shall, at all times during the term of this Agreement, maintain appropriate insurance.

12. As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the **CITY** certifies that its affiliates, suppliers, sub-contractors, and consultants who perform work hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

13. The **CITY** shall require each contractor engaged by the **CITY** for work associated with this Agreement to maintain:

Workers' Compensation coverage in accordance with Florida Statutes, and;

- a. Commercial General Liability coverage, including vehicle coverage, in combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000.00). The **COUNTY** shall be included in the coverage as an additional insured.
- b. A payment and performance bond for the total amount of the **IMPROVEMENTS** in accordance with Florida Statute 255.05.

14. In the event of termination, the **CITY** shall not be relieved of liability to the **COUNTY** for damages sustained by the **COUNTY** by virtue of any breach of the Agreement by the **CITY**; and the **COUNTY** may withhold any payment to the **CITY** for the purpose of set-off until such time as the exact amount of damages due the **COUNTY** is determined.

15. The **CITY's** termination of this Agreement shall result in all obligations of the **COUNTY** for funding contemplated herein to be cancelled.

16. The **COUNTY** and **CITY** agree that no person shall, on the grounds of race, color, national origin, sexual orientation, religion or creed, sex, age, or handicap be discriminated against in performance of this Agreement.

17. In the event that any section, paragraph, sentence, clause or provision hereof is held invalid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

18. 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 paid, to the following:

AS TO THE COUNTY

Engineering and Public Works Department
Tanya N. McConnell, P.E.
Deputy County Engineer
P.O. Box 21229
West Palm Beach, Florida 33416-1229

AS TO THE CITY

City of West Palm Beach
Ms. F. Joan Goldberg
Mayor's Office
200 2nd Street
West Palm Beach, Florida 33401

19. This Agreement shall be construed and governed by 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 other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now 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 shall preclude any other or further exercise thereof.

20. 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; provided, however, that this clause pertains only to the parties to the Agreement.

21. 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.
22. Each party agrees to abide by all laws, orders, rules and regulations and the **CITY** will comply with all applicable governmental codes during the **IMPROVEMENTS**.
23. Each party shall promptly notify the other of any lawsuit-related complaint, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement.
24. The parties expressly covenant and agree that in the event any of the parties is in default of its obligations under this Agreement, the parties not in default shall provide to the defaulting party thirty (30) days written notice before exercising any of their rights.
25. 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.
26. This Agreement represents the entire understanding among the parties, and supercedes all other negotiations, or agreements, written or oral, relating to this Agreement.
27. The County will file a copy of this Agreement with the Clerk of the Circuit Court in and for Palm Beach County, Florida.
28. This Agreement shall take effect upon execution and the effective date shall be the date of execution.

REMAINDER OF PAGE LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this Agreement and it is effective on the date first above written.

THE CITY OF WEST PALM BEACH

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

By: [Signature]
Mayor

By: _____
Chair

ATTEST:

ATTEST:

By: [Signature]
City Clerk

SHARON R. BOCK, CLERK

By: _____
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]
City Attorney

By: _____
Assistant County Attorney

Date: 8/13/07

By: _____

APPROVED AS TO TERMS AND CONDITIONS

By: [Signature]

Date: 8/23/07

**PALM BEACH COUNTY
ENGINEERING & PUBLIC WORKS DEPARTMENT
CONTRACT PAYMENT REQUEST**

Exhibit A

(PROJECT)

Grantee _____ **Request Date** _____

Billing # _____ **Billing Period** _____

PROJECT PAYMENT SUMMARY

Item	Project Costs this Billing	Cumulative Project Costs	Total Project Costs
Consulting Services	_____	_____	_____
Contractual Services	_____	_____	_____
Material, Supplies, Direct Purchases	_____	_____	_____
Grantee Stock	_____	_____	_____
Equipment, Furniture	_____	_____	_____
TOTAL PROJECT COSTS	_____	_____	_____

Certification: I hereby certify that the above was incurred for the work identified as being accomplished in the attached progress reports.

Certification: I hereby certify that the documentation has been maintained as required to support the project expenses reported above, and is available for audit upon request.

Administrator/Date

Financial Officer/Date

PBC USE ONLY

County Funding Participation	\$ _____
Total Project Costs	\$ _____
Total Project Costs to Date	\$ _____
County Obligation to Date	\$ _____
County Retainage (___%)	(\$ _____)
County Funds Previously Disbursed	(\$ _____)
County Funds Due this Billing	\$ _____

Reviewed and Approved by:

PBC Project Administrator/Date

**PALM BEACH COUNTY
ENGINEERING & PUBLIC WORKS DEPARTMENT
CONTRACTUAL SERVICES PURCHASE SCHEDULE**

(PROJECT)

Grantee _____

Billing Date _____

Billing # _____

Billing Period _____

Contractor Name

**Contractor
Invoice Number
and Date**

**City Check or
Voucher Number
and Date**

**Project
Amount Paid
this Period**

**General
Description**

TOTAL _____

Certification: I hereby certify that the purchase noted above was used in accomplishing the project.

Certification: I hereby certify that bid tabulations, executed contract, cancelled checks, and other purchasing documentation have been maintained as required to support the costs reported above, and are available for audit upon request.

Administrator/Date

Financial Officer/Date

2008 _____

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY
BUDGET Transfer

FUND Transportation Improvement

BGEX

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 10/01/07	REMAINING BALANCE
STUB CANAL DRAINAGE BASIN STUDY-DIST 3								
3500-365-S001-8101	Contributions Othr Govtl Agency	0	0	500,000	0	500,000	0	500,000
RESERVE FOR DISTRICT 3								
3500-368-9113-9907	Res-Future Construction	2,571,392	2,571,392	<u>0</u>	<u>500,000</u>	2,071,392		
				500,000	500,000			

SIGNATURE

DATE

By Board of County Commissioners
At Meeting of 10/02/07

Engineering & Public Works

R. D. Ward

8/20/07

Administration / Budget Approval

OFMB Department - Posted

Deputy Clerk to the
Board of County Commissioners