





**EMPLOYEE INTERCHANGE AGREEMENT  
BETWEEN  
PALM BEACH COUNTY  
AND  
U.S. ARMY CORPS OF ENGINEERS**

THIS EMPLOYEE INTERCHANGE AGREEMENT ("EIA") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY", located at 301 North Olive Avenue, West Palm Beach, Florida 33401, and the U.S. ARMY CORPS OF ENGINEERS, hereinafter referred to as "USACOE", a federal agency, (both being hereinafter referred to collectively as "the PARTIES").

WITNESSETH:

WHEREAS, the COUNTY is a political subdivision of the State of Florida with the power to enter into contracts with public agencies, private corporations or other persons; and

WHEREAS, the COUNTY desires to accelerate the review of its proposed projects that are subject to review, approval and permitting by the USACOE prior to construction; and

WHEREAS, the USACOE desires to increase its level of involvement during the planning, programming and project development process of the County's projects; and

WHEREAS, the USACOE is responsible for review of federal and state agency actions under Section 404 of the Clean Water Act, Section 10 of the River and Harbor Act of 1899 and Section 103 of the Marine Resources, Protection and Sanctuaries Act, and is required to satisfy the requirements of the National Environmental Policy Act ("NEPA"); and

WHEREAS, the PARTIES have determined that it is mutually beneficial to increase funding to the USACOE to enable the USACOE to provide the COUNTY with dedicated project review staff so that COUNTY projects may be reviewed and evaluated more promptly and, if approved, timely designed and constructed in accordance with the project implementation schedule of the COUNTY; and

WHEREAS, the USACOE has determined that: (1) it is authorized, pursuant to Section 214 of the Water Resources Development Act of 2000, as amended, to accept and expend funds contributed by non-federal public entities to expedite the evaluation of permits under the jurisdiction of USACOE; and (2) evaluating permits on an expedited basis requires the USACOE to provide a level of service beyond the normal work it performs on regulatory projects; and

WHEREAS, the COUNTY is willing to fund one senior-level position at the USACOE to ensure priority project review and a level of service beyond the normal work performed on regulatory projects; and

WHEREAS, the COUNTY understands that this EIA will result in expedited review but, in no way, ensures favorable review of permit applications.

NOW, THEREFORE, in consideration of the foregoing promises and mutual promises set forth below, the PARTIES hereto agree, with the intention of being legally bound, to the following:

1. Responsibilities of USACOE:

A. The USACOE shall provide one dedicated qualified, senior-level project review specialist to review projects and applications submitted by the COUNTY for review, consideration, and/or approval. The senior-level review specialist shall be assigned to all COUNTY applications and items submitted for review.

B. For actions related to permitting, the USACOE shall provide one senior-level project review specialist to conduct priority project coordination, technical assistance and document review on COUNTY projects.

C. The USACOE shall maintain time records identifying the number of hours the senior-level project review specialist performs work on COUNTY applications and projects in accordance with this EIA.

D. At least thirty (30) days prior to the commencement of each fiscal year (October 1<sup>st</sup>), the USACOE shall submit an invoice requesting funding on an advance payment basis for that fiscal year, and semi-annually or quarterly the USACOE shall submit reconciliation reports to the COUNTY along with documentation sufficient to the support actual hours worked under this EIA during the corresponding timeframe.

E. The USACOE shall deliver the above cited invoices and reconciliation reports to:

Richard Walesky, Director  
2300 N Jog Rod 4<sup>th</sup> fl,  
West Palm Beach, FL 33411

2. Responsibilities of the COUNTY:

A. The COUNTY shall provide funding for the salary and employee benefits for the senior-level project review specialist during its 2008 and 2009 fiscal years in an amount not to exceed a total of three hundred and seventy-seven thousand dollars and no cents (\$377,000), in accordance with the schedule set forth in **Exhibit A**. In addition, the senior-level project review specialist shall be compensated for necessary travel expenses incurred in connection with this EIA on the same basis as if (s)he were a regular employee of the USACOE.

B. In fiscal years 2008 and 2009, respectively, the COUNTY shall provide payment to the USACOE within thirty (30) days of receipt and approval of an invoice requesting

funds in accordance with paragraph 1.D. above. The COUNTY shall provide funds for each fiscal year in an amount not to exceed the amounts provided in **Exhibit A**.

3. The COUNTY'S performance and obligation to provide funding under this EIA for any fiscal year beyond FY 2008 is contingent upon an annual appropriation for such purpose by the Palm Beach County Board of County Commissioners, and appropriation for one year does not suggest that subsequent appropriations will be pursued or approved.
4. The PARTIES act in an independent capacity in the performance of their respective functions under this EIA, and neither PARTY shall be construed as the officer, agent or employee of the other.
5. The senior-level project review specialist provided for herein shall at all times be an employee of the USACOE, not the COUNTY, and the USACOE shall be solely responsible for said employee and for the supervision of said employee.
6. In no way shall it be construed or implied that either the COUNTY or the USACOE is intending to abrogate its obligation and duty to comply with the regulations promulgated under the Clean Water Act of 1977, as amended; Section 10 of the River and Harbor Act; Section 103 of the Marine Resources, Protection and Sanctuaries Act; the Fish and Wildlife Coordination Act of 1958, as amended; the National Environmental Policy Act of 1969, or and other applicable federal laws and regulations.
7. Either PARTY shall have the right to terminate this Agreement for convenience by providing sixty (60) days written notice to the other PARTY. The USACOE shall be compensated for senior-level project review specialist services rendered through the date of termination. In the event of termination by the COUNTY, the USACOE shall within ninety (90) days of the date of termination return to the COUNTY all unexpended advance payments provided in accordance with paragraph 1.D. above and this AIE.
8. The Project Manager for the COUNTY is Richard Walesky, Director of Environmental Resources Management, 2300 N Jog Rod 4<sup>th</sup> fl, West Palm Beach, FL 33411, (561) 233-2400. The Project Manager for the USACOE is [NAME, ADDRESS, PHONE NUMBER, PENDING]. All notices required to be given under this EIA shall be delivered by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to the Project Manager with a copy sent to the Palm Beach County Attorney's Office, Attn: ERM Attorney, 301 North Olive Avenue, 6<sup>th</sup> Floor, West Palm Beach, FL 33401.
9. Upon execution by both PARTIES, this EIA shall become effective ("Effective Date") and shall remain in effect until September 30, 2009 ("Expiration Date"), unless terminated sooner as a result of lack of funding, for good cause, or for the convenience of either PARTY. This EIA may be extended for a term beyond the Expiration Date, at the option of the PARTIES, through execution of an amendment or agreement signed by the PARTIES.

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10. Participation by the USACOE in this EIA is subject to the United States Congress's extension of the authority currently provided in Section 214 of the Water Resources Development Act, which is now scheduled to expire on December 31, 2008.
  11. The interpretation, construction, effect, performance, and enforcement and of this EIA shall be governed by and consistent with the applicable federal law and regulations and applicable laws and regulations of the State of Florida.
  12. The PARTIES agree that this EIA sets forth the entire agreement between the PARTIES and that there are no promises or understandings other than those stated herein. This EIA may be amended only with the written approval of the PARTIES through a duly executed amendment. Any changes, amendments, corrections, or additions to this EIA shall be in writing and executed by the PARTIES' duly authorized agents or officials with the same formalities used herein, in accordance with applicable law. Any amendment hereto shall become effective upon execution by both PARTIES.
  13. Consistent with Federal law, regulation and policy, the USACOE shall maintain records and the COUNTY shall have inspection and audit rights as follows:
    - A. Maintenance of Records: The USACOE shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this EIA including but not limited to supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five years from completing performance and receiving final payment under this EIA.
    - B. Examination of Records: The COUNTY or its designated agent shall have the right to examine, in accordance with generally accepted governmental auditing standards, all records directly or indirectly related to this EIA. Such examination may be made within five years from the date of final payment under this EIA and upon reasonable notice as to time and place.
    - C. Extended Availability of Records for Legal Disputes: In the event that the COUNTY should become involved in a legal dispute with a third party arising from performance under this EIA, the USACOE 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 COUNTY.
  14. Consistent with Federal law, regulation and policy, the USACOE shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the USACOE assert any exemptions to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the USACOE.
  15. Each PARTY shall be responsible for its own actions and negligence.

16. If any term or provision of this EIA, or the application thereof to any person or circumstance, shall, to any extent, be held invalid or unenforceable, the remainder of this EIA, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this EIA shall be deemed valid and enforceable to the extent permitted by law.

IN WITNESS WHEREOF, the PARTIES or their duly authorized representatives hereby execute this Agreement.

ATTEST: SHARON R. BOCK  
Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA BY  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Addie L. Greene, Chairperson

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

By: \_\_\_\_\_  
Assistant County Attorney

By: Richard E. Walby  
Director, Env. Res. Management

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

U.S. ARMY CORPS OF ENGINEERS

By: \_\_\_\_\_  
USACOE Attorney

By: \_\_\_\_\_

By: \_\_\_\_\_  
Typed Name & Title

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EMPLOYEE INTERCHANGE AGREEMENT  
BETWEEN  
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AND  
U.S. ARMY CORPS OF ENGINEERS

**EXHIBIT A**

1. Estimated funding to be provided by the COUNTY to the USACOE for Fiscal Year 2008<sup>1</sup>:
  - A. Salary and Employee Benefits shall not exceed a total amount of \$ 184,000
  - B. Travel Expenses shall not exceed a total amount of \$2,000
  
2. Estimated funding to be provided by the COUNTY to the USACOE for Fiscal Year 2009<sup>2</sup>
  - A. Salary and Employment Benefits shall not exceed a total amount of \$189,000
  - B. Travel Expenses shall not exceed a total amount of \$2,000
  
3. The funding provided by the COUNTY to the USACOE for fiscal Years 2008 and 2009, including all Salary, Employment Benefits, and Travel Expenses provided pursuant to paragraphs 1 and 2 above, shall not exceed a total amount of \$377,000.
  
4. The funding provided for herein is based on an estimate of the number of potential work hours the senior-level project review\_specialist will perform under the Employee Interchange Agreement ("EIA") (e.g. 40 hours worked per week for 52 weeks per year, less leave, training and other hours of work that are not to be compensated under the EIA) multiplied by the actual hourly wage rate for the senior-level project review specialist, plus a percentage factor to cover employee benefits (annual and sick leave, medical, FICA, etc.), a percentage factor to fund a pro-rata share of certain overhead expenses including a G&A rate (USACOE overhead rate) and a percentage factor to fund overhead costs specific to the Regulatory Division. The senior-level project review specialist compensation will be established by multiplying the above cited rates by the actual hours the senior-level project review\_specialist spends working on COUNTY projects pursuant to the EIA.

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<sup>1</sup> Estimates based on funding starting October 1, 2007 and ending September 30, 2008.

<sup>2</sup> Estimates based on funding starting October 1, 2008 and ending September 30, 2009.

2008

0044

BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY  
BUDGET Transfer

BGEX 100407-1324

FUND Transportation Improvement

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 10/04/07	REMAINING BALANCE
<u>INTERCHANGE AGREEMENT/ARMY COE</u>								
3500-361-1187-3401	Other Contractual Services	0	0	150,800	0	150,800	0	150,800
<u>ROAD PROGRAM SWEEP RESERVES</u>								
3500-361-9997-9901	Contingency Reserves	16,381,209	3,277,369	0	150,800	3,126,569		
				150,800	150,800			

SIGNATURE

DATE

By Board of County Commissioners  
At Meeting of 10/16/07

Engineering & Public Works

R.D. Ward

10/4/07

Administration / Budget Approval

[Signature]

10-11-07

OFMB Department - Posted

\_\_\_\_\_

Deputy Clerk to the  
Board of County Commissioners

actn  
10-11-07 (WD)  
10/11/07

PTA 2