

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: March 11, 2008 ☒ Consent ☐ Regular
 ☐ Workshop ☐ Public Hearing

Department

Submitted By: Administration

Submitted For: Office of Community Revitalization

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: An Interlocal Agreement with the Village of Palm Springs (Village) for the County to reimburse the Village an amount not to exceed \$912,488, which is one half of the engineering and construction costs of providing vacuum sewers within the Lakewood Gardens Subdivision.

Summary: This Interlocal Agreement provides the mechanism for the County to reimburse the Village an amount not to exceed \$912,488, which is one half of the engineering and construction costs for the sewer improvements completed by the Village in 2005 in the Lakewood Gardens Subdivision. District 3 (AH)

Background and Justification: On April 4, 2006, the Board of County Commissioners (BCC) approved an Interlocal Agreement with the Village for the annexation of enclaves within the Lakewood Gardens Subdivision, generally located on the north and south sides of 10th Avenue North, east of Kirk Road, and including the right of ways of Ford Road, Evans Drive, Reo Lane, Canal Road, Rostan Lane, Sally Lane, Sierra Drive, 7th Avenue North, segments of 10th Avenue North and Gulfstream Road, and for the Office of Community Revitalization (OCR) to provide the County's share of funding for infrastructure improvements of Lakewood's vacuum sewer. The Village completed construction of the vacuum sewer system in 2005, which cost approximately One Million, Eight Hundred and Twenty-Four Thousand, Nine Hundred and Seventy-Five Dollars (\$1,824,975). Funding for the vacuum sewer improvements were allocated in FY 2006-2007 and FY 2007-2008, and with the remaining funds to be allocated in FY 2008-2009. Previously, the BCC directed staff to work with municipalities to strategically address annexations and to provide incentives to annexation where appropriate. As an incentive for the Village to annex the Lakewood Gardens Subdivision, the County agreed to provide one half of the funding to the Village for costs associated with the construction of the vacuum sewer system in Lakewood, in an amount not to exceed Nine Hundred Twelve Thousand Four Hundred and Eighty-Eight Dollars (\$912,488). The Village is responsible to pay any remaining costs, which is at least an amount not to exceed Nine Hundred Twelve Thousand Four Hundred and Eighty-Eight Dollars (\$912,488). On November 21, 2006, the County reimbursed the Village an amount not to exceed Three Hundred and Four Thousand, One Hundred and Sixty-Three Dollars (\$304,163) towards the construction of the vacuum sewer. There are two payments that remain, for a total amount of Six Hundred and Eight Thousand, Three Hundred and Twenty-Five Dollars (\$608,325), which will be paid over this and next fiscal year. The BCC approved and allocated funding for the second payment of Three Hundred and Four Thousand, One Hundred and Sixty-Three Dollars (\$304,163) on December 18, 2007.

Attachments:

1. Interlocal Agreement with the Village of Palm Springs W/ Resolution

Recommended by:

OCR Manager

Date

Approved By:

Deputy County Administrator

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	20 <u>08</u>	20 <u>09</u>	20 <u>10</u>	20 <u>11</u>	20 <u>12</u>
Capital Expenditures	<u>912,488</u>	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>912,488</u>	_____	_____	_____	_____

ADDITIONAL FTE POSITIONS (Cumulative) _____

Is Item Included In Current Budget? Yes X No

Budget Account No.: Fund 3900 Dept 366 Unit X129 Object 8101

Reporting Category

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

C. Departmental Fiscal Review: Tat Elgoren

III. REVIEW COMMENTS

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

The second payment of \$304,163 is included in the current budget. The final payment in the amount of \$304,163 will be included in the fiscal year 2009 budget.

2009 budget.

Atwill 2-28-08
88 OFMB CN 2/27/08
2/28/08 2/27/08

J. J. Jones 2/29/08
Contract Dev. and Control E. Jones 2/29/08

B. Legal Sufficiency:

This Contract complies with our contract review requirements.

Anne Helgant 3/3/08
Assistant County Attorney

C. Other Department Review:

Department Director

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY
AND THE VILLAGE OF PALM SPRINGS**

THIS INTERLOCAL AGREEMENT, made and entered into this ____ day of _____, 2008 by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter "COUNTY") and the Village of Palm Springs, a municipal corporation existing under the laws of Florida, (hereinafter "VILLAGE"), each one constituting a public agency defined in Part I of Chapter 163, Florida Statutes.

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

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

WHEREAS, both COUNTY and VILLAGE support annexations into municipalities in order to round out municipal boundaries and to provide more efficient services; and

WHEREAS, the COUNTY recognizes incentives such as sharing the cost of providing services including sanitary sewer service, to encourage landowners to annex into municipalities; and

WHEREAS, on April 4, 2006, the Lakewood Gardens Subdivision, which is located on the north and south sides of 10th Avenue North, east of Kirk Road and including the right of ways of Ford Road, Evans Drive, Reo Lane, Canal Road, Rostan Lane, Sally Lane, Sierra Drive, 7th Avenue North, segments of 10th Avenue North and Gulfstream Road (hereinafter "Lakewood") was annexed into the VILLAGE; and

WHEREAS, as part of the annexation, a vacuum sewer system was needed to be installed in Lakewood; and

WHEREAS, in 2005, the VILLAGE completed construction of the vacuum sewer system in Lakewood; and

WHEREAS, the cost of the construction of the vacuum sewer system was approximately One Million, Eight Hundred and Twenty-Four Thousand, Nine Hundred and Seventy-Five Dollars (\$1,824,975); and

WHEREAS, as an incentive to its annexation, COUNTY agreed to provide half of the funding to the VILLAGE for costs associated with the construction of the vacuum sewer system in Lakewood; and

WHEREAS, the VILLAGE also agreed to provide funding for half of the costs associated with the construction of the vacuum sewer system in Lakewood; and

WHEREAS, on November 21, 2006 COUNTY reimbursed the VILLAGE an amount not to exceed Three Hundred and Four Thousand, One Hundred and Sixty-Three Dollars, (\$304,163) towards the construction of the vacuum sewer system in Lakewood; and

WHEREAS, County agreed to fund an additional Six Hundred and Eight Thousand Three Hundred and Twenty-Five Dollars (\$608,325) towards the construction of the vacuum sewer system in Lakewood for a total project amount not to exceed Nine Hundred and Twelve Thousand, Four Hundred and Eighty-Eight Dollars (\$912,488); and

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WHEREAS, installing vacuum sewers services a public purpose.

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

Section 1. Recitals.

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

Section 2. Term.

The term of this Agreement shall be effective on the date of execution of this Agreement by both parties and shall continue in full force and effect until August 30, 2010, unless otherwise terminated as provided herein. The COUNTY reserves the right to extend this Agreement for good cause. Any extensions shall be in writing and executed by both parties.

Section 3. Responsibilities and Duties:

1) COUNTY shall fund one-half (1/2) of the actual construction and engineering costs of the vacuum sewer improvements, in an amount not to exceed Nine Hundred and Twelve Thousand, Four Hundred and Eighty-Eight Dollars (\$912,488), as documented by invoices showing such expenses were paid by the VILLAGE for the vacuum sewer improvements. In no event shall COUNTY reimburse the Village more than Nine Hundred and Twelve Thousand, Four Hundred and Eighty-Eight Dollars (\$912,488). All remaining costs shall be borne by the VILLAGE.

2) The VILLAGE shall fund one-half of the actual construction and engineering costs of the vacuum sewer improvements and any costs in excess of Nine Hundred and Twelve Thousand, Four Hundred and Eighty- Eight Dollars (\$912,488).

3) The VILLAGE shall not assess any property owners for any part of the cost of construction of the vacuum sewer improvements.

4) The VILLAGE acknowledges that in 2005, construction of the vacuum sewer improvements were completed in Lakewood.

5) The VILLAGE shall be responsible for all costs associated with the maintenance of the vacuum sewer system. Failure to maintain the vacuum sewer system may result in a default of this Agreement by the VILLAGE, and COUNTY may seek reimbursement for expenses it paid to the VILLAGE under this Agreement.

Section 4. Payments/Invoicing and Reimbursement:

All expenses incurred by the VILLAGE for this project subsequent to April 1, 2004 shall be eligible for reimbursement by COUNTY. VILLAGE shall submit all invoices to the COUNTY identifying the project, including the VILLAGE'S total expenditure for the PROJECT, and identifying the amount due and payable to the VILLAGE. Invoices shall be itemized in sufficient detail for prepayment audit thereof and shall be supported by copies of the corresponding paid vendor invoices and substantiated proof of payment and performance. The VILLAGE shall supply any further documentation deemed necessary by the COUNTY. Invoices received from the VILLAGE will be reviewed and approved by the County's Office of Community Revitalization, indicating that expenditures have been made in conformity with this Agreement and then will be sent to the COUNTY'S Finance Department for final approval and payment. Invoices will normally be paid within thirty (30) days following approval.

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On November 21, 2006, COUNTY reimbursed the VILLAGE an amount not to exceed Three Hundred and Four Thousand, One Hundred and Sixty-Three Dollars, (\$304,163) towards the construction of the vacuum sewer system in Lakewood. This amount shall be deducted from the total amount COUNTY owes the VILLAGE, as described in Section 3 above. COUNTY now owes the VILLAGE an amount not to exceed Six Hundred and Eight Thousand Three Hundred and Twenty-Five Dollars (\$608,325) towards construction of the vacuum sewer system in Lakewood.

Section 5. Access and Audits:

The VILLAGE shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the project for at least three (3) years after its completion. The COUNTY shall have access to all books, records, and documents as required in this section for the purpose of inspection or audit, during normal business hours.

Section 6. Repayment:

The VILLAGE shall repay the COUNTY for all unauthorized, illegal or unlawful expenditures of revenues, including those discovered after the expiration or termination of this Agreement. Funds which are to be repaid to the COUNTY are to be repaid by delivering to the COUNTY a certified check for the total amount due and payable to the COUNTY, within ten (10) days of the COUNTY'S demand. Nothing contained herein shall act as a limitation of the COUNTY'S right to be repaid, as a waiver of any rights of the COUNTY'S or exclude the COUNTY from pursuing any other remedy which may be available to it under law of equity.

Section 7. Independent Contractor:

The VILLAGE recognizes that it is an independent contractor and not an agent or servant of COUNTY. No person employed by any party to this Agreement, shall in conjunction with the performance of this AGREEMENT or any services of 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 or otherwise, except through and against the entity by whom they are employed.

Section 8. Liability:

The parties to this Agreement shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party. Nothing contained herein shall be construed as a waiver, by either party, of the liability limits established in 768.28, Florida Statutes. Furthermore, the VILLAGE stipulates that the extent of the COUNTY'S responsibility shall be limited solely to funding. Liability for injury to personnel, and the loss or damage of equipment shall be borne by the party employing such personnel and owning such equipment. This provision shall survive termination and expiration of this Agreement.

Section 9. Indemnification:

In the event a claim or lawsuit is brought against the COUNTY, its officers, employees, servants or agents, the VILLAGE to the extent permitted by law agrees to save, defend, reimburse, indemnify and hold harmless the COUNTY, its officers, employees, servants and agents from any and all claims, demands, damages, liabilities, causes or actions, legal or administrative proceedings, judgments, interests, attorney fees, costs and expenses of whatsoever kind of nature, whether arising in any manner directly or indirectly caused, occasioned or contributed to, by reason of any act, omission or fault whether active or passive of COUNTY, or anyone acting under its direction or control, or on its behalf, in connection with or incidental to the performance

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of this Agreement. The VILLAGE'S aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall apply to the fullest extent permitted by law but in no event shall they apply to liability caused by the negligence or willful misconduct of the COUNTY, or agents, servants, employees or officers of COUNTY. This provision shall survive termination and expiration of this Agreement.

Section 10. Notice of Complaints or Suits:

Each party will promptly notify the other of any citizen complaint, claim, suit, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement.

Section 11. Annual Appropriation:

Each party's performance and obligation under this Agreement is contingent upon an annual budgetary appropriation by its representative governing body for the purposes hereunder.

Section 12. Breach and Opportunity to Cure:

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

Section 13. Enforcement Costs:

Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties; provided, however, that this clause pertains only to the parties to this Agreement.

Section 14. Notice:

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

As to the "COUNTY":

Houston L. Tate, Manager
County Administration
Office of Community Revitalization
2300 North Jog Road, 2nd Floor East
West Palm Beach, Florida 33411

As to the "VILLAGE":

John M. Davis, Mayor
Village of Palm Springs
226 Cypress Lane
Palm Springs, Florida 33461-1699

Section 15. Modification and Amendment:

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.

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Section 16. 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 this Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy 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, nor remedy hereunder shall preclude any other or further exercise thereof.

Section 17. Joint Preparation:

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

Section 18. Equal Opportunity:

The COUNTY and the VILLAGE agree that no person shall on the grounds of 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 this Agreement. The VILLAGE will ensure that all contracts let for the project pursuant to the terms of this Agreement will contain a similar non-discrimination and equal opportunity clause.

Section 19. Execution:

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

Section 20. Filing:

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

Section 21. Termination:

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

Section 22. Effective Date:

This Agreement shall take effect upon execution by both parties.

Section 23. Compliance with Codes and Laws:

Each party agrees to abide by all laws, orders, rules and regulations which relate to or affect the procurement, award of contracts, installation and maintenance of the Sanitary Sewer System.

Section 24. Severability:

If any section, paragraph, sentence, clause or provision of this Agreement is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative or void, such holding shall not affect the remaining portions of this Agreement.

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Section 25. Entirety of Agreement:

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

(The remainder of this page is intentionally left blank)

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

ATTEST:

PALM BEACH COUNTY, FLORIDA, BY IT'S
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK,
CLERK & COMPTROLLER

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

Approved as to Form and
Legal Sufficiency:

Approved as to Terms and Conditions:

By: Anne Delgant
Assistant County Attorney

By: Houston R Tate
Houston Tate, Manager
Office of Community Revitalization

ATTEST:

VILLAGE OF PALM SPRINGS, FLORIDA

By: Virginia M. Walton
Village Clerk

By: John M. Davis
John M. Davis, Mayor

Approved as to Form and
Legal Sufficiency:

By: _____
Village Attorney



RESOLUTION NO. 2008-26

A RESOLUTION OF THE VILLAGE OF PALM SPRINGS, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH PALM BEACH COUNTY FOR COST SHARING OF THE SANITARY SEWER INSTALLATION FOR LAKEWOOD GARDENS SUBDIVISION, PURSUANT TO SECTION 163.01, FLORIDA STATUTES, ET SEQ.; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, this Interlocal Agreement is an opportunity to participate in the Palm Beach County Annexation Incentive Program, with cost sharing measures for infrastructure improvements to a substandard development; and

WHEREAS, although the Village has been part of this program and has already been reimbursed one-third of the County's obligation, the Clerk of the Court/Comptroller for Palm Beach County had issued a new requirement that an Interlocal Agreement must be approved by the Board of County Commissioners before any further payments to the Village will be made; and

WHEREAS, both the VILLAGE and the COUNTY believe it is in the best public interest to enter into this agreement in order to continue this joint project.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF PALM SPRINGS, FLORIDA, AS FOLLOWS:

Section 1. The Village of Palm Springs, Florida hereby agrees to the terms and conditions of that certain Interlocal Agreement with Palm Beach County for Cost Sharing of the Sanitary Sewer Installation for Lakewood Gardens Subdivision, a copy of which is attached hereto as **Exhibit "A"**, and which is incorporated herein by reference, and which is authorized pursuant to Chapter 163.01 et seq, Florida Statutes; and further authorizes the Mayor and Village Clerk to execute and deliver said Interlocal Agreement to Houston L. Tate, Manager, County

Resolution No. 2008-26

Administration, Office of Community Revitalization, 2300 Jog Road, 2nd Floor East, West Palm Beach, FL 33411, along with a certified copy of this Resolution, for adoption and filing by the Palm Beach County Board of County Commissioners.

Section 2. This Resolution shall take effect immediately upon its passage.

Council Member Brinkman offered the foregoing resolution. Council Member Osborne seconded the motion, and upon being put to a vote, the vote was as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
JOHN M. DAVIS, MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BEV SMITH, VICE MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JONI BRINKMAN, MAYOR PRO TEM	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHET OSBORNE, COUNCIL MEMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PATTI WALLER, COUNCIL MEMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The Mayor thereupon declared the Resolution duly passed and adopted this 14th day of FEBRUARY 2008.

VILLAGE OF PALM SPRINGS, FLORIDA

BY: John M. Davis
JOHN M. "MIKE" DAVIS, MAYOR

ATTEST:
BY: Virginia M. Walton
VIRGINIA M. WALTON, VILLAGE CLERK

REVIEWED FOR FORM AND LEGAL SUFFICIENCY
BY: Glen J. Torcivia
GLEN J. TORCIVIA, VILLAGE ATTORNEY

