

AGENDA ITEM SUMMARY

Meeting Date: April 1, 2008 () Consent (X) 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:

- A) **approve** an Interlocal Agreement with the City of West Palm Beach (City) and the South Florida Water Management District (SFWMD) for construction of a bridge over the Grassy Waters Preserve at Northlake Boulevard with project cost shares of up to \$1.6 million from the City; up to \$800,000 from the SFWMD and up to \$700,000 from the County to be matched with \$1.5 million from the State; and
- B) **approve** Budget Amendment in the Capital Outlay Fund of \$1,600,000 to recognize the contribution from the City to the Loxahatchee Slough Bridge Project;
- C) **approve** Budget Amendment in the Capital Outlay Fund of \$800,000 to recognize the contribution from SFWMD to the Loxahatchee Slough Bridge Project;
- D) **request** Board direction regarding a Budget Transfer of \$800,000 from General Fund Contingency Reserve to the Capital Outlay Fund for the bridge project in the event that the SFWMD fails to execute the Agreement;
- E) **approve** a Budget Amendment of \$800,000 in the Capital Outlay Fund to recognize the transfer from Contingency Reserves and reduce Other Physical Environment Revenues previously identified with SFWMD as the source in the event that the SFWMD fails to execute the Agreement, contingent upon budget transfer approval described in D above; and
- F) **authorize** the County Administrator or his designee to sign all future time extensions, task assignments, certifications and other forms associated with the Agreements, and necessary minor amendments that do not change the scope of work or terms and conditions of the Agreement.

Summary: A nearly identical Interlocal Agreement came before and was approved by the
(Continued on page 3)

Attachments:

1. Interlocal Agreement
2. Budget Amendment (3900)
3. Budget Amendment (3900)
4. Budget Transfer (0001)
5. Budget Amendment (3900)

Recommended by: Richard E. Walukay 3/17/08
Department Director Date
Approved by: [Signature] 3/27/08
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	\$4,600,000				
Operating Costs					
External Revenues	< \$3,100,000 >				
Program Income (County)					
In-Kind Match (County)					
 NET FISCAL IMPACT	 \$1,500,000				
 # 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, \$800,000 or \$0
 City of West Palm Beach \$1,600,000
 Environmental Restoration \$350,000
 Transportation Improvement Fund \$350,000
 FDEP \$1,500,000
 Contingency Reserve \$800,000 or \$0

C. Department Fiscal Review:

JP

III. REVIEW COMMENTS

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

Atwillhite 3/21/08
 OFMB *3/19/08* *CN 3/18/08*
for Jon J. Jordest 3/24/08
 Contract Development and Control

B. Legal Sufficiency:

Mon T
 Assistant County Attorney

3/24/08 At the time of our review, the Agreement was not executed.

C. Other Department Review:

 Department Director

Continued from page 1:

BCC on December 4, 2007. Since that time, the SFWMD has become a more reluctant partner. It is unknown at this time whether the SFWMD will sign the Agreement. As a result, both the City and County staff want to clarify how the Agreement will be implemented if the District ultimately does not become a partner. Should the District not become a partner, the County will provide the \$800,000 that was contemplated to come from the District. The County's total contribution toward the \$4,600,000 bridge would then become \$1,500,000.

If the County does not make up the District's \$800,000 share, then \$1,500,000 in State grants to the County and another \$1,600,000 in State grants to the City could not be utilized. Also, both grants will need to be extended. Should they not be extended, the Agreement would terminate absent other funding sources. At the same time, the County's expression of willingness to utilize contingency reserves may cause the District to be less compelled to execute the Agreement, thereby increasing the likelihood that contingency funds would be needed. District 6 (SF)

Background and Policy Issues: The cost of the bridge is estimated to be approximately \$4.6 million. Through the Interlocal Agreement, the City commits \$1 million towards the bridge within the County-owned right-of-way and another \$600,000 to improvements on City land outside the right-of-way. The SFWMD commits a total of \$800,000. A 2007 legislative request brought \$1.5 million to the project which is provided through the Florida Department of Environmental Protection (FDEP) Agreement. The County makes up the difference in funding which is projected to be \$700,000 consisting of \$350,000 from the Environmental Restoration Fund and \$350,000 from the Transportation Improvement Fund Reserves.

Historically, the Loxahatchee Slough occupied what is now Grassy Waters Preserve, and lands further south and west, to the Northwest Fork of the Loxahatchee River. Clean water flowed from interior headwater wetlands to the River. Three roads, Northlake Boulevard, State Road 710 and PGA Boulevard have since interrupted those flows. The Comprehensive Everglades Restoration Plan (CERP) identifies the need to restore flows beneath these three roads. The Florida Department of Transportation took on the first project which resulted in a bridge in State Road 710 where previously only a culvert existed.

Placement of a similar bridge at Northlake Boulevard will allow for expanded recreational opportunities by linking 12,800 acres of Grassy Waters Preserve with the 12,500 acre Loxahatchee Slough Natural Area. Canoes, kayaks, hikers and wildlife will be able to pass beneath the planned 8' high bridge opening. A canoe portage area makes for safe passage during periods of high water while also regulating water flow. This passage also makes up a portion of the planned Northeast Everglades Natural Area (NENA) trail system.

The CERP calls for an additional 150 cubic-feet-per-second (cfs) peak flow from Grassy Waters Preserve and a base flow of 50 cfs to restore the Loxahatchee River. By directing this flow at the proposed bridge location, as opposed to the location of existing culverts, the flow will hydrate the Loxahatchee Slough rather than be shunted down the C-18 canal where it never encounters a wetland to cleanse the water.

The SFWMD commits \$800,000 to the project as follows: \$166,000 in FY 2009 for bridge engineering and design and \$217,000 and \$417,000 in FY 2010 and FY 2011, respectively, for bridge construction. For each fiscal year of the project, the County and City will first seek payment from the District up to its committed amount.

The City commits \$1 million towards bridge construction. In addition, for some additional work outside the Northlake Boulevard ROW (i.e., on City-owned land), the City commits an additional \$600,000 for activities such as channel dredging, weir placement and a canoe-kayak portage. After seeking payment up to the District's committed amount, the County will seek payment from the City. The County is responsible for all further payments.

In addition, the 2007 legislature provided a State Financial Assistance Grant (Item 1859 of the 2007-2008 General Appropriations Act) in the amount of \$1,500,000 towards this bridge project which can be matched by the SFWMD, City and County contributions.

**INTERLOCAL AGREEMENT
BETWEEN
PALM BEACH COUNTY,
THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT,
AND
THE CITY OF WEST PALM BEACH
FOR NORTHLAKE BOULEVARD BRIDGE FUNDING AND CONSTRUCTION**

THIS AGREEMENT is made and entered into this _____ day of _____, 2008, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter the "COUNTY"), the **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**, a public corporation of the State of Florida (hereinafter the "DISTRICT"), and the **CITY OF WEST PALM BEACH**, a Florida municipal corporation (hereinafter the "CITY"), also hereinafter referred to collectively as the "PARTIES."

WITNESSETH:

WHEREAS, the PARTIES have identified a bridge construction project (hereinafter the "Project") on Northlake Boulevard, in West Palm Beach, Palm Beach COUNTY, Florida, that will: (1) protect, restore, and maintain the quality and natural functions of water and wetland systems in the CITY's Water Catchment Area and the COUNTY's adjacent Loxahatchee Slough Natural Area; (2) provide recreational opportunities for hikers, kayakers, and others; and (3) provide a wildlife corridor between in the CITY's Water Catchment Area and the Loxahatchee Slough Natural Area; and

WHEREAS, the PARTIES agree that the Project will enhance water conveyance and water quality, will provide recreational opportunities, and will protect wildlife in Palm Beach County; and

WHEREAS, the PARTIES have a mutual interest in the Project and wish to cooperate to complete the Project; and

WHEREAS, Section 163.01, Florida Statutes, permits public agencies to enter into Interlocal Agreements with each other to jointly exercise any power, privilege, or authority that such agencies share in common and that each might exercise separately; and

WHEREAS, the DISTRICT is further authorized to enter into this Agreement pursuant to Section 373.083, Florida Statutes; and

WHEREAS, the PARTIES have the full authority and capability to perform as hereinafter set forth and have agreed to share the cost of the Project in accordance with the terms of this Agreement; and

WHEREAS, during the 2006-2007 Legislative Session, the Florida Legislature appropriated \$1.5 million to the COUNTY, which the COUNTY intends to use for construction

of the Project, and funds to be provided by the PARTIES to this Agreement are necessary to match the \$1.5 million legislative appropriation; and

WHEREAS, the CITY has obtained a State Financial Assistance Grant through the Department of Environmental Protection ("DEP") (Grant Agreement No. LP 6748) to be used toward funding the Project.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants set forth herein, the PARTIES agree as follows:

- 1) The foregoing Recitals are true and correct and are hereby incorporated herein by reference as if fully set forth herein.
- 2) **Purpose.** The purpose of this Agreement is to set forth the PARTIES' agreement to provide funding for the planning, implementation, construction, and management of the Project, which consists of a six (6) lane bridge crossing over Northlake Boulevard, a Palm Beach County road, in the CITY's Water Catchment Area near the COUNTY's Loxahatchee Slough Natural Area, and to provide for management of the Project by the COUNTY. The PARTIES will proceed and assist each other in implementing the Project in the manner defined herein and in the Statement of Work ("SOW") attached hereto as **Exhibit "A"**.
- 3) **Term and Effective Date.** The term of this Agreement shall commence upon execution by all of the PARTIES (the "Effective Date") and shall continue, unless extended or earlier terminated, until the completion of all contractual obligations by the PARTIES, but in no event later than five (5) years from the Effective Date of this Agreement.

4) Project Funding and Project Expenses.

A. The PARTIES agree that each PARTY shall, as specifically provided herein, contribute funds towards construction of the Project, which is currently estimated to cost \$4.6 million.

B. Approved Project expenses shall include but are not limited to the costs to procure the services of contractors, consultants and engineers for design, construction, project management and operation of the facilities and any permit fees incurred for implementation of the Project. Staff time shall not be a recoverable expense under this Agreement.

5) Obligations of the COUNTY.

A. The COUNTY shall plan, implement, construct, and manage the Project. 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"**.

B. The COUNTY shall maintain current records of the payments provided by the

PARTIES and current projections for total Project costs due to modifications or any other costs that increase the cost of the Project.

C. At least quarterly, the COUNTY shall provide the DISTRICT and the CITY with a report setting forth each PARTY's financial contributions to the Project as of that date.

D. Upon written request of any PARTY, the COUNTY shall provide an accounting of the receipt and disbursement of funds paid to and disbursed by it for the Project. Said accounting shall be provided within forty-five (45) days of COUNTY's receipt of the written request for same.

E. The COUNTY shall provide the funds necessary to complete the Project after the DISTRICT and the CITY provide all of their funding for the Project up to the not to exceed amounts provided in this Agreement.

F. The COUNTY, at the request of the CITY, shall complete and execute, or shall cause to be completed and executed, each Engineer's Certificate required to be filed by the CITY with the State as a condition of the CITY's grant agreement, which is attached hereto as **Exhibit "B"**.

6) Obligations of the DISTRICT.

A. Regardless of the actual cost of the Project, the DISTRICT shall fund the Project in an amount not to exceed a total Project cost of Eight Hundred Thousand Dollars and No Cents (\$800,000.00). Funding for the DISTRICT's fiscal year ending September 30, 2009 shall not exceed One Hundred and Sixty-Six Thousand Dollars and No Cents (\$166,000). Funding for the DISTRICT's fiscal year ending September 30, 2010 shall not exceed Two Hundred and Seventeen Thousand Dollars and No Cents (\$217,000). Funding for DISTRICT's fiscal year ending September 30, 2011 shall not exceed Four Hundred and Seventeen Thousand Dollars and No Cents (\$417,000). Notwithstanding the foregoing, the amount expended by the DISTRICT under this Agreement shall be paid in accordance with, and subject to the multi-year funding allocations for each DISTRICT fiscal year. Funding for each applicable fiscal year of this Agreement is subject to DISTRICT Governing Board budgetary appropriation.

B. The DISTRICT shall provide payment to the COUNTY in an amount up to the not to exceed amounts provided in paragraph 6.A. upon receipt of a proper invoice from the COUNTY.

C. The DISTRICT agrees that in each fiscal year cited in paragraph 6.A., the COUNTY will first seek payment for all proper Project invoices from the DISTRICT, until the DISTRICT provides funds up to its not to exceed amount, at which time the CITY and the COUNTY, respectively, will be sent invoices for payment.

7) Obligations of the CITY.

A. Regardless of the actual amount of the Project, the CITY shall fund the Project in an amount not to exceed a total Project cost of One Million and 00/100 Dollars (\$1,000,000.00)

for construction of the overall Project and an additional Six Hundred Thousand Dollars (\$600,000) for works outside of Northlake Boulevard right-of-way, subject to the funding contingency set forth in this Agreement.. Such works shall include but are not limited to the creation of excavation channels to and from the bridge and other construction necessary for the success for the Project.

B. The CITY agrees that in each fiscal year that this Agreement is in effect, the COUNTY will first seek payment for all proper Project invoices from the DISTRICT until the DISTRICT provides funds up to its not to exceed amount for that period, and the COUNTY will next seek payment for all proper Project invoices from the CITY until the CITY provides funds up to its not to exceed amount, and subject to the funding contingency, at which time the COUNTY will be responsible to pay all further invoices.

8) Funding Contingency.

A. Completion of the Project under this Agreement is contingent upon each of the PARTIES approving and securing, as applicable, its funding obligation hereunder.

B. The PARTIES acknowledge that pursuant to the grant obtained by the City (Exhibit "B"), the Project construction must be completed no later than **June 2009**, unless extended in writing by the DEP. COUNTY agrees to cooperate with the CITY to diligently pursue any necessary time extensions from the DEP. In the event that the CITY loses grant funding due to failure of the Project to be completed by June 2009, the CITY may terminate this Agreement as provided in paragraph 13 herein. If the DEP extends the term of the grant agreement beyond 2009, the Project will proceed as provided herein.

9) Invoicing and Prompt Payment.

A. The PARTIES understand that all payments made pursuant to the Agreement are subject to the Local Government Prompt Payment Act, Chapter 218, Florida Statutes, and the PARTIES agree to make timely payments as required under the Act. The PARTIES acknowledge that payment to any contractor or subcontractor is due within twenty-five (25) business days after the date on which an invoice is received by the COUNTY and that each PARTY hereto is responsible for timely providing funds as required under this Agreement.

B. The COUNTY will review all Project invoices received from any contractor or subcontractor and will periodically submit proper invoices for payment to the DISTRICT and/or the CITY. Such invoices shall include a reference to this Agreement, shall identify the amount due and payable to the COUNTY, and shall be sent to the DISTRICT and/or the CITY at the address provided in paragraph 12 herein.

C. The COUNTY shall submit proper invoices to the DISTRICT or the CITY within ten (10) business days after the date on which the invoice is received by the COUNTY. The DISTRICT or the CITY shall submit payment in the amount requested to the COUNTY within ten (10) business days after the date on which the payment request or invoice is received from the COUNTY.

8

D. If a PARTY fails to make a payment requested under this Agreement within the timeframes specified herein, that PARTY shall pay interest on such late payment at the rate of 1 percent per month. The COUNTY shall invoice the DISTRICT and/or the CITY for payment of any accrued unpaid interest.

E. All payments made to the COUNTY shall be by check made payable to the Palm Beach County Board of County Commissioners, shall be clearly marked to identify the Project, and shall be mailed to the address provided in paragraph 10 herein to the attention of the Project Manager.

10) **Project Manager.** Each PARTY hereby designates a Project Manager who shall be responsible for the Project coordination and oversight relating to each PARTY's performance of this Agreement. The PARTIES shall direct all matters arising in connection with the performance of this Agreement, other than invoices, to the attention of the below cited Project Manager:

COUNTY: Palm Beach County Department of
Environmental Resource Management
c/o Richard E. Walesky, Director
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411-27743

DISTRICT: Mr. Fred Rapach, Director
Palm Beach County Service Center
South Florida Water Management DISTRICT
Post Office Box 24680
West Palm Beach, FL 33416-4680
Telephone: (561) 682-6754

CITY: Mr. City Administrator
City of West Palm Beach
P.O. Box 3366
West Palm Beach, FL 33402-3366

11) **Notice.** Any notice, request, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, to each PARTY's Project Manager at the address in paragraph 10, with a copy to the below cited counsel:

For the COUNTY: Palm Beach County Attorney's Office
Attention: Attorney for ERM
301 North Olive Avenue, Sixth Floor
West Palm Beach, FL 33401

For the DISTRICT: Francisco Mendez
South Florida Water Management DISTRICT
Post Office Box 24680
West Palm Beach, FL 33416-4680

For the CITY: City Attorney
City of West Palm Beach
P.O. Box 3366
West Palm Beach, FL 33402- 3366

All notices required by this Agreement shall be considered delivered *upon receipt*. Should any PARTY change its address, written notice of such new address shall promptly be sent to the other PARTIES.

12) **Invoices.** All Proper Invoices sent by the COUNTY to the DISTRICT or the CITY shall be directed to the attention of the appropriate entity's Accounts Payable:

DISTRICT: South Florida Water Management District
Attention: Accounts Payable
P.O. Box 24682
West Palm Beach, FL 33416-4682

CITY: City of West Palm Beach
Attention: Accounts Payable
P.O. Box 3366
West Palm Beach, FL 33402- 3366

13) Termination.

A. If any PARTY fails to fulfill its obligations under this Agreement in a timely and proper manner, any other PARTY shall have the right to terminate this Agreement by giving written notice of any deficiency. The PARTY in default shall then have sixty (60) calendar days from receipt of notice to correct the deficiency. If the defaulting PARTY fails to correct the deficiency within this time, the non-defaulting PARTY or PARTIES shall have the option to terminate this Agreement at the expiration of the sixty (60) day time period. Notwithstanding any other provision of this Agreement, each PARTY shall be entitled to all remedies that are available to the non-defaulting PARTY under law and/or equity.

B. **The DISTRICT may terminate this Agreement at any time for convenience upon thirty (30) calendar days written notice to the other PARTIES.**

C. If the CITY's DEP grant (Exhibit "B") is not extended past June 2009 as provided in paragraph 8 herein, the CITY may terminate this Agreement upon thirty (30) calendar days prior written notice to the other PARTIES. In the event of such termination by the CITY, the

CITY shall compensate the COUNTY for all Project related costs expended through the date of termination and that result from the termination.

D. If the COUNTY's DEP grant, which is expected to expire in December of 2010 and which is attached hereto as **Exhibit "C"**, is not extended as necessary for the COUNTY to meet its funding obligations under this Agreement, the COUNTY may terminate this Agreement upon thirty (30) calendar days prior written notice to the other PARTIES. In the event of such termination by the COUNTY, the COUNTY shall pay for its share of all Project related costs expended through the date of termination and that result from the termination.

E. If at the time the COUNTY solicits bids for construction of the Project, the total Project costs exceed the estimated Project cost (\$4.6 million), any PARTY may terminate this Agreement upon thirty (30) calendar days prior written notice to the other PARTIES. In the event of such termination by such PARTY, the PARTIES shall compensate the COUNTY for all Project related costs expended through the date of termination.

14) **Dispute Resolution.** In the event a dispute arises that the Project Managers cannot resolve among themselves, the PARTIES shall have the option to submit to non-binding mediation. The mediator(s) shall be impartial, shall be selected by the PARTIES, and the cost of the mediation shall be borne equally by the PARTIES. The mediation process shall be confidential to the extent permitted by law.

15) **Stop Work Order.** The COUNTY may invoke a "stop work" order if circumstances dictate that this action is in its best interest. Such circumstances may include, but are not limited to, unexpected technical developments, 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 COUNTY shall notify the other PARTIES in writing of its intent to stop work as of a time and date certain and specify the reason(s) for the action, which shall not be arbitrary or capricious.

16) **Records Retention.** The PARTIES shall maintain records and each PARTY shall have the inspection and audit rights identified in this paragraph. The PARTIES shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:

A. Maintenance of 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. Such records shall be maintained and made available for inspection for a period of five (5) years from completing performance and receiving final payment under this Agreement.

B. Examination of Records: The PARTIES, along with the Department of Environmental Protection, the State's Chief Financial Officer and/or Auditor General 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.

C. Extended Availability of Records for Legal Disputes: In the event that any or all of the PARTIES become involved in a legal dispute with a PARTY hereto or 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.

- 17) **Time is of the Essence.** The PARTIES agree that time is of the essence in the performance of each and every obligation under this Agreement.
- 18) **Standards of Compliance.** The PARTIES, their employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement.
- 19) **Governing Law; Venue.** This Agreement shall be governed by and construed under the laws of the State of Florida. Venue for any lawsuit filed in connection with this Agreement shall be in Palm Beach County, Florida.
- 20) **Public Entity Crimes.** 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, subcontractors, or consultants who shall perform work that is intended to benefit the PARTIES is a convicted vendor or, if the PARTY or any affiliate of the PARTY has been convicted of a public entity crime, a period longer than thirty-six (36) months has passed since that person was placed on the convicted vendor list. The PARTIES further understand and accept that this Agreement shall be either voided or subject to immediate termination by any PARTY, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133, Florida Statutes.
- 21) **Public Records.** The PARTIES shall allow public access to all Project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should a PARTY 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 that PARTY.
- 22) **Non-Discrimination.** The PARTIES hereby assure that no person shall be excluded on the grounds of race, color, religion, sex, age, disability, marital status, sexual orientation, national origin or ancestry from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this Agreement.
- 23) **Relationship Between the PARTIES.** The PARTIES shall be considered independent contractors, and no PARTY 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.

- 24) **Beneficiaries of Agreement.** 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.
- 25) **Assignment, Delegation, and Transfer.** No PARTY shall assign, delegate, or otherwise transfer its rights and obligations as set forth in this Agreement without the prior written consent of the other PARTIES. Any attempted assignment in violation of this provision shall be void.
- 26) **Delays.** Notwithstanding any provisions of this Agreement to the contrary, the PARTIES shall not be held liable for any failure or 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.
- 27) **Non-Waiver.** Failure(s) to insist on strict performance of any covenant, condition, or provision of this Agreement by a 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) **Severability.** Should any term or provision of this Agreement be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement, to the extent that the Agreement shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- 29) **Liability.** Each PARTY shall be liable for its own actions and negligence and assumes any and all risks of personal injury, bodily injury and property damage attributable to the negligent acts or omissions of itself and its officers, employees, servants, and agents, to the extent permitted by law, and each PARTY shall indemnify, defend and hold harmless the other PARTIES against all actions, claims or damages arising out of that PARTY's negligence in connection with this Agreement and any amendment hereto.

30) **Insurance.**

- A. 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. Each PARTY warrants and represents that it is self-funded for Worker's Compensation and Liability insurance covering at a minimum bodily injury, personal injury and property damage with protection being applicable to the PARTY's officers, employees, servants and agents while acting within the scope of their employment during performance under this Agreement. 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 or its agents beyond the waiver provided in Section 768.28, Florida Statutes.

B. In the event any PARTY subcontracts any part or all of the work hereunder to any third PARTY, that PARTY shall require each and every subcontractor to identify the other PARTIES as an additional insured on all general liability insurance policies as required by the PARTY. Any contract awarded by COUNTY for work under this Agreement shall include a provision whereby the COUNTY's contractor or subcontractor agrees to defend, indemnify, and pay on behalf, save and hold the DISTRICT, CITY and COUNTY harmless from all damages arising in connection with the COUNTY's this Agreement.

C. 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.

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

31) **Delegation.** Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, County, or municipal officers.

32) **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.

33) **Non-Exclusivity of Remedies.** 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.

34) Construction of Agreement.

A. The titles, captions and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, limit or expand the scope or content of this Agreement or any provision hereto.

B. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the PARTY causing this Agreement to be drafted.

C. In the event any provision of this Agreement conflicts, or appears to conflict with any other provision of this Agreement, the Agreement, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any such conflict or inconsistency.

35) **Exhibits.** The Exhibits referred to and attached to this Agreement are incorporated herein in full by this reference.

36) **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.

37) **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the PARTIES, their respective assigns, and successors in interest.

38) **Entire Agreement.** This Agreement states the entire understanding and agreement between the PARTIES as to the subject matter hereof, and supersedes any and all written or oral representations, statements, negotiations, or Agreements previously existing between the PARTIES with respect to the subject matter of this Agreement. The PARTIES recognize that any representations, statements or negotiations made by another PARTY does not suffice to legally bind the PARTIES in a contractual relationship unless they have been reduced to writing and signed by an authorized representative of each PARTY.

15

IN WITNESS WHEREOF, the PARTIES or their duly authorized representative hereby execute this Agreement on the date first written above.

EXECUTED by the **DISTRICT** this _____ day of _____, 2007.

ATTEST:

**SOUTH FLORIDA WATER MANAGEMENT
DISTRICT, BY ITS GOVERNING BOARD**

By: _____
_____, Secretary

By: _____
Frank Hayden, Procurement Director

{SFWMD SEAL}

Approved as to legal form and sufficiency:

By: _____

Procurement Approved:

By: _____

16

PALM BEACH COUNTY BOARD OF
COUNTY COMMISSIONERS, a political
subdivision of the State of Florida

[Official Seal]

ATTEST:

By: _____
Addie L. Greene, Chairperson

SHARON R. BOCK,
CLERK AND COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

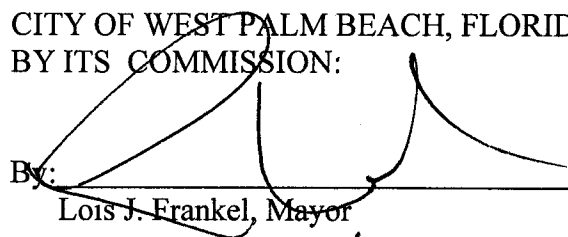
By: Mark J. Fox
COUNTY Attorney

APPROVED AS TO TERMS AND
CONDITIONS:

By: Richard E. Walesky
Richard E. Walesky, Director
Environmental Resources Management

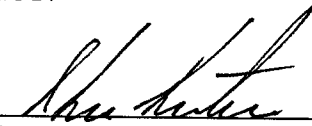
By: George T. Webb
George T. Webb, P.E., COUNTY Engineer
Engineering & Public Works

CITY OF WEST PALM BEACH, FLORIDA
BY ITS COMMISSION:

By: 
Lois J. Frankel, Mayor

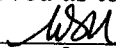
Date: 3/24, 2008

ATTEST:

By: 
Blane Kauthen, City Clerk

CITY ATTORNEY'S OFFICE

Approved as to form and legal sufficiency

By: 
Date: 3-24-08

STATEMENT OF WORK

EXHIBIT "A"

I. Purpose of Agreement. The purpose of this Agreement is for the PARTIES to fund, plan, implement, construct, and manage the Project, which consists of a six (6) lane bridge crossing over Northlake Boulevard, a Palm Beach County road, in the CITY's Water Catchment Area. The Project will enhance activities in the northern part of Palm Beach County by providing the infrastructure for increased water flow, providing recreational opportunities such as hiking, canoeing, and kayaking, and creating of a wildlife corridor between the Water Catchment Area and the Loxahatchee Slough and surrounding areas. (Project location shown on Attachment "1").

II. Obligations of the PARTIES:

A. The COUNTY.

1. The COUNTY shall plan, implement, construct, and manage the Project with the funds provided by the PARTIES to the Agreement and any additional funds provided to the COUNTY by other governmental entities.
2. No later than twenty-four (24) months after the date the Agreement is executed by the PARTIES (the "Effective Date"), the COUNTY shall provide the plans and specifications for the Project to the DISTRICT and the CITY for review and comment. Before the COUNTY finalizes the plans and specifications for the Project, it shall address all comments timely submitted by the DISTRICT and the CITY and shall attempt to incorporate such comments into the final plans and specifications.
3. The COUNTY shall provide the DISTRICT and the CITY the opportunity to review and comment on the specifications for all contracts prior to the COUNTY's issuance of solicitations. The COUNTY shall not issue the solicitation for the first contract until the DISTRICT and the CITY have confirmed in writing their willingness to proceed with the Project.
4. Once the plans and specifications are finalized and a contractor(s) is procured, the COUNTY shall commence construction and shall manage construction of the Project.
5. To the extent possible, the COUNTY shall afford the DISTRICT and the CITY the opportunity to review and comment on all contract modifications prior to issuance to the contractor(s) of a notice to proceed. In any instance where providing the DISTRICT and the CITY with notification of contract change orders or modifications is not possible prior to issuance of a notice to proceed, the COUNTY shall provide such notice to the DISTRICT and the CITY at the earliest possible date.

6. Through out the construction of the Project, the COUNTY shall furnish the DISTRICT and the CITY with a copy of the COUNTY's written acceptance of completed work for each contract related to construction of the Project.

B. The DISTRICT.

1. No later than thirty (30) days after receipt of the proposed plans and specifications for the Project, the DISTRICT shall provide any comments to the COUNTY.
2. No later than fifteen (15) days after receipt of proposed contract modifications, the DISTRICT shall provide any comments to the COUNTY.

C. The CITY.

1. No later than thirty (30) days after receipt of the proposed plans and specifications for the Project, the CITY shall provide any comments to the COUNTY.
2. No later than fifteen (15) days after receipt of proposed contract modifications, the CITY shall provide any comments to the COUNTY.

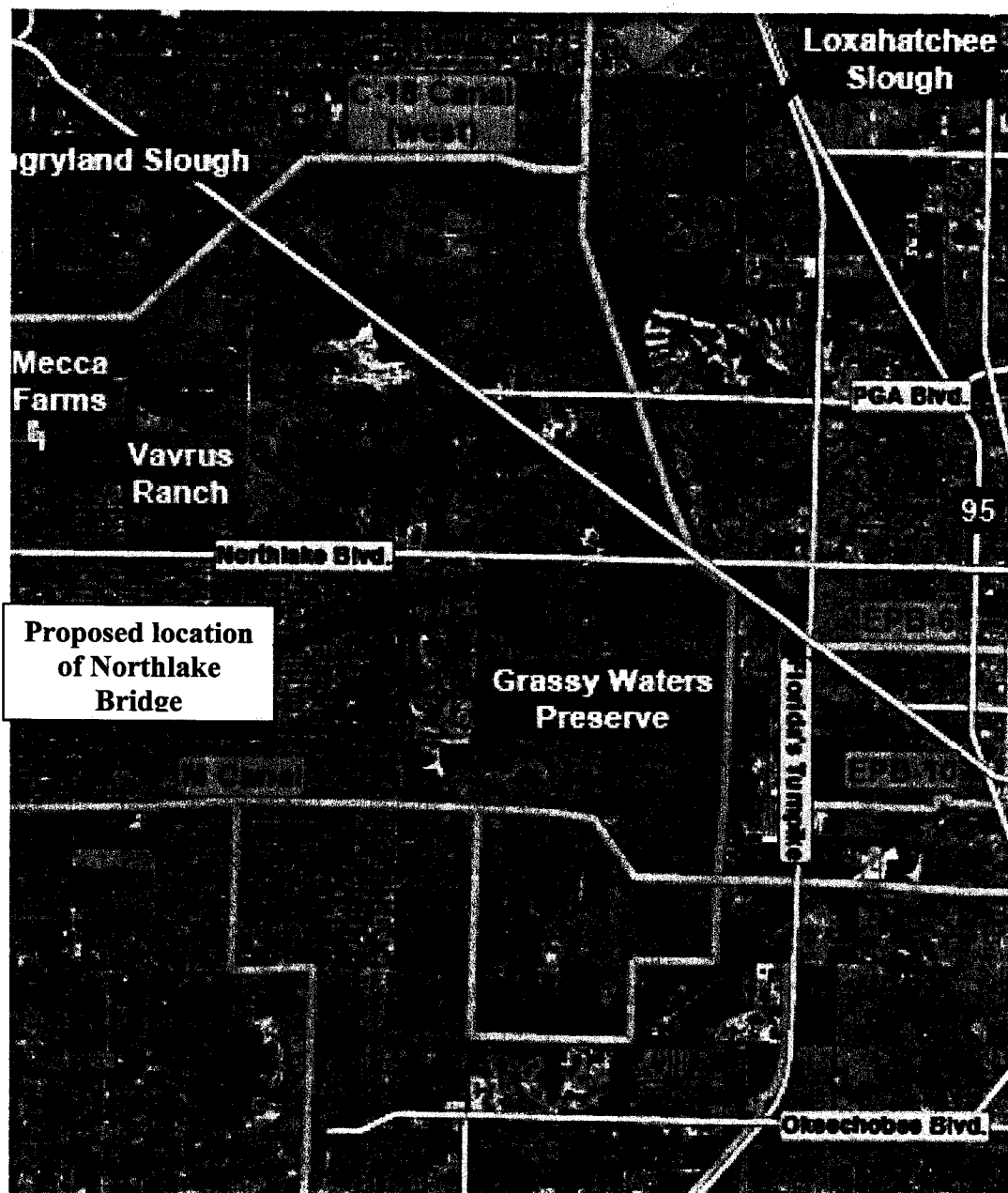
III. Deliverable Schedule

<u>Deliverable</u>	<u>Description</u>
Phase One	Within two years of execution of the Agreement, the COUNTY shall complete all plans and spec's for the Project.
Phase Two	Within four years of execution of the Agreement, the COUNTY shall substantially complete First Phase of Bridge Construction (i.e. first bridge complete)
Phase Three	Within five years of execution of the Agreement, the COUNTY shall substantially complete Bridge Construction Project

IV. Payment Schedule

- A. The PARTIES shall make timely payment to the COUNTY in accordance with paragraph 9 of the Agreement, **Invoicing and Prompt Payment**, for all Project work performed under the Agreement and this Scope of Work.

Attachment 1 – Project Location



21

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 3/11/2008	REMAINING BALANCE
<u>REVENUES</u>							
<u>Loxahatchee Slough-Ecosite 109</u>							
381-E270 3739-Grant Fr Other Loc Gov't - Physical Env	0	0	1,600,000	0	1,600,000		
TOTAL RECEIPTS & BALANCES	48,617,734	49,615,005	1,600,000	0	51,215,005		
<u>EXPENDITURES</u>							
<u>Loxahatchee Slough-Ecosite 109</u>							
381-E270 6504-Iotb Non Infrastructure	2,080,457	4,233,095	1,600,000	0	5,833,095	2,426,870	3,406,225
TOTAL APPROPRIATIONS & EXPENDITURES	48,617,734	49,615,005	1,600,000	0	51,215,005		

Environmental Resources
Management

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

Signatures & Dates

Richard E. Wabuly 3/12/08
Atwill 3-21-08

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF
April 1, 2008

Deputy Clerk to the
Board of County Commissioners

22

3/19/08

08-0609

BGEX - 380 - 03110800000000002357

BGRV - 380- 03110800000000000435

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 3/11/2008	REMAINING BALANCE
<u>REVENUES</u>							
<u>Loxahatchee Slough-Ecosite 109</u>							
381-E270 4399-Other Physical Env Revenue	0	0	800,000	0	800,000		
TOTAL RECEIPTS & BALANCES	48,617,734	51,215,005	800,000	0	52,015,005		
<u>EXPENDITURES</u>							
<u>Loxahatchee Slough-Ecosite 109</u>							
381-E270 6504-Iotb Non Infrastructure	2,080,457	5,833,095	800,000	0	6,633,095	3,426,870	4,206,225
TOTAL APPROPRIATIONS & EXPENDITURES	48,617,734	51,215,005	800,000	0	52,015,005		

Environmental Resources
Management

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

Signatures & Dates

Richard E. Walcott 3/12/08
atwillhite 3-24-08

BY BOARD OF COUNTY COMMISSIONERS
AT MEETING OF

April 1, 2008
Deputy Clerk to the
Board of County Commissioners

23

3/19/08

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA

BUDGET TRANSFER
Fund 0001 General Fund

ACCOUNT NAME AND NUMBER		ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENC/EXP 3/11/2008	REMAINING BALANCE
<u>Appropriations</u>								
820-9900 Reserves	9901-Contingency Reserves	20,000,000	19,279,328		800,000	18,479,328		18,479,328
820-9100 Transfers	9207-Tr To Capital Outlay Fd 3900	9,080,094	9,080,094	800,000		9,880,094	0	9,880,094
				800,000	800,000			

Environmental Resources
Management

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

Signatures & Dates

Richard E. Uhlir 3/12/08
atwillhitz 3.21.08

2
3/19/08

BY BOARD OF COUNTY COMMISSIONERS
AT MEETING OF

April 1, 2008
Deputy Clerk to the
Board of County Commissioners

08-0611

BGEX - 380 - 0311080000000002358

BGRV - 380- 03110800000000000436

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 3/11/2008	REMAINING BALANCE
<u>REVENUES</u>							
<u>Loxahatchee Slough-Ecosite 109</u>							
381-E270 8000-Tr Fr General Fund Fd 0001	0	0	800,000	0	1,600,000		
TOTAL RECEIPTS & BALANCES	48,617,734	52,015,005	800,000	0	52,815,005		
<u>EXPENDITURES</u>							
<u>Loxahatchee Slough-Ecosite 109</u>							
381-E270 6504-Iotb Non Infrastructure	2,080,457	5,833,095	800,000	0	6,633,095	2,426,810	4,206,225
TOTAL APPROPRIATIONS & EXPENDITURES	48,617,734	52,015,005	800,000	0	52,815,005		

Environmental Resources

Management

INITIATING DEPARTMENT/DIVISION

Administration/Budget Department Approval

OFMB Department - Posted

Signatures & Dates

Richard E. Wainly 3/12/08
Arthur White 3-20-08

3/19/08

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF

April 1, 2008

Deputy Clerk to the

Board of County Commissioners

56