

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: June 3, 2008

Consent

Regular

Workshop

Public Hearing

Department:

Submitted By: Engineering & Public Works

Submitted For: Engineering Services Division

Project #2002917

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A First Amendment to the Interlocal Agreement (R2007-0367) with the City of Pahokee in the amount of \$300,000, regarding reimbursement for the installation of the Canal Point Sanitary Sewer.

SUMMARY: The First Amendment to the Interlocal Agreement will provide an additional \$300,000 to the existing \$710,950 for a total of \$1,010,950 for construction and other related costs of the sanitary sewer expansion serving the unincorporated Canal Point area from Pahokee to the West Palm Beach Canal. The City of Pahokee will perform all work to complete the project. Palm Beach County allocated these funds through the Countywide Community Revitalization Team for this project.

District 6 (MRE)

Background and Justification: Unincorporated Canal Point is a targeted area of the Countywide Community Revitalization Team (CCRT) and is located in the "acute" area (35% or higher poverty) of Palm Beach County's Development Regions. Revitalization of the commercial area in Canal Point's Scenic Trail/Downtown and the Southwest Commercial Area is a key component in the Glades Strategic Business Development Initiative funded by the U.S. Department of Agriculture (USDA) in 2002 and 2003. Septic tanks in these areas have tremendous limitations. The lack of municipal sewer has impeded business growth and redevelopment. The Board of County Commissioners (Board) approved \$190,000 (FY2003), \$250,000 (FY2004), \$500,000 (FY2006) and recently \$300,000 (Dec. 18, 2007) in CCRT funds for a total of \$1,240,000.

On September 14, 2004, the Board approved an Interlocal Agreement (R2004-1853) with the City of Pahokee (City) for the survey, design and permits totaling \$204,347, for the sanitary sewer expansion in the Canal Point area. On August 15, 2006, an Amendment was approved for an additional \$23,300. An additional \$1,403 was used during the preliminary engineering study for a total of \$229,050.

(Continued on page 3)

Attachments:

1. Location Sketch
2. First Amendment to Interlocal Agreement (3)
3. Interlocal Agreement R2007-0367

Recommended by:

Charles Rich
Division Director

5/2/08
Date

Approved By:

S. J. Webb
County Engineer

5/9/08
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact: See Comment Section B

Fiscal Years	2008	2009	2010	2011	2012
Grant Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ -0-	See note below	-0-	-0-	-0-

ADDITIONAL FTE POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes X No _____
 Budget Acct No.: Fund 3900 Dept. 366 Unit X058 Object 6506.
 Program

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

Capital Outlay Fund
 Canal Point Sanitary Sewer

Funding for this item was provided in a prior Board item (December 18, 2007) for the Countywide Community Revitalization Team and therefore this item has no additional fiscal impact.

C. Departmental Fiscal Review: R.D. Ward 4/29/08

III. REVIEW COMMENTS

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

ahollate 5.15.08
 OFMB 5/15/08
 SN 5/13/08
 VO 05/09
 SH 5/14/08

J. J. Jacoby 5/16/08
 Contract Dev. and Control
 5/16/08

B. Approved as to Form and Legal Sufficiency:

Marlon R. Pitts 5/17/08
 Assistant County Attorney

This amendment complies with our review requirements.

C. Other Department Review:

 Department Director

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

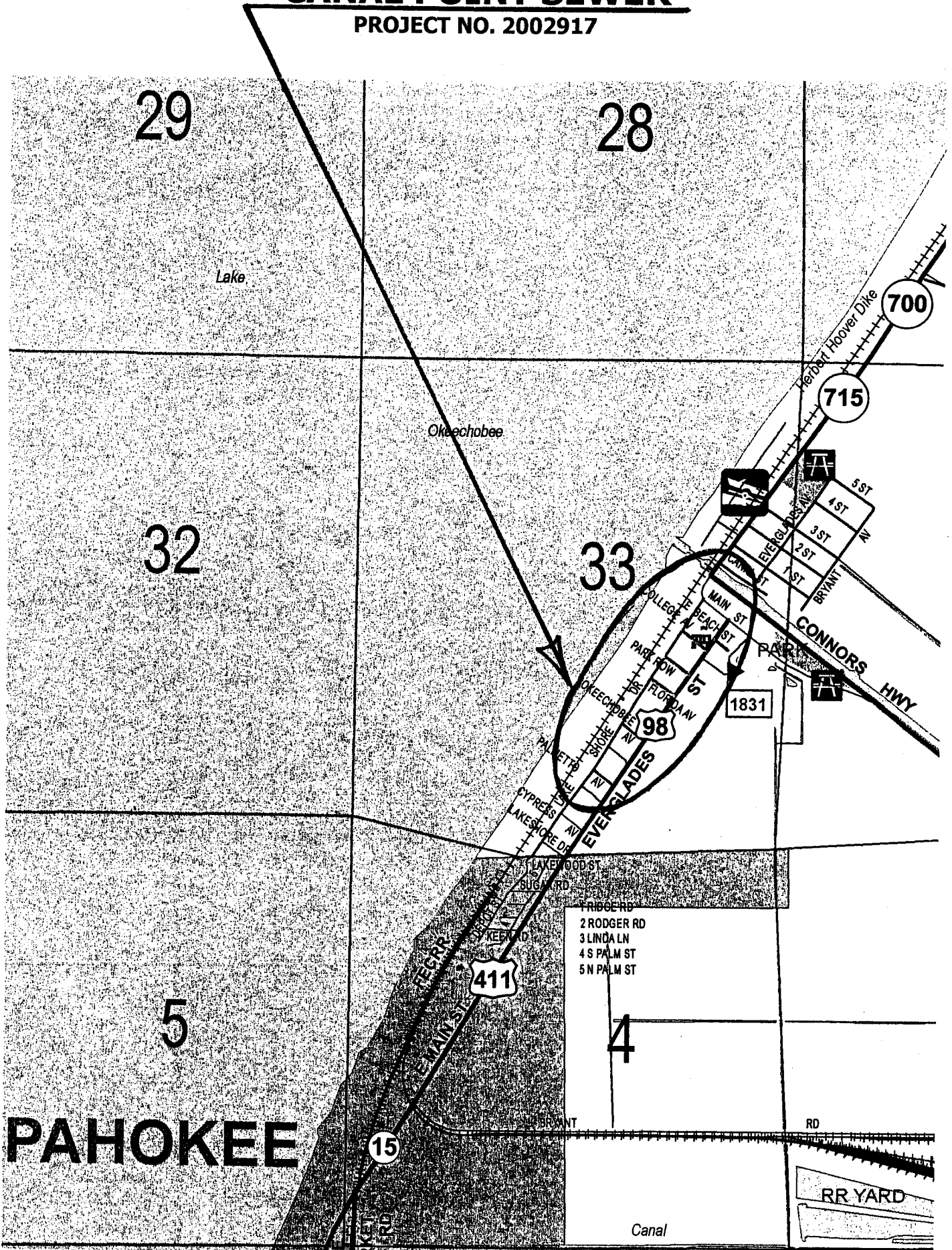
Background and Justification: (Continued)

On March 13, 2007, the Board approved an Interlocal Agreement (R2007-0367) totaling \$710,950 in CCRT funds to be used toward construction and related costs of the sewer. These funds will be matched by the City's USDA Rural Development Grant of \$400,000, the Community Development Block Grant of \$105,395, and the City's State Appropriation of \$700,000.

The County's Engineering & Public Works Department Administrative Services Division oversees the reimbursements for this project and will continue this service to the end of construction. The Economic Development Office (EDO) prepared applications and assisted the City in securing State and Federal grants to fund construction of the sanitary sewer expansion in the Canal Point area. EDO continues to coordinate with the City on the implementation of the project.

PROJECT LOCATION CANAL POINT SEWER

PROJECT NO. 2002917



LOCATION SKETCH

**FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT
BETWEEN PALM BEACH COUNTY
AND
THE CITY OF PAHOKEE
R2007-0367**

THIS AMENDMENT is made as of the 26th day of FEBRUARY, 2008, by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter "COUNTY") and the City of Pahokee, a municipal corporation existing under the laws of Florida, (hereinafter "PAHOKEE"), each one constituting a public agency defined in Part I of Chapter 163, Florida Statutes.

WITNESSETH:

WHEREAS, on March 13, 2007, the COUNTY and PAHOKEE entered into an Interlocal Agreement (hereinafter "AGREEMENT"), Resolution R2007-0367 totaling \$710,950 for the installation of the Canal Point Sanitary Sewer; and

WHEREAS, on December 18, 2007, the Board of County Commissioners approved an additional \$300,000 in Countywide Community Revitalization Team (CCRT) funds to assist in the sewer expansion costs; and

WHEREAS, the COUNTY and PAHOKEE desire the additional funds totaling Three Hundred Thousand Dollars (\$300,000) to be used for construction, administration and other related costs for the sanitary sewer, which will benefit the residents and businesses in the Canal Point area.

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

I. Section 4. Entitled Responsibilities and Duties:

Sentence 1 of Subsection A is hereby deleted and replaced with the following:

A. COUNTY shall reimburse PAHOKEE an amount not to exceed **One Million Ten Thousand Nine Hundred Fifty Dollars (\$1,010,950.00)** for the Project, provided PAHOKEE performs pursuant to the terms and conditions of this AGREEMENT. PAHOKEE agrees that the extent of COUNTY'S responsibility under this AGREEMENT shall be limited solely to funding, as stated above.

Except as set forth herein, the AGREEMENT remains unrevised and in full force and effect, and the parties hereby ratify, confirm and adopt the AGREEMENT as amended hereby.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day set forth above.

WITNESS

CITY OF PAHOKEE
BY ITS CITY COUNCIL:

By: Raquel Diaz
Signature

By: [Signature]
Mayor

RAQUEL DIAZ CITY CLERK
Name (type or print)

ATTEST:
SHARON R. BOCK,
Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

APPROVED AS TO TERMS
AND CONDITIONS

By: Charles Rich
Engineering

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
County Attorney

INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY OF PAHOKEE

THIS Interlocal Agreement, (hereinafter "Agreement"), is made as of the ____ day of MAR 13 2007, 2007, by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter "COUNTY") and the City of Pahokee, a municipal corporation existing under the laws of Florida, (hereinafter "PAHOKEE"), 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 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, 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, the COUNTY has approved \$940,000 in Countywide Community Revitalization Team (CCRT) funds in fiscal years 2003, 2004, and 2005 for all costs related to the installation of a sanitary sewer system in the Canal Point area; and

WHEREAS, on September 14, 2004, the COUNTY and PAHOKEE entered into an Interlocal Agreement R2004-1853 for PAHOKEE to survey, design and permit a sanitary sewer system for the Canal Point area totaling \$204,347; and

WHEREAS, on August 22, 2006, the COUNTY and PAHOKEE amended the Interlocal Agreement to increase the engineering design fees by \$23,300; and another \$1,403 was used for additional study costs for a total of \$229,050; and

WHEREAS, the COUNTY and PAHOKEE desire the remaining funds totaling Seven Hundred Ten thousand Nine Hundred Fifty Dollars (\$710,950) to be used for construction and administrative costs for the sanitary sewer, which will benefit the residents and businesses in the Canal Point area.

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

Section 1. Recitals.

The above recitals 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 completion or no later than **March 1, 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. Project to be Completed by PAHOKEE:

PAHOKEE shall provide construction and administrative services (hereinafter the "Project") as more specifically described in the Scope of Work, which is attached herelo and incorporated herein as Exhibit "A". The Project, as set forth in this Agreement, shall be performed on the Scenic Trail Downtown Area, Southwest Residential Area, PAHOKEE'S Transmission System Upgrades and the Wastewater Treatment Plant.

Section 4. Responsibilities and Duties:

A. COUNTY shall reimburse PAHOKEE an amount not to exceed **Seven Hundred Ten Thousand Nine Hundred Fifty Dollars (\$710,950.00)** for the Project, provided PAHOKEE performs pursuant to the terms and conditions of this Agreement. PAHOKEE agrees that the extent of COUNTY'S responsibility under this Agreement shall be limited solely to funding, as stated above.

- B. PAHOKEE shall secure all necessary easements and permits required to perform this Agreement.
- C. PAHOKEE shall publicly bid, administer, construct and inspect the Project in accordance with Exhibit "A".
- D. PAHOKEE shall require the contractor to provide a Public Construction Bond in an amount equal to the contractor's bid for the Project.
- E. PAHOKEE shall use its own personnel, Contractor and/or subcontractors to perform this Agreement, and each contractor/subcontractor shall indemnify and save harmless the County against or from all cost, expense, damages, injury, or loss to which the County may be subjected by reason of any wrongdoing, misconduct, want of care of skill, negligence, failure to complete within the prescribed time, or default, including patent infringement, on the part of contractor/subcontractor, (his), (its), (their) agents or employees, in the execution or performance of said Contract.
- F. Upon completion of the Project, PAHOKEE shall repair and maintain the sanitary sewer system, at PAHOKEE'S expense.

Section 5. Payments/Invoicing and Reimbursement:

The County shall reimburse PAHOKEE upon completion of each task as identified in Exhibit "A". PAHOKEE shall submit all invoices to the COUNTY identifying the Project, including PAHOKEE'S total expenditure for the Project, and identifying the amount due and payable to PAHOKEE. A Contract Payment Request Form and a Contractual Services Purchases Schedule Form attached hereto and incorporated herein, as Exhibit "B", which are required for each and every reimbursement requested by PAHOKEE. Said information shall list each invoice payable by PAHOKEE and shall include the vendor invoice number, invoice date; and the amount payable by PAHOKEE. PAHOKEE shall attach a copy of each vendor invoice therefore to the applicable item listed on the Contractual Services Purchases Schedule Form. Further the City Manager and the City's Financial Officer shall certify the total funds payable by PAHOKEE on the project and shall certify that each vendor invoice listed on the Contractual Services Purchases Schedule Form was paid by PAHOKEE as indicated. PAHOKEE shall supply any further documentation such as copies of paid receipts, canceled checks, invoices and other documents deemed necessary by the COUNTY within seven (7) calendar days of request by the COUNTY. Invoices received from PAHOKEE will be reviewed and approved by the COUNTY to insure that expenditures have been made in conformity with this Agreement and 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. In no event shall the COUNTY provide advance funding to PAHOKEE.

The Project will be initiated by PAHOKEE. Only those costs incurred by PAHOKEE subsequent to the date of said Project initiation and prior to the expiration date of this Agreement are eligible for reimbursement by County pursuant to the terms and conditions hereof. In the event PAHOKEE ceases or suspends the Project for any reason, any remaining unpaid portion of this Agreement shall be retained by COUNTY and COUNTY shall have no further obligation to honor reimbursement requests submitted by PAHOKEE. The determination that PAHOKEE has ceased or suspended the Project shall be made by COUNTY and PAHOKEE agrees to be bound by COUNTY'S determination.

Section 6. Repayment

PAHOKEE 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 or exclude the COUNTY from pursuing any other remedy which may be available to it under law or equity.

Section 7. Access and Audits:

PAHOKEE shall maintain books, records, and documents to justify all charges, expenses and costs incurred under this Agreement and in performing the Project, in accordance with Generally Accepted Accounting Principles (GAAP), as promulgated by the Government Finance Officers Association from time to time. The COUNTY shall have access to all books, records, and documents as required in this Agreement, and for at least three (3) years after completion of the Project. In the event any work is subcontracted by PAHOKEE, PAHOKEE shall similarly require each Contractor and subcontractor to maintain and allow access to such records for audit purposes.

Section 8. Independent Contractor:

PAHOKEE is, and shall be, in the performance of all work, services and activities under this Agreement an Independent Contractor and not an employee, agent or servant of COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to PAHOKEE'S sole direction, supervision, and control. PAHOKEE shall exercise control over the means and manner in which it and its employees perform the work, and in all respects PAHOKEE'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

PAHOKEE does not have the power or authority to bind the COUNTY in any promise, Agreement or representation.

Section 9. Personnel:

PAHOKEE represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereinunder shall be performed by PAHOKEE or under its supervision, and personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

All of PAHOKEE'S personnel, Contractors and all subcontractors while on County premises will conduct themselves in an acceptable manner and follow acceptable safety and security procedures.

Section 10. Indemnification:

Each party shall be liable for its own actions and negligence and, to the extent permitted by law, and PAHOKEE shall indemnify, defend, and hold harmless COUNTY against any and all actions, claims, or damages arising out of PAHOKEE'S actions in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful, or intentional acts or omissions.

This Indemnification provision shall survive the expiration or termination of this Agreement.

Section 11. Annual Appropriation:

The obligations of the COUNTY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of County Commissioners of Palm Beach County.

Section 12. Insurance:

A. Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, PAHOKEE acknowledges it is either self-insured under State 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, which the COUNTY shall recognize as acceptable coverage for General Liability and Automobile Liability insurance; or

B. In the event that PAHOKEE does not rely exclusively on sovereign immunity as provided by Section 768.28, Florida Statutes, PAHOKEE shall maintain third-party Commercial General Liability and Automobile Liability at limits not less than \$1,000,000 Per Occurrence. With respect to Commercial General Liability, PAHOKEE shall add the COUNTY as an "Additional Insured."

C. PAHOKEE agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statutes, Chapter 440.

D. PAHOKEE shall provide a statement or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which COUNTY agrees to recognize as acceptable for the above required coverages. The Certificate Holder will be: Palm Beach County.

Section 13. 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, each party shall have thirty (30) days written notice before exercising any of its rights.

Section 14. 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.

Section 15. 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":

Richard Farquhar, Director
Administrative Services Division
2300 N. Jog Road
West Palm Beach, Florida 33411
Phone: 561-684-4028
Fax: 561-684-4033

As to the "PAHOKEE":

Lillie Latimore, City Manager
City of Pahokee
171 N. Lake Avenue
Pahokee, Florida 33476
Phone: 561-924-5534, ext. 35
Fax: 561-924-7301

Section 16. 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.

Section 17. Remedies:

This Agreement shall be governed by and in accordance with 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 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 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.

Section 18. 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 19. Equal Opportunity:

COUNTY and PAHOKEE agree that no person shall on the grounds of race, color, creed, 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. PAHOKEE 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 20. Arrears:

PAHOKEE shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. PAHOKEE further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

Section 21. 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 22. Filing:

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

Section 23. Termination:

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

Section 24. Compliance with Codes and Laws:

PAHOKEE shall abide by all applicable federal, state and local laws, orders, rules and regulations when performing under this Agreement. PAHOKEE further agrees to include this provision in all subcontracts issued as a result of this Agreement.

Section 25. Public Entity Crime Certification:

As provided in F.S. 287.132-133, as may be amended from time to time, by entering into this Agreement or performing any work in furtherance hereof, PAHOKEE shall have its contractors certify that their affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3)(a).

Section 26. 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.

Section 27. Entirety of Agreement:

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

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

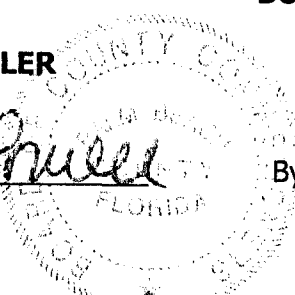
R2007.0367
MAR 13 2007

ATTEST:

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

**SHARON R. BOCK,
CLERK & COMPTROLLER**

By: *Sharon R. Bock*
Deputy Clerk



By: *Addie L. Greene*
Addie L. Greene, Chairperson

Approved as to Form and Legal Sufficiency:

Approved as to Terms and Conditions:

By: *Morner R. Att*
Assistant County Attorney

By: *Charles Rich*
Charles Rich, Director
Engineering Services Division

ATTEST: CITY OF PAHOKEE, BY ITS PAHOKEE COUNCIL

By: *Patricia McLean*
City Clerk

By: *[Signature]*
Mayor

Approved as to Form and Legal Sufficiency:

By: *[Signature]*
City Attorney