

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: May 19, 2009 ☒ Consent ☐ Regular
 ☐ Workshop ☐ Public Hearing

Department:
Submitted By: Engineering & Public Works Department
Submitted For: Roadway Production Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A Joint Participation and Project Funding Agreement with the Loxahatchee River District (District) in the amount of \$ 24,720 for utility construction on Alt A1A (SR 811) from Frederick Small Road to Center Street.

SUMMARY: Approval of this Agreement will allow Palm Beach County (County) and the District to jointly participate in the utility adjustments to the sewage transmission system and other improvements along the right-of-way. The District agrees to reimburse the County for the cost of these utility adjustments and other improvements.

District 1 (MRE)

Background and Justification: The construction contract for this project was awarded by the Board of County Commissioners on November 18, 2008. The District agrees to pay directly to the County all costs attributable to the utility construction of the District owned improvements for the project. The inclusion of these utility adjustments and improvements with the roadway construction will facilitate coordination and minimize disruption by accomplishing both roadway and utility work concurrently.

- Attachments:**
- 1. Location Maps 1a. and 1b.
 - 2. Agreement (3)

Recommended by: SR 811 District 1 4/16/09
 Division Director Date

Approved By: S. J. Wahl 4/29/09
 County Engineer Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	\$24,720	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	<\$ 24,720>	-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	-0-	-0-	-0-	-0-

ADDITIONAL FTE

POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes x No

Budget Acct No.: Fund 3501 Dept. 361 Unit 0993 RevSrc/Object 6948/8101
Program

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

Road Impact Fee Fund - Zone 1

Alt A1A (SR 811)/S of Frederick Small Rd to Center St

Utility Relocation Reimbursements

Reimbursement Funding:

Loxahatchee River Dist

\$ 24,720.00

C. Departmental Fiscal Review: Adrienne White

III. REVIEW COMMENTS

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

John D. Smith 5/9/09
OFMB
5/16/09
4/29/09
5/14/09

John J. Smith 5/12/09
Contract Dev. and Control
5/11/09

B. Approved as to Form and Legal Sufficiency:

Marlene R. Smith 5/14/09
Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Department Review:

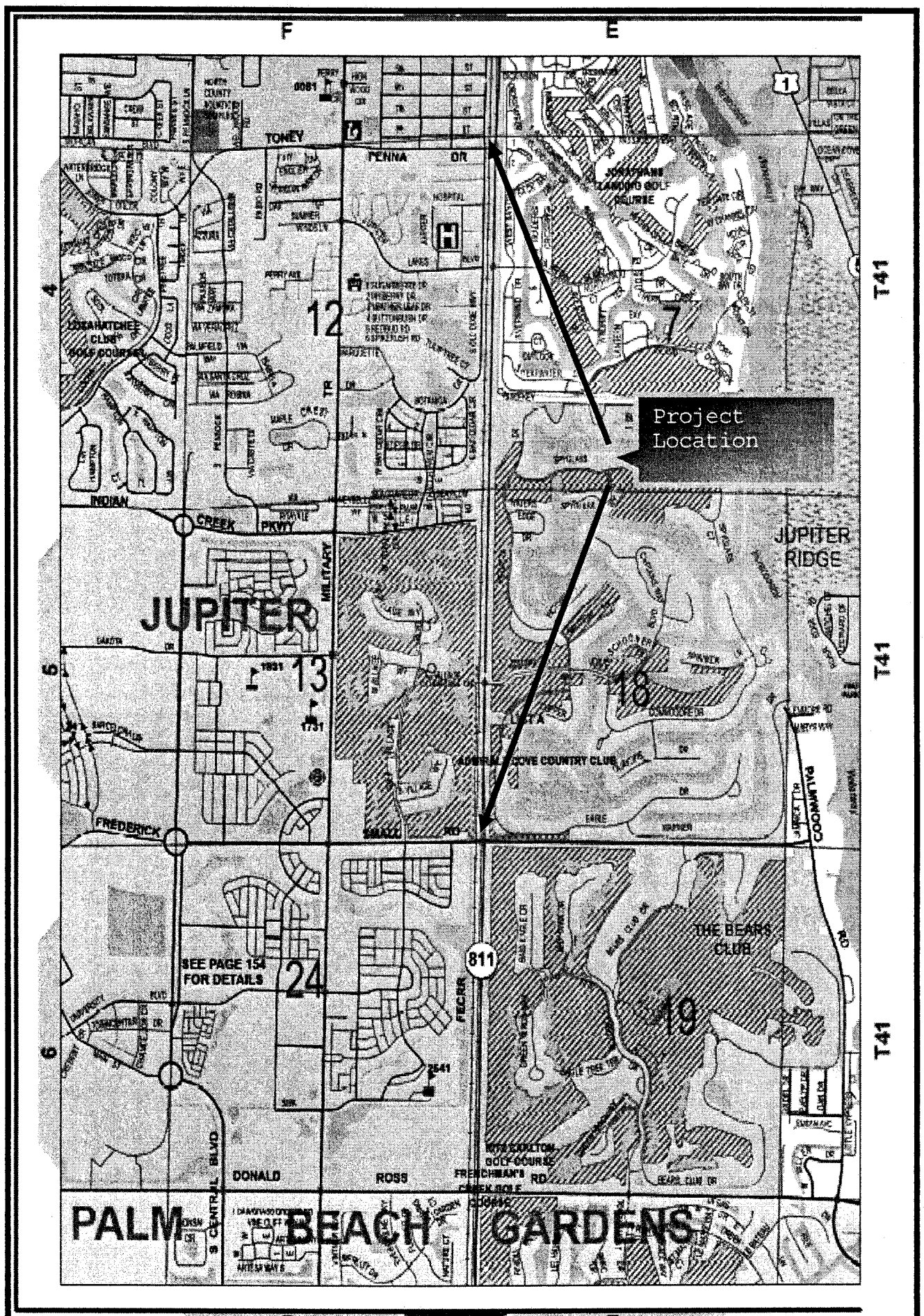
Department Director

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

LOCATION MAP 1a.

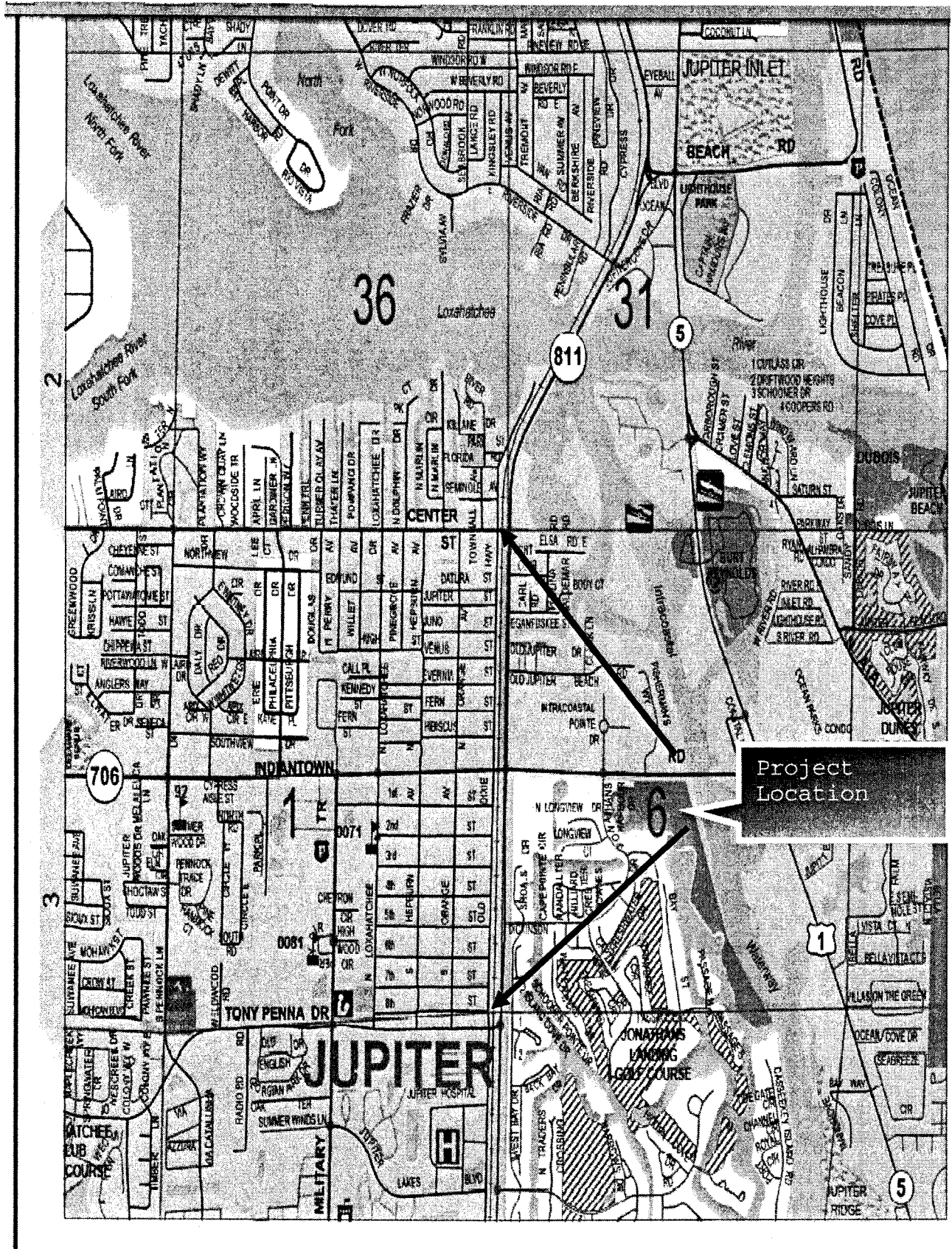
ROADWAY IMPROVEMENTS AND UTILITY ADJUSTMENTS

Alt A1A from Frederick Small Road to Toney Penna Road
PROJECT # 2003515



LOCATION MAP 1b. ROADWAY IMPROVEMENTS AND UTILITY ADJUSTMENTS

Alt A1A from Toney Penna Road to Center Street
PROJECT # 2003500



**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY, FLORIDA
AND
LOXAHATCHEE RIVER DISTRICT
FOR JOINT PARTICIPATION AND PROJECT FUNDING
IN CONSTRUCTION OF
Alt A1A (SR 811)
PALM BEACH COUNTY PROJECTS NO. 2003500 & 2003515**

THIS Interlocal Agreement, (hereinafter "Agreement"), is made as of the ____ day of _____, 2009, by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter "COUNTY") and Loxahatchee River Environmental Control District, a Special District Independent Governmental Entity, (hereinafter "DISTRICT"), 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 intends to make roadway improvements to Alt A1A (SR 811) from Frederick Small Road to Center Street (hereinafter the "Project"); and

WHEREAS, the COUNTY and the DISTRICT desire to jointly participate in the construction of utility adjustments to the District's sewage transmission systems and other improvements within the Project area, hereinafter referred to as the "Work"; and

WHEREAS, both the COUNTY and the DISTRICT declare that it is in the public interest that the "Work" be constructed with the aforementioned Project; and

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, unless otherwise terminated as provided herein.

Section 3. Project to be Completed by the COUNTY:

The COUNTY shall provide construction and administrative services to the "Project" as more specifically described in the Bid Documents for Palm Beach County Project No. 2003500 & 2003515. Said Bid Documents include District, Applicable Technical Specifications, Standard Construction Details, and Approved Product List. The Project, as set forth in this Agreement, shall be performed on Alt A1A (SR 811) from Frederick Small Road to Center Street.

Section 4. Responsibilities and Duties:

A. DISTRICT shall reimburse the COUNTY a total estimated cost of **Twenty Four Thousand Seven Hundred Twenty Dollars (\$24,720.00)**, provided the COUNTY performs pursuant to the terms and conditions of this Agreement for all "Work" in accordance with the Bid Tabulation (Exhibit "A") and summary (Exhibit "B"), DISTRICT Utility Items for the specified work. Any cost exceeding this amount attributable to Loxahatchee River District Utility Items, shall be paid by the DISTRICT. The COUNTY agrees that the extent of DISTRICT'S responsibility under this Agreement shall be limited solely to funding, as stated above.

LOXAHATCHEE RIVER DISTRICT INTERLOCAL AGREEMENT

- B. Costs shall be based upon actual contract costs using contract unit prices and actual constructed quantities, said quantities being measured by the COUNTY with concurrence by the DISTRICT.
- C. COUNTY shall obtain written approval from the DISTRICT in advance of any change orders which increase the cost attributable to the Work to an amount greater than the contract amount as stated in Paragraph A of this Agreement. Approval shall not be unreasonably withheld.
- D. COUNTY shall secure all necessary easements and permits required to perform the Project.
- E. COUNTY shall publicly bid, administer, construct and inspect the Project and Work in accordance with the Bid Documents and Exhibit "A".
- F. COUNTY shall require the contractor to provide a Public Construction Bond in an amount equal to the contractor's bid for the Project and Work.
- G. COUNTY shall use its own personnel, Contractor and/or subcontractors to perform this Agreement, and each contractor/subcontractor shall indemnify and save harmless the DISTRICT against or from all cost, expense, damages, injury, or loss to which the DISTRICT may be subjected by reason of any wrongdoing, misconduct, want of care or 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.
- H. Upon completion of the Project and the Work, DISTRICT shall repair and maintain the water and sanitary sewer system, at DISTRICT'S expense.

Section 5. Payments/Invoicing and Reimbursement:

The COUNTY will invoice the DISTRICT on a periodic basis during construction of the Project and the Work. The DISTRICT agrees to provide to the COUNTY reimbursement funding for documented costs for the Work in the amount established in Section 4.A. Upon COUNTY'S submission of acceptable documents needed to substantiate their costs for the Work, the DISTRICT will use its best efforts to provide said funds to the COUNTY on a reimbursement basis within thirty (30) days of receipt of all required documents. The COUNTY shall submit all invoices to the DISTRICT identifying the Work, including COUNTY'S total expenditure for the Project, and identifying the amount attributable to the District's "Work" under Exhibit "A". The COUNTY shall supply any further documentation such as copies of paid receipts, canceled checks, invoices and other documents deemed necessary by the DISTRICT within seven (7) calendar days of request by the DISTRICT. Invoices received from the COUNTY will be reviewed and approved by the DISTRICT to insure that expenditures have been made in conformity with this Agreement. Invoices will normally be paid within thirty (30) days following approval. In no event shall the DISTRICT provide advance funding to the COUNTY.

The Project and the Work will be initiated by the COUNTY. Only those costs incurred by the COUNTY relating to the Work are eligible for reimbursement by the DISTRICT pursuant to the terms and conditions hereof. In the event the COUNTY ceases or suspends the Project or the Work for any reason, the DISTRICT will reimburse the COUNTY for the Work completed as of the date the County uses to suspend the Work. Any remaining unpaid portion of this Agreement shall be retained by the DISTRICT and the DISTRICT shall have no further obligation to honor reimbursement requests submitted by the COUNTY.

Section 6. Repayment

COUNTY shall repay the DISTRICT 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 DISTRICT are to be repaid by delivering to the DISTRICT payment for the total amount due and payable to the DISTRICT, within ten (10) days of the DISTRICT'S demand. Nothing contained herein shall act as a limitation of the DISTRICT'S right to be repaid, as a waiver of any rights of the DISTRICT or exclude the DISTRICT from pursuing any other remedy which may be available to it under law or equity.

Section 7. Access and Audits:

COUNTY 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 DISTRICT 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 the COUNTY, the COUNTY shall similarly require each Contractor and subcontractor to maintain and allow access to such records for audit purposes.

Section 8. Independent Contractor:

COUNTY 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 the DISTRICT. 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 COUNTY'S sole direction, supervision, and control. The COUNTY shall exercise control over the means and manner in which it and its employees perform the Work, and in all respects COUNTY'S relationship and the relationship of its employees to the DISTRICT shall be that of an Independent Contractor and not as employees or agents of the DISTRICT.

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

Section 9. Personnel:

COUNTY 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 DISTRICT.

All of the services required hereinunder shall be performed by the COUNTY 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 COUNTY'S personnel, Contractors and all subcontractors while on the 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 the COUNTY/ the DISTRICT Shall indemnify, defend, and hold harmless the COUNTY/ the DISTRICT against any and all actions, claims, or damages arising out of COUNTY'S/ DISTRICT'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 and the DISTRICT under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Loxahatchee River District. However once the Work has commenced it shall be prosecuted to completion and this agreement shall be binding upon the parties and shall no longer be contingent upon the availability of funds needed for the construction and neither party shall have the right to terminate the subject Agreement for the reason that sufficient funds are not available for the construction project.

LOXAHATCHEE RIVER DISTRICT INTERLOCAL AGREEMENT

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, each 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.

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:

All notice to the DISTRICT shall be sent to:

D. Albrey Arrington, Executive Director
Loxahatchee River District
2500 Jupiter Park Dr.
Jupiter, FL 33458

All notice to the COUNTY shall be sent to:

Omelio A. Fernandez, P.E., Director
Engineering and Public Works Operations
P.O. Box 21229
West Palm Beach, FL 33416-1229

ATTN: ROADWAY PRODUCTION

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.

Section 16. 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 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:

COUNTY and the DISTRICT 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. The COUNTY 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.

LOXAHATCHEE RIVER DISTRICT INTERLOCAL AGREEMENT

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, except as otherwise addressed in this Agreement.

Section 22. Compliance with Codes and Laws:

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

Section 23. 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, the COUNTY 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 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.

Section 25. Entirety of Agreement:

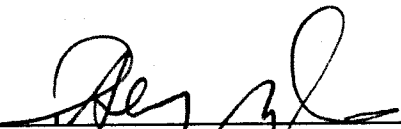
COUNTY and the DISTRICT agree that this Agreement sets forth the entire Agreement between the parties, and there are no promises or understandings other than those stated herein.

LOXAHATCHEE RIVER DISTRICT INTERLOCAL AGREEMENT

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

LOXAHATCHEE RIVER DISTRICT

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

BY: 
D. Albrey Arrington, Executive Director

BY: _____
John F. Koons, Chairperson

ATTEST:

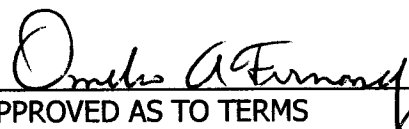
ATTEST:

DISTRICT CLERK

SHARON R. BOCK,
CLERK & COMPTROLLER

BY:  3-11-09
(DATE)

BY: _____
(DATE)

By:  3/24/09
APPROVED AS TO TERMS
AND CONDITIONS

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY: 
District Attorney

BY: _____
Assistant County Attorney

ATTACHMENT "B"

PROJECT NAME: Alt A1A (SR 811)
from Fredrick Small Rd. to Toney Penna Drive
and from Toney Penna Drive to Center Street

PROJECT NUMBERS: 2003500 & 2003515

CONTRACTOR: Ranger Construction Industries, Inc.

	ITEM	QTY / UNITS	UNIT PRICE	AMOUNT
	LOXAHATCHEE RIVER DISTRICT ITEMS			
69	VALVE ADJUSTMENT	15 EA	\$341.00	\$5,115.00
70	ARV MH RIM ADJUSTMENT (ENCON) (SEE TSP's)	1 EA	\$599.00	\$599.00
71	PREMIUM FOR CONFLICT CONDITION (SEE SP's)	3 EA	\$2,400.00	\$7,200.00
83	SUPPORT & PROTECT F.M. & APPURTANCES	40 LF	\$7.65	\$306.00
85	RELOCATE 16" REUSE W.M. (PVC C-900 DR-18) W/FITTINGS (ENCON) (SEE TSP's)	50 LF	\$230.00	\$11,500.00
	GRAND TOTAL			\$24,720.00