

ADD-ON

Agenda Item #6E-3

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

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Meeting Date:	June 2, 2009	Consent []	Regular [X]
		Public Hearing []	
Submitted By:	Water Utilities Department		
Submitted For:	Water Utilities Department		

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I. EXECUTIVE BRIEF

Motion and title: Staff recommends motion to approve: Interlocal Agreement with the City of South Bay, contingent upon approval by the City, authorizing the County to perform capital improvements within the City's utility service area to be reimbursed from American Recovery and Reinvestment Act (ARRA) funds allocated through the Florida Department of Environmental Protection (FDEP) and providing for a covenant by the County to repay the principal and interest on the \$67,874 loan portion of the funding provided that the Glades Utility Authority (GUA) is established.

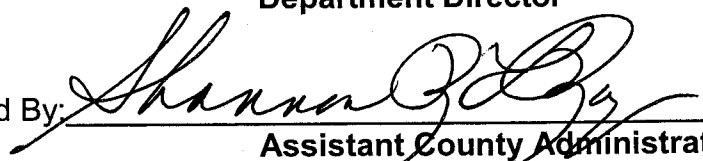
Summary: The Water Utilities Department will undertake certain construction projects on behalf of the City of South Bay utilizing ARRA funds. The FDEP administers the funding and has allocated \$792,000 in ARRA funds for the project in South Bay, made up of a \$724,126 ARRA principal forgiveness grant and a \$67,874 ARRA loan. The South Bay project will reduce wet weather wastewater overflows caused by the inflow of storm water and infiltration of groundwater into the sanitary sewer system, which are a public health hazard due to the potential of exposure by the public to raw sewage. FDEP and ARRA regulations require that the funding be paid directly to the City. This agreement provides for the City to reimburse the County for the cost of the projects. Additionally, a covenant by the County to repay the principal and interest portion of the loan is required by FDEP because the City does not have the resources necessary to ensure repayment. The County will only need to pay the debt service in the event the GUA is unable to pay the debt service with its own revenue. If the GUA is created as planned, the loan agreement will be transferred to the GUA for repayment. If the GUA is not formed, the City will not accept the ARRA funds and the County will not perform the improvements. These grants and loans will provide a significant source of funds needed in the GUA's first year of operation. District 6 (MJ)

Background and Justification: The wastewater system of the City of South Bay requires major repairs to reduce the cost of operation and to prevent sewer overflows, endangering the health of the City's residents. In developing a Business Plan for the GUA, staff has identified almost \$19,000,000 in capital improvements over the next ten years that will be required to improve revenue, reduce costs, and correct regulatory violations. These funds are extremely important to the future success of the GUA.

Attachments:

- Two (2) original agreements with City of South Bay

Recommended By:  6/1/09
 Department Director Date

Approved By:  6/1/09
 Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years		2009	2010	2011	2012
Capital Expenditures	<u>0</u>	<u>\$792,000</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>(\$792,000)</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	* <u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

See below

Budget Account No.: **Fund** **Agency** **Org.** **Object**

Is Item Included in Current Budget? Yes No X

Reporting Category N/A

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

The Water Utilities Department will pay the cost of the projects and receive reimbursement from the City utilizing FDEP grant and loan funds.

C. Department Fiscal Review: Frank W. Jenkins

III. REVIEW COMMENTS

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

* In the event the City is unable to pay the principal and interest portion of the loan, the County will have a fiscal impact of \$67,874.

[Signature] 6/11/09
 6/11/09 OFMB [Signature] 6/11/09

[Signature] 6/11/09
 Contract and Development Control

B. Legal Sufficiency:

[Signature] 5/11/09
 Assistant County Attorney

This Contract complies with our contract review requirements.

At the time of our review, the contract was not executed.

C. Other Department Review:

 Department Director

INTERLOCAL AGREEMENT

THIS AGREEMENT is made and entered into on this _____ day of _____, 2009 by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "County", and the City of South Bay, a municipality organized under the laws of the State of Florida, hereinafter referred to as "City."

WITNESSETH

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969," authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, in conjunction with SRF Project # WW50100, the City has been deemed eligible to receive \$792,000 for wastewater infrastructure improvements ("Improvements") under the American Recovery and Reinvestment Act ("ARRA Funds"), as allocated through the Florida Department of Environmental Protection ("FDEP"); and

WHEREAS, a portion of the ARRA Funds shall be a loan by FDEP to the City ("ARRA Loan"); and

WHEREAS, City wishes to authorize the County to perform the Improvements, and to reimburse the County for the Improvements from the ARRA Funds; and

WHEREAS, City will be required to enter into an agreement with FDEP for the repayment of the ARRA Loan; and

WHEREAS, County wishes to provide a covenant to budget and appropriate funds ("Covenant") for the repayment of the ARRA Loan.

NOW THEREFORE, in consideration of the mutual promises contained herein, the County and City agree as follows:

1. Recitals. The foregoing statements are true and correct and are incorporated herein as if fully set forth.
2. Term. This Agreement shall commence on the Effective Date and shall continue until: (1) the completion of the Improvements; (2) full repayment to the County for the total costs of the Improvements; or (3) full repayment of the ARRA Loan, whichever occurs later.

3. Effective Date. This Agreement shall become effective upon approval by both parties. The Effective Date of this Agreement shall be the date this Agreement is ratified by the Palm Beach County Board of County Commissioners.
4. Creation of Glades Utility Authority as Condition Precedent. The County and City acknowledge that their obligations under this Agreement are contingent upon the formation of an intergovernmental entity, preliminarily called the Glades Utility Authority ("GUA"), which would be responsible for providing water and wastewater service in the City and surrounding areas. It is the intention of the parties that, should the GUA not be formed, the City shall not accept the ARRA Funds and the County shall not perform the Improvements.
5. City-FDEP Loan Agreement. City shall be required to enter into an agreement with FDEP setting forth the provisions for repayment of the ARRA Loan ("Loan Agreement"). Subject to the County's Covenant for repayment of the ARRA Loan set forth in Section 7 herein, City shall be responsible for full repayment of the ARRA Loan pursuant to the terms of the Loan Agreement. City and County acknowledge that the Loan Agreement, and the responsibility for repayment of the ARRA Loan, shall be transferred to the GUA. Under said scenario, and subject to the County's Covenant for repayment set forth in Section 7 herein, the GUA shall be responsible for full repayment of the ARRA Loan pursuant to the Loan Agreement.
6. Authorization for County to Perform Improvements. City hereby authorizes the County to perform the Improvements to the City's wastewater system. The Scope of Work of the Improvements is set forth in **Exhibit "A,"** which is attached hereto and incorporated herein. County, or its agent, shall perform all work necessary to complete the Improvements authorized under FDEP SRF Project # WW50100, including, but not limited to, the hiring, supervision of, and payment of any contractors hired to perform the Improvements. City, or the GUA after the Loan Agreement and obligation to repay the ARRA Loan are transferred to the GUA pursuant to Section 5 herein, shall reimburse the County for the work performed on the Improvements from the ARRA Funds, including the ARRA Loan.
7. County Covenant for Repayment of ARRA Loan. County agrees that, should City default on its obligation to repay the ARRA Loan pursuant to the terms of the Loan Agreement, County will assume the City's obligation to repay the ARRA Loan until such time as the City is able to renew repayment on the ARRA Loan. This Covenant by the County shall continue following the transfer of the Loan Agreement and obligation to repay the ARRA Loan to the GUA, as described in Section 5 herein, and shall continue in effect until full repayment of the ARRA Loan. This Covenant by the County shall only be applicable to the ARRA Loan related to FDEP SRF Project # WW50100, the principal amount of which is estimated to be \$67,874 (excluding Capitalized Interest.) In the event the City is unable to pay debt service on the Loans, the County covenants that

it shall, upon written notice of such deficiency and the amount, promptly amend its budget in order to appropriate an amount of non-ad valorem revenues to pay the deficiency of the City. For purposes of this paragraph, the term non-ad valorem revenues means all legally available revenues of the County which are not derived from its imposition, levy and collection of ad valorem taxes on real and personal property within the County. Notwithstanding the foregoing, the County does not covenant to maintain services or programs that generate non-ad valorem revenues or programs or services which are dependent on the continued collection of such non-ad valorem revenues. The foregoing Covenant places a positive duty on the County to appropriate and budget the required non-ad valorem revenues, by amendment, if necessary, subject in all respects to maintaining a balanced budget pursuant to Section 129.01, Florida Statutes.

8. Indemnification. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, County shall indemnify, defend, and hold harmless City against any actions, claims, or damages arising out of County's negligence in connection with this Agreement, and City shall indemnify, defend, and hold harmless County against any actions, claims, or damages arising out of City's negligence 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.
9. No Transfer of Powers. Nothing contained in this Agreement shall be construed to constitute a transfer of powers in any way whatsoever. This Agreement is solely an agreement to provide services as authorized in Florida Statutes, Chapter 163. The governing bodies for County and City shall each maintain all legislative authority with regard to their respective political subdivision. All of the privileges and immunities from liability; exemption from laws, ordinances, and rules; and pensions and relief, disability, workers compensation and other benefits that apply to the activity of officers, agents or employees of any public agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extra-territorially under the provisions of this Agreement.
10. Force Majeure. In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including, but not limited to, Acts of God or of the public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, disorder or demonstration, terrorism, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout,

windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe, neither party shall be liable for such non-performance.

11. Remedies. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred 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 now or hereafter.
12. Successors and Assigns. County and City each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither County nor City shall assign, sublet, convey, or transfer its interest in this Agreement without prior written consent of the other.
13. Waiver. The failure of either party to insist on the strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that said party may have for any subsequent breach, default, or non-performance, and said party's right to insist on strict performance of this Agreement shall not be affected by any previous waiver of course or dealing.
14. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement, or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
15. Notice. All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to City, shall be mailed or delivered to City at:

City Manager
City of South Bay

South Bay, FL _____

and if to County, shall be mailed or delivered at:

Water Utilities Director
Palm Beach County Water Utilities Department
8100 Forest Hill Boulevard
West Palm Beach, FL 33467

16. Filing. This Agreement shall be filed with the Clerk of the Circuit Court in Palm Beach County.
17. Amendment and Modification. This Agreement may only be amended, modified, changed, supplemented or discharged by an instrument in writing signed by the parties hereto.
18. Entirety of Agreement. County and City agree that this Agreement and any Exhibits set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superceded or otherwise altered, except by written instrument executed by the parties.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement.

ATTEST:
SHARON R. BOCK,
CLERK AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By: 
Director-Water Utilities

ATTEST:

CITY OF SOUTH BAY

By: _____
City Clerk

By: _____
Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
City Attorney

EXHIBIT "A"
SCOPE OF WORK – IMPROVEMENTS

SOUTH BAY INFILTRATION AND INFLOW IMPROVEMENT PROJECT INFORMATION

Description:

The majority of the South Bay gravity sewer system consists of substandard clay pipe which is in poor condition due to breaks and cracks which allows the leaking of raw sewage into the groundwater and the infiltration/inflow of rainwater. This proposed project will reduce wet weather wastewater overflows caused by inflow of stormwater and infiltration of groundwater into the sanitary sewer system. Wet weather overflows are a public health hazard due to the potential of exposure by the public to raw sewage.

The City of South Bay's wastewater collection system has excessive inflow and infiltration (I/I), which causes excessive wastewater flows during wet weather events. Reduction of I/I wet weather flows will reduce Sanitary Sewer Overflows at the South Bay wastewater treatment plant due to the wastewater flows that exceeds the approximately 2.5 MGD capacity of the pumps transferring wastewater to the Belle Glade wastewater treatment plant. This I/I wet weather flow reduction will also reduce the capacity and treatment costs for both wastewater treatment plants to treat that excess flow.