

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

**Meeting Date:** September 15, 2009      (X ) Consent      ( ) Regular  
( ) Workshop      ( ) Public Hearing

Department

**Submitted By:** Environmental Resources Management

**Submitted For:** Environmental Resources Management

## Engineering and Public Works

## Airports

## Water Utilities

## I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve:

A) Employee Interchange Agreement (Agreement) with the U.S. Army Corps of Engineers (COE) in an amount not-to-exceed \$175,000 to fund a COE staff position dedicated to reviewing County permit applications through September 30, 2010;

**B) budget transfer of \$14,700 in the Transportation Improvement Fund from Road Program Sweep Reserves to Agreement with the COE on behalf of Engineering and Public Works Department; and**

C) waiver of advance payment prohibition cited in County Policy and Procedure Memorandum No. CW-F-049 for this Agreement.

**Summary:** Proposed is a one (1) year extension of an existing two (2) year Agreement with the COE which expires September 30, 2009. User Departments have indicated a significant benefit from the existing Agreement during the last two years. Airports, Engineering & Public Works, Environmental Resources Management and Water Utilities all cite time and cost savings as well as making grant application deadlines that otherwise may have been missed as benefits of the existing Agreement.

The County is required to advance the estimated salary cost associated with the Agreement. Typically, an advance is not authorized by County contracts. However, staff is seeking a Board waiver of this policy because these permitting services are deemed necessary for County business, and the Agreement mitigates risk of loss by requiring periodic reconciliations. For this Agreement extension, the first payment is prorated for the period ending December 31, 2009. Currently, the COE's authority to accept funds expires on that date. It is anticipated that the COE's authority will be extended. A second payment would then be made to carry the Agreement through to September 30, 2010. Should the COE's authority not be extended, the Agreement will expire on December 31, 2009. The Agreement may be renewed annually.

Countywide (SF)

**Attachments:**

1. Employee Interchange Agreement
2. Budget Transfer

3. Budget Availability Statements (Water Utilities, Airports, Engineering)

**Recommended by:**

Department Director

8/31/09

Date \_\_\_\_\_

**Approved by:**

**County Administrator**

Date \_\_\_\_\_

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	<u>175,000</u>	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>175,000</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	_____	_____	_____	_____

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:

20% ERM	3652-381-M100-3401	35,000	
20% DOA	4111-121-A175-6505	35,000	
20% WUD	4001-720-2322-3401	35,000	(Included in the FY2009 Budget)
* 40% ENG	3500-361-1187-3401	70,000	
Total		\$175,000	

### C. Department Fiscal Review:

*JP*

## III. REVIEW COMMENTS

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

*MSL* 9/14/09  
2a OFMB 9/1-09 9/3/09 9/13/09 9/21/09 9/11/09 9/21/09  
Contract Development and Control 9/19/09 9/8/09

### B. Legal Sufficiency:

*Mr. T* 9-11-09  
Assistant County Attorney

This Contract complies with our  
contract review requirements.

### C. Other Department Review:

**EMPLOYEE INTERCHANGE AGREEMENT  
BETWEEN  
PALM BEACH COUNTY  
AND  
U.S. ARMY CORPS OF ENGINEERS**

THIS EMPLOYEE INTERCHANGE AGREEMENT ("EIA") 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", located at 301 North Olive Avenue, West Palm Beach, Florida 33401, and the U.S. ARMY CORPS OF ENGINEERS, hereinafter referred to as "USACOE", a federal agency, (both being hereinafter referred to collectively as "the PARTIES").

WITNESSETH:

WHEREAS, the COUNTY is a political subdivision of the State of Florida with the power to enter into contracts with public agencies, private corporations or other persons; and

WHEREAS, the COUNTY desires to accelerate the review of its proposed projects that are subject to review, approval and permitting by the USACOE prior to construction; and

WHEREAS, the USACOE desires to increase its level of involvement during the planning, programming and project development process of the County's projects; and

WHEREAS, the USACOE is responsible for review of federal and state agency actions under Section 404 of the Clean Water Act, Section 10 of the River and Harbor Act of 1899 and Section 103 of the Marine Resources, Protection and Sanctuaries Act, and is required to satisfy the requirements of the National Environmental Policy Act ("NEPA"); and

WHEREAS, the PARTIES have determined that it is mutually beneficial to increase funding to the USACOE to enable the USACOE to provide the COUNTY with dedicated project review staff so that COUNTY projects may be reviewed and evaluated more promptly and, if approved, timely designed and constructed in accordance with the project implementation schedule of the COUNTY; and

WHEREAS, the USACOE has determined that: (1) it is authorized, pursuant to Section 214 of the Water Resources Development Act of 2000, as amended, to accept and expend funds contributed by non-federal public entities to expedite the evaluation of permits under the jurisdiction of USACOE; and (2) evaluating permits on an expedited basis requires the USACOE to provide a level of service beyond the normal work it performs on regulatory projects; and

WHEREAS, the COUNTY is willing to fund one senior-level position at the USACOE to ensure priority project review and a level of service beyond the normal work performed on regulatory projects; and

WHEREAS, the COUNTY understands that this EIA will result in expedited review but, in no way, ensures favorable review of permit applications.

NOW, THEREFORE, in consideration of the foregoing promises and mutual promises set forth below, the PARTIES hereto agree, with the intention of being legally bound, to the following:

1. Responsibilities of USACOE:

A. The USACOE shall provide one dedicated qualified, senior-level project review specialist to review projects and applications submitted by the COUNTY for review, consideration, and/or approval. The senior-level review specialist shall be assigned to all COUNTY applications and items submitted for review.

B. For actions related to permitting, the USACOE shall provide one senior-level project review specialist to conduct priority project coordination, technical assistance and document review on COUNTY projects.

C. The USACOE shall maintain time records identifying the number of hours the senior-level project review specialist performs work on COUNTY applications and projects in accordance with this EIA.

D. At least thirty (30) days prior to the commencement of each funding period shown in **Exhibit A**, the USACOE shall submit an invoice requesting funding on an advance payment basis for that funding period, and shall submit reconciliation reports to the COUNTY along with documentation sufficient to the support actual hours worked under this EIA during the corresponding timeframe.

E. The USACOE shall deliver the above cited invoices and reconciliation reports to:

Richard Walesky, Director  
Department of Environmental Resources Management  
2300 N Jog Road 4th Fl  
West Palm Beach, FL 33411

2. Responsibilities of the COUNTY:

A. The COUNTY shall provide funding for the salary and employee benefits for the senior-level project review specialist for period October 1, 2009 to September 30, 2010 in an amount not to exceed a total of one hundred and seventy five thousand dollars and no cents (\$175,000), in accordance with the schedule set forth in **Exhibit A**. In addition, the senior-level project review specialist shall be compensated for necessary travel expenses incurred in connection with this EIA on the same basis as if (s)he were a regular employee of the USACOE.

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B. The COUNTY shall provide payment to the USACOE within thirty (30) days of receipt and approval of an invoice requesting funds in accordance with paragraph 1.D. above. The COUNTY shall provide funds in an amount not to exceed the amounts provided in **Exhibit A**.

3. The COUNTY'S performance and obligation to provide funding under this EIA is contingent upon an appropriation for such purpose by the Palm Beach County Board of County Commissioners, and appropriation for the first funding period does not suggest that subsequent appropriations will be pursued or approved.
4. The PARTIES act in an independent capacity in the performance of their respective functions under this EIA, and neither PARTY shall be construed as the officer, agent or employee of the other.
5. The senior-level project review specialist provided for herein shall at all times be an employee of the USACOE, not the COUNTY, and the USACOE shall be solely responsible for said employee and for the supervision of said employee.
6. In no way shall it be construed or implied that either the COUNTY or the USACOE is intending to abrogate its obligation and duty to comply with the regulations promulgated under the Clean Water Act of 1977, as amended; Section 10 of the River and Harbor Act; Section 103 of the Marine Resources, Protection and Sanctuaries Act; the Fish and Wildlife Coordination Act of 1958, as amended; the National Environmental Policy Act of 1969, or any other applicable federal laws and regulations.
7. Either PARTY shall have the right to terminate this Agreement for convenience by providing sixty (60) days written notice to the other PARTY. The USACOE shall be compensated for senior-level project review specialist services rendered through the date of termination. In the event of termination by the COUNTY, the USACOE shall within ninety (90) days of the date of termination return to the COUNTY all unexpended advance payments provided in accordance with paragraph 1.D. above and this AIE.
8. The Project Manager for the COUNTY is Richard Walesky, Director of Environmental Resources Management, 2300 N Jog Road 4th Fl, West Palm Beach, FL 33411, (561) 233-2400. The Project Manager for the USACOE is Tori White, Chief, South Permits Sections, Suite 500, 4400 PGA Blvd., Palm Beach Gardens, Florida 33410, (561) 472-3517. All notices required to be given under this EIA shall be delivered by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to the Project Manager with a copy sent to the Palm Beach County Attorney's Office, Attn: ERM Attorney, 301 North Olive Avenue, 6<sup>th</sup> Floor, West Palm Beach, FL 33401.
9. Upon execution by both PARTIES, this EIA shall become effective ("Effective Date") and shall remain in effect until September 30, 2010 ("Expiration Date"), unless terminated sooner as a result of lack of funding, for good cause, or for the convenience of either PARTY. This EIA may be extended for a term beyond the Expiration Date, at the

option of the PARTIES, through execution of an amendment or agreement signed by the PARTIES.

10. Participation by the USACOE in this EIA is subject to the United States Congress's extension of the authority currently provided in Section 214 of the Water Resources Development Act, which is now scheduled to expire on December 31, 2009.
11. The interpretation, construction, effect, performance, and enforcement and of this EIA shall be governed by and consistent with the applicable federal law and regulations and applicable laws and regulations of the State of Florida.
12. The PARTIES agree that this EIA sets forth the entire agreement between the PARTIES and that there are no promises or understandings other than those stated herein. This EIA may be amended only with the written approval of the PARTIES through a duly executed amendment. Any changes, amendments, corrections, or additions to this EIA shall be in writing and executed by the PARTIES' duly authorized agents or officials with the same formalities used herein, in accordance with applicable law. Any amendment hereto shall become effective upon execution by both PARTIES.
13. Consistent with Federal law, regulation and policy, the USACOE shall maintain records and the COUNTY shall have inspection and audit rights as follows:
  - A. Maintenance of Records: The USACOE shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this EIA including but not limited to 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 years from completing performance and receiving final payment under this EIA.
  - B. Examination of Records: The COUNTY or its designated agent shall have the right to examine, in accordance with generally accepted governmental auditing standards, all records directly or indirectly related to this EIA that are not protected by the attorney-client privilege or attorney work-product. Such examination may be made within five years from the date of final payment under this EIA and upon reasonable notice as to time and place.
  - C. Extended Availability of Records for Legal Disputes: In the event that the COUNTY should become involved in a legal dispute with a third party arising from performance under this EIA, the USACOE 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 COUNTY.
14. The USACOE shall allow public access to all project documents and materials in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. § 552
15. Each PARTY shall be responsible for its own actions and negligence.

16. If any term or provision of this EIA, or the application thereof to any person or circumstance, shall, to any extent, be held invalid or unenforceable, the remainder of this EIA, 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 EIA shall be deemed valid and enforceable to the extent permitted by law.

IN WITNESS WHEREOF, the PARTIES or their duly authorized representatives hereby execute this Agreement.

ATTEST: SHARON R. BOCK  
Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA BY  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Jeff Koons, Chairman

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

By: \_\_\_\_\_  
Assistant County Attorney

By: Richard E. Walinsky  
Director, Env. Res. Management

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

U.S. ARMY CORPS OF ENGINEERS

By: \_\_\_\_\_  
Assistant District Counsel

By: \_\_\_\_\_

By: \_\_\_\_\_  
PAUL L. GROSSKRUGER  
Colonel, Corps of Engineers  
Commanding

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**EMPLOYEE INTERCHANGE AGREEMENT  
BETWEEN  
PALM BEACH COUNTY  
AND  
U.S. ARMY CORPS OF ENGINEERS**

**EXHIBIT A**

1. First Funding Period. Estimated funding to be provided by the COUNTY to the USACOE for period October 1, 2009 to December 31, 2009:
  - A. Salary and Employee Benefits shall not exceed a total amount of \$ 40,000
  - B. Travel Expenses shall not exceed a total amount of \$0
2. Second Funding Period. Estimated funding to be provided by the COUNTY to the USACOE for period January 1, 2010 to September 30, 2010:
  - A. Salary and Employment Benefits shall not exceed a total amount of \$133,000
  - B. Travel Expenses shall not exceed a total amount of \$2,000
3. The funding provided by the COUNTY to the USACOE for the First and Second Funding Periods , including all Salary, Employment Benefits, and Travel Expenses provided pursuant to paragraphs 1 and 2 above shall not exceed a total amount of \$175,000.
4. The funding provided for herein is based on an estimate of the number of potential work hours the senior-level project review specialist will perform under the Employee Interchange Agreement ("EIA") (e.g. 8 hours worked per workday for 62 workdays for the First Funding Period, less leave, training and other hours of work that are not to be compensated under the EIA) multiplied by the actual hourly wage rate for the senior-level project review specialist, plus a percentage factor to cover employee benefits (annual and sick leave, medical, FICA, etc.), a percentage factor to fund a pro-rata share of certain overhead expenses including a G&A rate (USACOE overhead rate) and a percentage factor to fund overhead costs specific to the Regulatory Division. The senior-level project review specialist compensation will be established by multiplying the above cited rates by the actual hours the senior-level project review specialist spends working on COUNTY projects pursuant to the EIA.

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2009

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**BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY  
BUDGET Transfer**

BGEX 082609-2279

FUND Transportation Improvement

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 08/26/09	REMAINING BALANCE
<b><u>EMP INTERCHG AGREE/US ARMY CORPS OF ENG</u></b>								
3500-361-1187-3401	Other Contractual Services	97,400	97,400	14,700	0	112,100	42,000	70,100
<b><u>RESERVES-ROAD PROGRAM SWEEPS</u></b>								
3500-361-9997-9901	Contingency Reserves	12,696,243	3,903,760	<u>0</u>	<u>14,700</u>	3,889,060		
				14,700	14,700			

SIGNATURE

DATE

By Board of County Commissioners  
At Meeting of 09/15/09

Engineering &amp; Public Works

Atwillhite8/26/09

Administration / Budget Approval

MS9/4/09

OFMB Department – Posted

na  
9-1-09

Deputy Clerk to the  
Board of County Commissioners



DATE: August 18, 2009

TO: Jessica Kolb

Environmental Resources Management

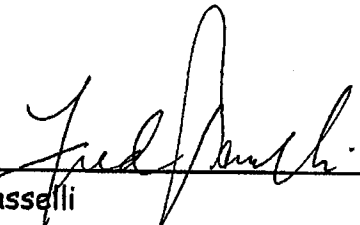
FROM: Fred Passelli  
Airport Fiscal Manager

Project Desc.

Employee Interchange Agreement with the Army Corp's of Engineers

Please be advised that funds are available in the amount of \$ 35,000.00 in

Account #4111-121-A175-6505 for FY 2009. Please encumber these funds in FY 2009. Thank you.

  
Fred Passelli  
8/18/09  
(Dated)

**INTEROFFICE COMMUNICATION  
PALM BEACH COUNTY**

**BUDGET AVAILABILITY STATEMENT**

**DATE:** August 19, 2009

**TO:** Jessica Kolb, Financial Analyst II  
Environmental Resource Management

**FROM:** Guy Eggertsson, Fiscal Manager 1  
Water Utilities Department

*Guy Eggertsson*

**RE:** Employee Interchange Agreement With the Army Corp's of Engineers- Water  
Utility Department's Portion

**FISCAL IMPACT ANALYSIS:**

Budget Account Number:

Fund	Agency	Organization	Object	Amount
4001	720	2322	3401	\$35,000.00

Funding Source  
Water Utility Department User Fees

**INTEROFFICE COMMUNICATION  
PALM BEACH COUNTY  
BUDGET AVAILABILITY STATEMENT**

**DATE:** August 26, 2009 **REVISED**

**TO:** Richard E. Walesky, Director  
Environmental Resources Management  
Attn: Jessica Kolb

**FROM:** Alexis T. Willhite, Fiscal Manager *awillhite*  
Administrative Services

**RE:** US Army Corps of Engineers  
Project # N/A  
Employee Interchange Agreement \$70,000.00

**BOARD MEETING DATE:** N/A

**FISCAL IMPACT LOCATION:** F:\COMMON\WP\AgendaPage2\ N/A

**FUNDING STATUS:** BUDGET TRANSFER NEEDED

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A Budget Transfer of \$14,700 in the Transportation Improvement Fund from Road Program Sweep Reserves to Employee Interchange Agreement/US Army Corps of Engineers.

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Is Item Included in Current Budget?      Yes      No      X

**Budget Account No:**

Fund 3500    Dept 361    Unit 1187    Object 3401

**Recommended Sources of Funds/Summary of Fiscal Impact:**

Transportation Improvement Fund  
Employee Interchange Agreement/US Army Corps of Engineers

Employee Interchange Agreement      \$70,000.00