

**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

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- A) approve** an Interlocal Agreement with the Town of Palm Beach (Town) to include the Town in the Central Palm Beach County Comprehensive Erosion Control Project (Breakwater Project), expiring upon completion of the project for an estimated cost share of \$417,339;
- B) approve** an Interlocal Agreement with the Town to cost share on shoreline protection tasks along eligible portions of shoreline within the municipal limits of the Town, expiring December 31, 2034 (Shoreline Protection Project);
- C) approve** a Budget Amendment in the amount of \$417,339 in the Beach Improvement Fund to recognize the estimated revenue from the Breakwater Project agreement; and
- D) authorize** the County Administrator, or his designee, to sign all future time extensions, task assignments, certifications and other forms associated with these Agreements, and necessary minor amendments that do not change the scope of work or terms and conditions of the Agreements.

Summary: The Interlocal Agreement for the Breakwater Project expands the original project area along Manalapan, Lantana, and South Palm Beach to the north to include a portion of the Town's shoreline in the design and permitting of the proposed project. This Agreement provides a 37.7% cost-share for the Environmental Impact Study (EIS) and design, permitting, and management of the Breakwater Project. In addition, the Agreement recognizes the need for additional coordination on any future construction, monitoring, and mitigation costs. This cost-share represents the Town's proportional share of linear shoreline contained within the Breakwater Project area. The remaining 62.3% of project costs is currently funded by a combination of Tourist Development Tax, interest, ad valorem and a 20% cost-share by the Town of South Palm Beach (as per Interlocal Agreement #R2007-0796).

The Interlocal Agreement involving the Shoreline Protection Project continues cooperation
(Continued on Page 3.)

- Attachments:**
- 1. Location Map
 - 2. Interlocal Agreement (Breakwater Project)
 - 3. Interlocal Agreement (Shoreline Protection Project)
 - 4. Budget Amendment (3652)

Recommended by: Richard E. Wolejko 8/31/09
Department Director Date

Approved by: Robert W. Wanner _____
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>417,339</u>	_____	_____	_____	_____
External Revenues	<u>(417,339)</u>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
 NET FISCAL IMPACT	 <u>\$ 0.00</u>	 _____	 _____	 _____	 _____
 # ADDITIONAL FTE POSITIONS (Cumulative)	 _____	 _____	 _____	 _____	 _____

Is Item Included in Current Budget? Yes _____ No X
 Budget Account No.: Fund Department Unit Object

B. Recommended Sources of Funds/Summary of Fiscal Impact

Interlocal Agreement for Breakwater Project: 37.7% of costs associated with the Project will be reimbursed by the Town of Palm Beach. The remaining portion of this Project (62.3%) will be funded by an existing Interlocal Agreement with the Town of South Palm Beach (20% cost-share) and a combination of Tourist Development Tax and interest. In addition, this portion of the Project has been determined to be eligible for 50% funding by the FDEP; receipt of State cost sharing grants are anticipated once funding becomes available.

Inter-local Agreement for cost sharing: 20% of total costs for shoreline protection tasks are reimbursed by the Town of Palm Beach. There will be no fiscal impact to the County at this time. Each project in the Town of Palm Beach will be brought to the BCC for approval and cost-share.

C. Department Fiscal Review: *JP*

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Administrator Comments:

[Signature] 9/4/09
 OFMB SN 9/3/09 CN 9/2/09

[Signature] 9/4/09
 Contract Administrator E. Jones 9/4/09

B. Legal Sufficiency:

[Signature] 9-11-09
 Assistant County Attorney

These Agreements comply with our review requirements. At the time of our review, these Agreements were not executed.

C. Other Department Review:

 Department Director

Summary (continued from page 1):

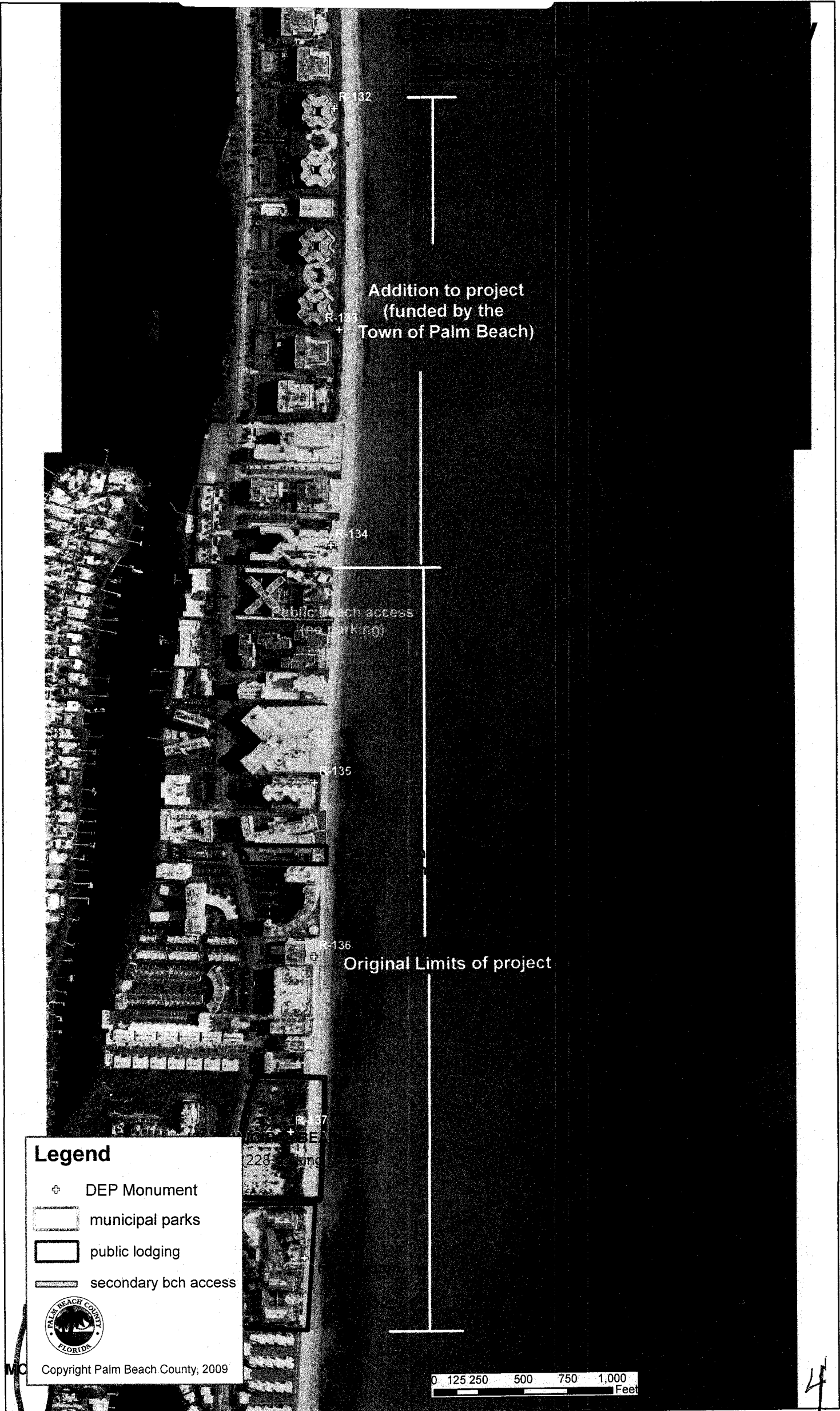
between the Town and County on funding shoreline protection tasks such as design, permitting, construction, mitigation, and environmental and performance monitoring. This Interlocal Agreement provides for 20% reimbursement of total costs associated with eligible portions of shoreline protection tasks incurred by either Party as defined in future agreements. Districts 1, 4 & 7 (SF)

Background and Justification: The Town of Palm Beach wishes to partner with the County on multiple shoreline protection tasks including the proposed breakwater project currently in the engineering and design phase. Strategies for municipal cost sharing and funding priorities for shoreline protection are included within the County's Comprehensive Plan (Objective 1.2 Policy 1.2-a & h).

In April 2006, the BCC approved the South Palm Beach Feasibility Study (Task Order CPE-001, R2006-0690), which evaluated the Town of South Palm Beach and Town of Lantana shorelines, multiple erosion control alternatives, and the environmental impacts each alternative may create. The study was completed in June 2007 and County and Town of South Palm Beach staff determined that constructing a series of segmented nearshore breakwaters parallel to the shoreline would be the most appropriate long-term protection response to the ongoing erosion

On October 7, 2008 the BCC approved Task Order No. 0877-03 (R2008-1764) which authorized the County's engineering consultant to work on the engineering, design and permitting of the breakwater system. Most recently, the BCC approved Task Order 0410-09 (R2009-0662) on April 21, 2009 in order to complete the federally required Environmental Impact Study (EIS) for the project area. Completion of the EIS is a requirement under the National Environmental Policy Act (NEPA) and evaluates project alternatives as well as the environmental, historic, economic and social values that the proposed erosion control project may impact.

County staff will update both the engineering and design and EIS scopes of work to include the new portion of the Town of Palm Beach shoreline. The contribution from the Town will fund the necessary increases in Task Orders. Inclusion of the Town of Palm Beach will delay the project by approximately six months but will also reduce the overall costs to the County and the Town of South Palm Beach.



BREAKWATER
Att. 2 3/4

INTERLOCAL AGREEMENT BETWEEN PALM BEACH
COUNTY AND THE TOWN OF PALM BEACH

THIS AGREEMENT is made and entered into on the _____ day of _____ 2009, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "County") and the TOWN OF PALM BEACH (the "Town"), a municipal corporation in the State of Florida, each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes.

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, 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 that such agencies share in common and that each might exercise separately; and

WHEREAS, pursuant to Chapter 125.01, Florida Statutes, the Board of County Commissioners is empowered to establish and administer programs of beach erosion control and to enter into agreements with other governmental agencies within or outside the boundaries of the County for joint performance, or performance of one unit on behalf of the other, of any of either governmental entity's authorized functions; and

WHEREAS, pursuant to Chapter 166, Florida Statutes, the Town is empowered to exercise any governmental, corporate, and proprietary power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the County is the local sponsor for the Central Palm Beach County Comprehensive Erosion Control Project, hereinafter called the "Project", a project to design and permit breakwaters in an area which consists of approximately 4,230 linear feet of shoreline extending from the southerly limits of the Town of Palm Beach to the south property line of the Ritz Carlton Hotel; and

WHEREAS, County is required to prepare an Environmental Impact Statement, design criteria, specifications and drawings and obtain permitting for the Project; and

WHEREAS, the Town desires that the County include within the Project an additional approximate 2,560 feet of linear shoreline located within the jurisdictional limits of the Town of Palm Beach extending from FDEP Monument R-132 south to the southerly limits of the Town conditioned upon the Town reimbursing the County for the Town's proportional share of the Project; and

WHEREAS, County desires to assist the Town by including within the Project that portion of the linear shoreline defined above located within the jurisdictional limits of the Town so as to incorporate within the Project a total linear shoreline of approximately 6,790 feet; and

WHEREAS, the County and the Town desire to establish their respective roles in the Project to make the most efficient use of their respective resources.

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

1. Purpose of the Agreement. The purpose of this Agreement, due to the multi-jurisdictional nature of the Project and the significant savings possible because of economies of scale, is to provide a mechanism for the County to include in the Central Palm Beach County Comprehensive Erosion Control Project an additional approximate 2,560 feet of linear shoreline located within the jurisdictional limits of the Town so as to define a Project of approximately 6,790 feet of linear shoreline.

2. Services Required. The Project will require an Environmental Impact Statement at a cost of approximately \$460,000.00, design and permitting for the Project at a cost of approximately \$547,000.00, and initial project management services at a cost of approximately \$100,000.00, which equals an estimated initial Project cost of \$1,107,000.00.

3. Cost Sharing. The County agrees to provide funding for the Project in anticipation of a 37.7% reimbursement from the Town, which equals an approximate initial Project cost to the Town in the amount of \$417,339.00. The Town agrees that it will bear 37.7% of said costs, which figure represents its proportional share of the linear shoreline contained within the Project. The Town shall reimburse the County quarterly for all costs related to the Project upon presentation from the County of a statement for said costs, along with a progress report and update in writing related to the status of work completed to date. The Town shall pay the County within forty-five (45) days of receipt of a statement from the County. All statements and payments shall be submitted to the County at the address provided in paragraph 9. If a dispute arises concerning any statement, the Town shall pay any amount not in dispute and shall immediately notify the County's Representative in writing of the amount of and reason for the disputed payment due.

4. Construction. The parties recognize that the hiring of a contractor will be necessary to construct the Project. The parties shared costs for construction services shall be contingent upon the County and Town's prior written approval for the specific construction service. Before entering into any construction contract in furtherance of the Project, the parties shall mutually agree, in writing, to the contractor, construction plans and technical specifications and bid costs. If the parties are not able to mutually agree, in writing, to a construction contract, the Town may terminate this Agreement by providing written notice of termination to the County. The Town shall then have no further obligations under this Agreement after it reimburses the County for its 37.7% share of the costs expended by the County on the Project through the date of termination.

5. Construction Management. The County shall assume the management role for consultants and contractors assigned to the Project. The Town shall remain informed of the progress of the Project through regular meetings between staffs of both parties.

Once the construction contract for the Project provided for in paragraph 4 is executed, the County shall provide the Town with relevant documents relating to the terms of the contract, including the schedule for work to be conducted within the Town. A representative of the Town will be involved as the Project Liaison on that portion of the Project conducted within the Town of Palm Beach to both periodically inform Town residents and field resident concerns.

6. Term. The term of this Agreement shall commence on the date this Agreement is signed by all parties hereto and is filed with the Clerk of the Circuit Court of the Fifteenth Judicial Circuit of Palm Beach County, Florida, and shall terminate upon completion of the Project and payment of all Project costs, unless terminated earlier as provided herein.

7. Funding. Notwithstanding any other provision herein, the County's obligation to pay under this Agreement is contingent upon appropriation for its purpose by its Board of County Commissioners in its annual fiscal year budget and the Town's obligation to pay under this Agreement is contingent upon an appropriation for its purpose by its Town Council in its annual fiscal year budget.

8. Party Representatives. The County's representative/contract monitor during the term of this Agreement shall be the Director of the Department of Environmental Resources Management whose telephone number is (561) 233-2400.

The Town's representative/contract monitor during the term of this Agreement shall be the Town Manager, whose telephone number is (561) 838-5400.

9. Notices. All notices required under this Agreement shall be forwarded, in writing, to:

Director
Palm Beach County Department of
Environmental Resources Management
2300 North Jog Road 4th floor
West Palm Beach, FL 33411
Facsimile: 561-233-2414

Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480
Facsimile: 561-838-5411

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, sent by certified mail, return receipt requested, or sent by facsimile with confirmation of receipt to the respective addresses specified herein. 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 party.

10. Default and Termination. The parties hereto expressly covenant and agree that in the event either party is in default of its obligations herein, the party not in default shall provide to the party in default thirty (30) days written notice to cure said default before exercising any of its rights as provided for in this Agreement. If the defaulting party fails to correct the default within this time, unless otherwise agreed by the parties, the party not in default may terminate the Agreement at the expiration of the thirty (30) day time period. In the event of a default by the Town, the Town shall pay the County for all costs incurred and work performed on the Project through the date of termination.

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

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

13. Remedies. This Agreement shall be construed by and 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 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.

14. Indemnification. Each party shall be liable for its own actions and negligence, and to the extent permitted under Section 768.28, Florida Statutes, the County shall indemnify, defend and hold harmless the Town against any actions, claims, or damages arising out of the County's negligence in connection with this Agreement, and the Town shall indemnify, defend and hold harmless the County against any actions, claims or damages arising out the Town'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. Nothing herein shall be construed as a waiver of sovereign immunity by either party, pursuant to Section 768.28, Florida Statutes.

15. Insurance. Parties shall maintain a fully funded program of self-insurance pursuant to Section 768.28, Florida Statutes. County further agrees to require any contractor performing work on the Project to maintain adequate insurance coverage, naming both the Town and County as additional insured and providing that the contractor shall save, defend and hold harmless the County and the Town for any and all suits, actions, claims, demands, liabilities, interests, attorneys' fees, costs and expenses of whatsoever kind or nature arising or occasioned or contributed to in whole or in part by reason of any act, omission, fault or negligence of the contractor.

16. Equal Opportunity. The County and the Town agree that no person shall, on the grounds of age, race, color, sex, national origin, disability, religion, ancestry, marital status, sexual orientation, gender identity, or gender expression be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of the Agreement.

17. Severability. In the event that any section, paragraph, sentence, clause, or provisions hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this agreement and the same shall remain in full force and effect.

18. Waiver of Breach. It is hereby agreed to by the parties that no waiver of breach of any of the covenants or provisions of this Agreement shall be construed to be a waiver of any succeeding breach of the same of any other covenant.

19. Entirety of Agreement. The Town and County agree that this Agreement, together with any attached exhibits, sets 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 or obligations in the Agreement may be added to, modified superseded, or otherwise altered, except by written instrument executed by the parties hereto.

20. Independent Contractor. Each party recognizes that it is an independent contractor and not an agent or servant of the other party. No person employed by any party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law, except through and against the entity by whom they are employed.

21. Enforcement Costs. Except as otherwise provided herein, 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. This provision pertains only to the parties to the Agreement.

22. Captions. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

23. Construction. No party shall be considered the author of this Agreement since the parties hereto have participated in drafting this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the County of Palm Beach, Florida has caused this Agreement to be signed by the Chairman of the Board of County Commissioners and the seal of said Board to be affixed hereto and attested by the Clerk of said Board, pursuant to authority granted by said Board; and the Town of Palm Beach has caused this Agreement to be signed in its corporate name, by its Mayor and its corporate seal to be affixed hereto, attested by its Town Clerk, the date and year first above written.

TOWN OF PALM BEACH, FLORIDA

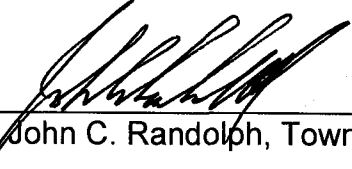
By 
Jack McDonald, Mayor

ATTEST:

By 
Joanna Cunningham, Town Clerk

Date: 9/10/07

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

By 
John C. Randolph, Town Attorney

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

By _____
John F. Koons, Chairman

ATTEST:

Sharon R. Bock, Clerk and Comptroller

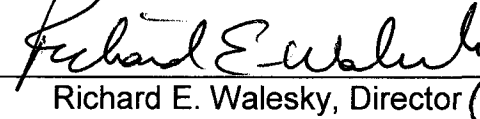
By _____
Deputy Clerk

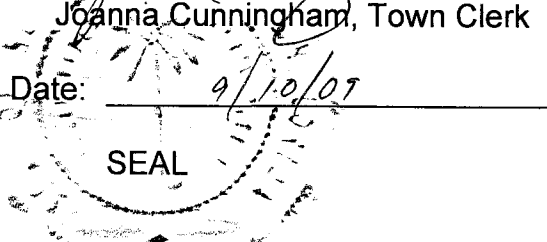
Date: _____

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

By 
Assistant County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By 
Richard E. Walesky, Director



SEAL

At General 4

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH
COUNTY AND THE TOWN OF PALM BEACH**

THIS AGREEMENT is made and entered into on the ____ day of _____, 2009, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "COUNTY") and the TOWN OF PALM BEACH (the "TOWN"), a municipal corporation in the State of Florida, each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes.

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, 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 that such agencies share in common and that each might exercise separately; and

WHEREAS, pursuant to Chapter 125.01, Florida Statutes, the Board of County Commissioners is empowered to establish and administer programs of beach erosion control and to enter into agreements with other governmental agencies within or outside the boundaries of the COUNTY for joint performance, or performance of one unit on behalf of the other, of any of either governmental entity's authorized functions; and

WHEREAS, pursuant to Chapter 166, Florida Statutes, the TOWN is empowered to exercise any governmental, corporate, and proprietary power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the COUNTY and the TOWN entered into an Interlocal Agreement on September 17, 1996 (3L-1-A), which provided for joint funding of the Midtown Beach Nourishment TASKS and which expired on September 30, 1997; and

WHEREAS, the COUNTY and the TOWN intend to make the most efficient use of their powers by continuing to cooperate with each other on shoreline protection TASKS within the municipal limits of the TOWN; and

WHEREAS, the COUNTY's Comprehensive Plan includes strategies for municipal cost sharing and funding priorities for shoreline protection (Objective 1.2 Policy 1.2-a & h); and

WHEREAS, the COUNTY and the TOWN desire to establish their respective roles

in the TASKS to make the most efficient use of their respective resources; and

WHEREAS, the COUNTY wishes to cost share with the TOWN, reimbursing 20% of the total costs associated with eligible shoreline protection tasks ("TASKS") along the eligible shoreline incurred by the TOWN; and

WHEREAS, the TOWN wishes to cost share with the COUNTY, reimbursing 20% of the total costs associated with TASKS incurred by the COUNTY.

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

1. Purpose of the Agreement. The purpose of this Agreement is to provide a mechanism for funding and to set forth the terms, conditions and obligations of each of the respective parties hereto.
2. The Eligible Shoreline Protection Tasks. The TASKS consist of shoreline protection design, permitting, construction, mitigation, environmental and performance monitoring, which will be mutually agreed to in scope and cost by both parties and set forth in a written Scope of Work(s) to be adopted by the parties when necessary as an amendment to this Agreement. Actions that may, at the sole discretion of either party, result in unreasonable impacts to environmental resources, impair longshore sediment transport, or incur unreasonable costs shall not be eligible for reimbursement.
3. The Eligible Shoreline. The eligible shoreline within the municipal limits of the TOWN is limited by publicly accessible and critically eroded criteria as defined by Chapter 62B-36 FAC
4. Term. The term of this Agreement shall be from the date of execution through December 31, 2034, unless otherwise provided herein.
5. Funding. The parties agree that the COUNTY and the TOWN shall cost share as set forth below.
 - a) The COUNTY and the TOWN, respectively, shall pay all expenses of the TASKS managed by that party in anticipation of a 20% reimbursement from the other party for those TASKS agreed to by the parties in writing and set forth in a Scope of Work.
 - b) Each party shall submit invoices for payment to the other party not more frequently than quarterly, but at least annually. Invoices shall include a reference to this Agreement, identify the TASKS performed, identify the amount due and payable, and include a statement certifying that the invoice amount includes only eligible expenses and said eligible expenses have been incurred and paid. Invoices shall be in sufficient detail for pre audit and post audit review. Invoices received from the

TOWN shall be reviewed by the Department of Environmental Resources Management and upon approval shall be sent to the COUNTY's Finance Department for final approval and payment. Invoices will normally be paid by the COUNTY within forty-five (45) days of receipt. The TOWN will pay the COUNTY within forty-five (45) days of receipt of an invoice from the COUNTY. All invoices and payments shall be submitted to the other party at address provided in paragraph 7. If a dispute arises concerning any invoice, the party disputing payment shall pay the any amount not in dispute and shall immediately notify the other Party's Representative in writing of the amount of and reason for the disputed payment due.

- c) Each party shall maintain adequate records to justify all charges, expenses and costs represented by the invoice amounts for at least five (5) years after termination of the Agreement. Each party shall have access to all books, records, and documents related to this Agreement for purposes of inspection or audit during normal business hours.
- d) Each party shall submit requests for State and/or Federal funding assistance and provide a copy of any such submittal to the other party. Each party shall provide the other party with a copy of any TASK-related scopes of work, contracts, permits and permit applications, surveys, aerials, photographs, reports and studies including pre- and post-construction monitoring reports, bid tabulations and other TASK-related documents, schedules, change orders, plans and specifications for shoreline protection work within the TOWN related to this Agreement. To the greatest extent possible, the above documents shall be provided in digital format. The parties shall coordinate on all consultant or construction contract changes or contract amounts.
- e) The parties shall cost share on a reimbursement basis. Cost sharing responsibility shall be limited to twenty percent (20%) of eligible expenses for the eligible TASKS described in this Agreement and to be more fully detailed in a Scope of Work. Under no circumstances shall either party advance funds for future work under the terms of this agreement.
- f) Each party shall appropriate adequate funds to cover its share of the eligible expenses associated with this Agreement. Eligible expenses are limited to: engineering, design, permitting, construction, construction oversight, dune planting, environmental monitoring and performance monitoring within the limits of the TOWN.
- g) Notwithstanding any other provision herein, the COUNTY's obligation to pay under this Agreement is contingent upon an appropriation for its purpose by its Board of County Commissioners in its annual fiscal year budget and the TOWN's obligation to pay under this agreement is

contingent upon an appropriation for its purpose by its Town Council in its annual fiscal year budget

6. Design, Construction and Monitoring.

- a) The parties shall establish the schedule for implementing the various TASKS as part of the Scope of Work.
- b) Each party shall properly prepare and submit in a timely manner any and all applications for State and Federal permits required for the TASKS it manages and provide a copy thereof to the other party.
- c) The parties shall endeavor to modify all relevant permits and contracts to conform to TASKS which may include a financial advantage for work on a regional scale, including but not limited to:
 1. Bathymetric and Topographic Surveys
 2. Aerial Photography and digitization
 3. Geotechnical surveys and analysis
 4. Sediment Analysis
 5. Sediment Compaction
 6. Reef Monitoring
 7. Turtle Monitoring
- d) Each party shall secure competitive bids by advertisement for all TASKS to be performed by contractors, except as provided for in previously executed agreements. The parties shall endeavor to coordinate the bidding and construction of the TASKS with similar work outside of the TOWN for the purpose of securing a more competitive bid from contractors.
- e) Each party shall submit to the other party a tabulation of all bids received, and a copy of the contract of the lowest, responsible, responsive bidder as well as any amendments or modifications thereof for all contracts associated with the TASKS.

6. Party Representatives.

- a) The COUNTY's representative/contract monitor during the term of this Agreement shall be the Director of the Department of Environmental Resources Management whose telephone number is (561) 233-2400.
- b) The TOWN's representative/contract monitor during the term of this Agreement shall be the TOWN Manager, whose telephone number is (561)838-5400.

7. Notices. All notices required under this Agreement shall be forwarded, in

writing, to:

Director
Palm Beach County Department of
Environmental Resources Management
2300 North Jog Road 4th floor
West Palm Beach, FL 33411
Facsimile: 561-233-2414

Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480
Facsimile: 561-838-5411

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, sent by certified mail, return receipt requested, or sent by facsimile with confirmation of receipt to the respective addresses specified herein. 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 party.

8. Default and Opportunity to Cure. The parties hereto expressly covenant and agree that in the event either party is in default of its obligations herein, the party not in default shall provide to the party in default thirty (30) days written notice to cure said default. If the defaulting party fails to correct the default within this time, unless otherwise agreed by the parties, the party not in default may terminate the Agreement at the expiration of the thirty (30) day time period.
9. Delegation. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or municipal officers.
10. Recording. A copy of this Agreement shall be recorded and filed with the Clerk of the Circuit Court in and for Palm Beach County.
11. Remedies. This Agreement shall be construed by and 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 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.
12. Indemnification. Each party shall be liable for its own actions and negligence, and to the extent permitted under Section 768.28, Florida Statutes, the COUNTY shall indemnify, defend and hold harmless the TOWN against any actions, claims, or damages arising out of the

COUNTY's negligence in connection with this Agreement, and the TOWN shall indemnify, defend and hold harmless the COUNTY against any actions, claims or damages arising out the TOWN'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. Nothing herein shall be construed as a waiver of sovereign immunity by either party, pursuant to Section 768.28, Florida Statutes.

13. Insurance. Each party shall maintain a fully funded program of self-insurance pursuant to Section 768.28 Florida Statutes. Each party agrees to require any contractor performing pursuant to this Agreement to maintain insurance coverage approved by the COUNTY and the TOWN, naming both the TOWN and COUNTY as additional insured and providing that the contractor shall save, defend and hold harmless the County or the Town, depending on the entity which is a party to the contract, for any and all suits, actions, claims, demands, liabilities, interests, attorneys' fees, costs and expenses of whatsoever kind or nature arising or occasioned or contributed to in whole or in part by reason of any act, omission, fault or negligence of the contractor. Each party agrees to have any contractor performing work pursuant to this Agreement to supply the other party with a certificate of insurance naming that party as an additional insured. Each party expressly understands and agrees that any insurance protection furnished shall in no way limit its responsibilities to indemnify and save harmless the other party under the provisions of paragraph 12 of this Agreement.
14. Equal Opportunity. The COUNTY and the TOWN agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, sexual orientation, gender identity or gender expression be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of the Agreement.
15. Severability. In the event that any section, paragraph, sentence, clause, or provisions hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this agreement and the same shall remain in full force and effect.
16. Waiver of Breach. It is hereby agreed to by the parties that no waiver of breach of any of the covenants or provisions of this Agreement shall be construed to be a waiver of any succeeding breach of the same of any other covenant.
17. Termination. Either party may terminate this Agreement by giving thirty (30)

days prior written notice and shall pay for all costs incurred and due under terms of this Agreement as of the date of termination.


18. Entirety of Agreement. The TOWN and COUNTY agree that this Agreement, together with any attached exhibits, sets 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 or obligations in the Agreement may be added to, modified superseded, or otherwise altered, except by written instrument executed by the parties hereto.
19. Independent Contractor. Each party recognizes that it is an independent contractor and not an agent or servant of the other party. No person employed by any party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law, except through and against the entity by whom they are employed.
20. Enforcement Costs. Except as otherwise provided herein, 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. This provision pertains only to the parties to the Agreement.
21. Captions. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.
22. Construction. No party shall be considered the author of this Agreement since the parties hereto have participated in drafting this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.
23. Amendments. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the County of Palm Beach, Florida has caused this Agreement to be signed by the Chairman of the Board of County Commissioners and the seal of said Board to be affixed hereto and attested by the Clerk of said Board, pursuant to authority granted by said Board, and the Town of Palm Beach has caused this Agreement to be signed in its corporate name by its mayor and its corporate seal to be affixed hereto, attested by its Town Clerk, the date and year first above written.

TOWN OF PALM BEACH, FLORIDA

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

By: 
Jack McDonald, Mayor

By: _____
John F. Koons, Chairman

ATTEST:

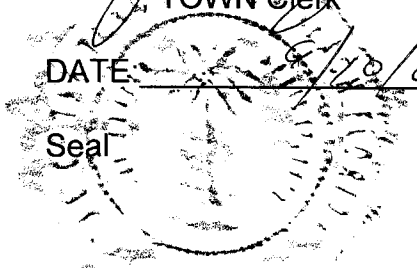
ATTEST:
Sharon R. Bock, Clerk and Comptroller

By: 
TOWN Clerk

By: _____
Deputy Clerk

DATE: 9/18/09

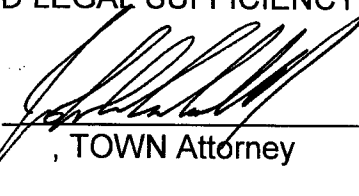
DATE: _____



Seal

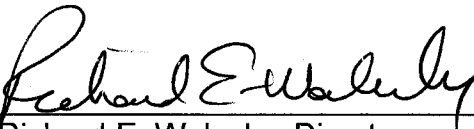
APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
TOWN Attorney

By: 
Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: 
Richard E. Walesky, Director
Dept. of Env. Resources Management

2009 - **1376**

BGEX - 380 - 081209*2204
 BGRV - 380- 081209*751

BOARD OF COUNTY COMMISSIONERS
 PALM BEACH COUNTY, FLORIDA

BUDGET AMENDMENT
Fund 3652 Beach Improvement Fund

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENCUMBERED / Expended 8/7/2009	REMAINING BALANCE
<u>REVENUES</u>							
381-M034 Palm Beach Midtown Shoreline 3739 Grant Other Government	0	0	417,339		417,339		
TOTAL RECEIPTS & BALANCES	25,130,517	44,455,662	417,339	0	44,873,001		
<u>EXPENDITURES</u>							
381-M034 Palm Beach Midtown Shoreline 3120-Engineering Services	578	578	417,339	0	417,917	0	417,917
TOTAL APPROPRIATIONS & EXPENDITURES	25,130,517	44,455,662	417,339	0	44,873,001		

Environmental Resources
 Management

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

Signatures & Dates

Richard E. Walsely 8/27/09
[Signature] 9/4/09

SN
9/3/09

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF

September 15, 2009

Deputy Clerk to the
 Board of County Commissioners

(19)