

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: July 19, 2011

<input checked="" type="checkbox"/>	Consent	<input type="checkbox"/>	Regular
<input type="checkbox"/>	Workshop	<input type="checkbox"/>	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 (Agreement) with the Loxahatchee River District (District) in the amount of \$13,667.50 for utility adjustments at Central Boulevard from Church Street to Longshore Drive.

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 Central Boulevard from Church Street to Longshore Drive (Project) is anticipated to be awarded by the Board of County Commissioners on July 19, 2011. 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 Map
2. Agreement (3)

Recommended by: SK [Signature] Division Director 6/15/11 Date

Approved By: Sgt. J. Webb 6/16/11
County Engineer Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$-0-	-0-	-0-	-0-	-0-

ADDITIONAL FTE

POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____

No X.

Budget Acct No.: Fund _____ Dept. _____ Unit _____ Object _____
Program

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

* Budget will be amended at the time of the construction contract award.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

OFMB
6/27/11
ce
6/27/11 PM
6-2011

Contract Dev. and Control
6-27-11 B. Wheel

B. Approved as to Form and Legal Sufficiency:

7/7/11
Assistant County Attorney

This Contract complies with our contract review requirements.

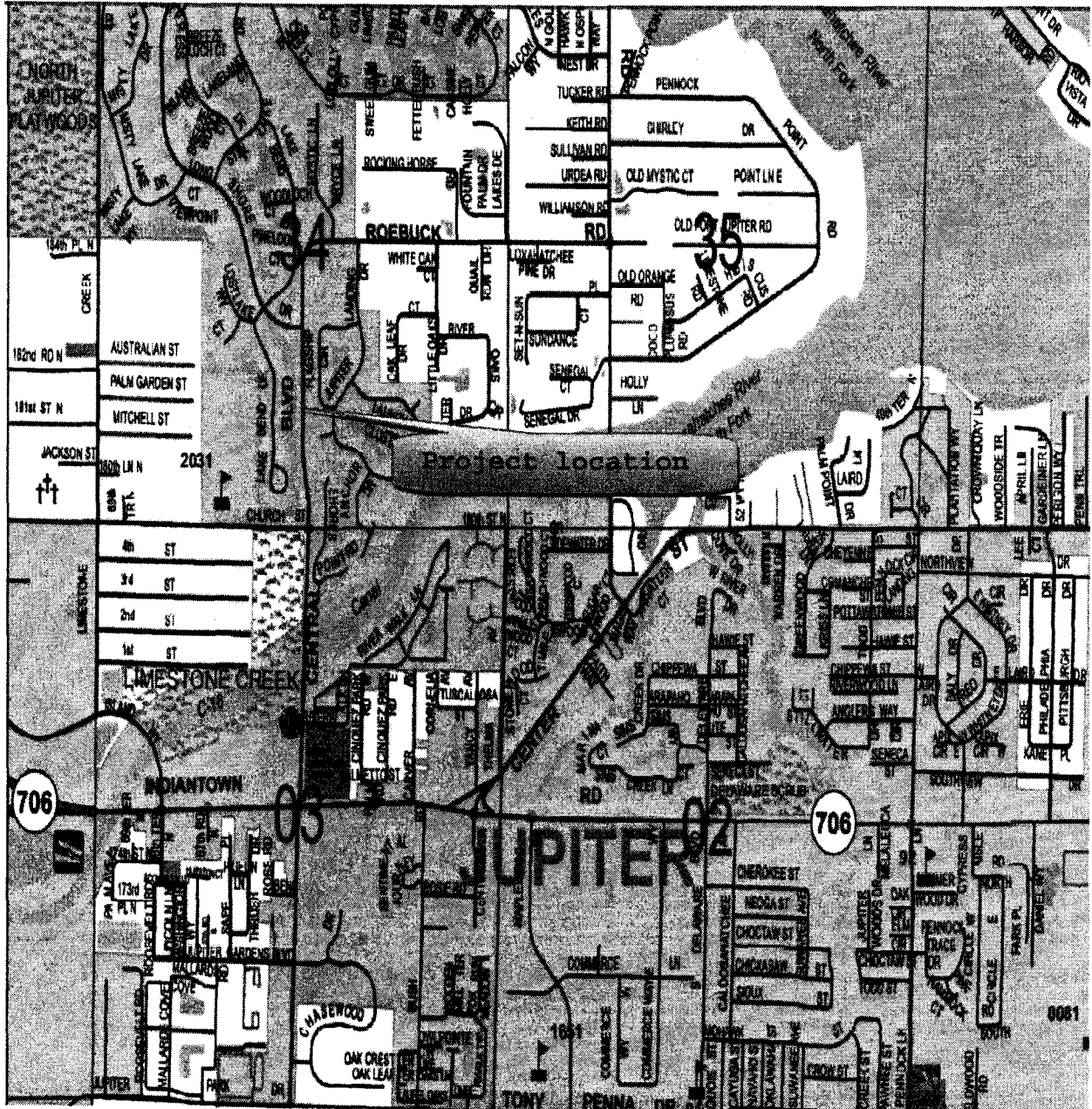
C. Other Department Review:

Department Director

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

ATTACHMENT 1

LOCATION MAP ROADWAY IMPROVEMENTS AND UTILITY ADJUSTMENTS at Central Blvd. from Church St. to Longshore Dr.



**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY, FLORIDA
AND
THE LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL DISTRICT
FOR JOINT PARTICIPATION AND PROJECT FUNDING
IN CONSTRUCTION OF
CENTRAL BOULEVARD FROM CHURCH STREET TO LONGSHORE DRIVE
PALM BEACH COUNTY PROJECT NO. 2006501-B**

THIS Interlocal Agreement, (hereinafter "Agreement"), is made as of the ____ day of _____, 2011, by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter "COUNTY") and the Loxahatchee River Environmental Control District, a special district independent governmental entity existing under the laws of Florida, (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 improve the Central Boulevard from Church Street to Longshore Drive (hereinafter the "Project"); and

WHEREAS, the COUNTY and the DISTRICT desire to jointly participate in the construction of utility adjustments to the DISTRICT'S force main and other improvements within the Project area, hereinafter referred to as the "Work"; and

WHEREAS, both COUNTY and 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. Project and Work to be Completed by the COUNTY:

COUNTY shall provide construction and administrative services to the Project as more specifically described in the Bid Documents for Palm Beach County Project No. 2006501-B. Said Bid Documents include the Work as shown in DISTRICT prepared Utility Matrix, Applicable Technical Specifications, Standard Construction Details, and Approved Product List. The Project, as set forth in this Agreement, shall be performed on Central Boulevard from Church Street to Longshore Drive.

Section 3. Responsibilities and Duties:

A. DISTRICT shall reimburse COUNTY a total estimated cost of **Thirteen Thousand Six Hundred Sixty Seven Dollars and Fifty Cents (\$13,667.50)**, provided 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"). Any cost exceeding this amount attributable to Loxahatchee River Environmental Control District Items shall be paid by the DISTRICT.

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, including any costs associated with the DISTRICT'S failure to approve change orders in a timely manner, 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 the Work.

G. Upon completion of the Project and the Work, the DISTRICT shall repair and maintain the Work, at DISTRICT'S expense.

Section 4. 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 COUNTY reimbursement funding for documented costs for the Work in the amount established in Section 3.A. Upon COUNTY'S submission of acceptable documents needed to substantiate their costs for the Work, DISTRICT will use its best efforts to provide said funds to COUNTY on a reimbursement basis within thirty (30) days of receipt of all required documents. 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 Work under Exhibit "A". 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 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 administered 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 5. 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.

Section 6. Access and Audits:

COUNTY and DISTRICT shall maintain books, records, and documents to justify all charges, expenses and costs incurred under this Agreement and in performing the Project, in accordance with Generally Accepted Accounting Principles (GAAP), as promulgated by the Government Finance Officers Association from time to time. The COUNTY and 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 COUNTY, COUNTY shall similarly require each Contractor and subcontractor to maintain and allow access to such records for audit purposes.

Section 7. Independent Contractor:

COUNTY and the DISTRICT are and shall be, in the performance of all work, services and activities under this Agreement Independent Contractors and not employees, agents or servants of the other party. All COUNTY employees engaged in 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. All DISTRICT employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to DISTRICT's sole direction, supervision, and control. The Parties shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the parties relationship and the relationship of its employees to the other party shall be that of an Independent Contractor and not as employees or agents of the other.

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

Section 8. 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 COUNTY or its contractor, 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 COUNTY premises will conduct themselves in an acceptable manner and follow acceptable safety and security procedures.

Section 9. Indemnification:

The DISTRICT and COUNTY recognize its liability for certain tortuous acts of its agents, officers, employees and invitees to the extent and limits provided in Section 768.28, Florida Statutes. To the extent permitted by law, the DISTRICT and COUNTY shall indemnify, defend and hold the other harmless against any actions, claims and damages arising out of the DISTRICT'S or COUNTY'S negligence in connection with the Work and the Project and the use of the funds provided under this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute an agreement by the DISTRICT or COUNTY to indemnify each other for sole negligence, or willful or intentional acts of the other. The foregoing indemnification shall survive termination of this Agreement.

Section 10. Annual Appropriation:

All provisions of this Agreement calling for the expenditure of ad valorem tax money by either the COUNTY or the DISTRICT are subject to annual budgetary funding and should either Party involuntarily fail to fund any of their respective obligations pursuant to the Agreement, this Agreement may be terminated. However, once the Project has been awarded to the COUNTY contractor, it shall be prosecuted to completion and this Agreement shall be binding upon the parties and neither party shall have the right to terminate the subject Agreement for the reason that the sufficient funds are not available for the construction of the Project.

Section 11. 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 12. 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.

Loxahatchee River District Interlocal Agreement

Section 13. 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:

George W. DiCarlo, P.E., Director of Engineering Services
Loxahatchee River Environmental Control District
2500 Jupiter Park Dr.
Jupiter, FL 33458-8964

All notice to the COUNTY shall be sent to:

Omelio A. Fernandez, P.E., Director
Roadway Production Division
P.O. Box 21229
West Palm Beach, FL 33416-1229

Section 14. 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 15. 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 16. No Waiver:

Any waiver by either Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter. The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.

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 DISTRICT agree that no person shall, on the grounds of age, race, color, sex, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, and gender identity and expression, 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. 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.

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. However, once the Project has commenced, it shall be prosecuted to completion and this Agreement shall be binding upon the parties and neither party shall have the right to terminate the subject Agreement.

Section 22. Compliance with Codes and Laws:

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

Section 23. Office of the Inspector General:

Palm Beach County has established the Office of the Inspector General, Ordinance R2009-049, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All contractors and parties doing business with the County and receiving County funds shall fully cooperate with the Inspector

Loxahatchee River District Interlocal Agreement

General including receiving access to records relating to Bid or any resulting contract.

Section 24. 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, 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 25. 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 26. Entirety of Agreement:

COUNTY and 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.

Section 27. Survival:

The obligations, rights, and remedies of the Parties hereunder, which by their nature survive the termination of this Agreement or the completion of the Project, shall survive such termination or Project completion and inure to the benefit of the Parties.

Section 28. Term:

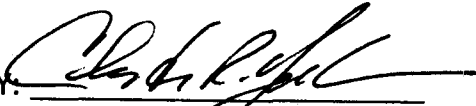
The term of this Agreement shall be effective on the date of execution of this Agreement by both parties.

Loxahatchee River District Interlocal Agreement

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

LOXHATCHEE RIVER DISTRICT
BY ITS
GOVERNING BOARD

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

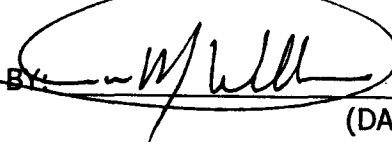
BY: 
Gordon M. Boggie, Chair
Clinton R. Yerkes,
Deputy Executive Director
ATTEST:

BY: _____
Karen T. Marcus, Chair

ATTEST:

Sharon R. Bock,
CLERK & COMPTROLLER

DISTRICT CLERK
Anna M. Williams
Dir. Admin. Serv.

BY:  6/8/11
(DATE)

BY: _____
(DATE)


APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY: 
District Attorney

BY: _____
Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

BY: 
SR