

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Escrow Account	<u>\$33,347</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Staff Costs	<u>\$1,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</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>\$34,347</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes No **X**

Budget Account No:

Fund 3511 Dept 366 Unit X092 Object 6551

Recommended Sources of Funds/Summary of Fiscal Impact:

MSTU Unincorporated Improvement Fund
Reserves
Cinquez Park Area Improvements

Escrow Agreement	\$33,347.00
Staff Costs	\$ 1,000.00
Fiscal Impact	<u>\$34,347.00</u>

C. Departmental Fiscal Review: atwillhite

III. REVIEW COMMENTS

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

 [Signature] 1/28/2013
OFMB
1/29/13 [Signature] 1/28

 [Signature] 1/31/13
Contract Dev. and Control
1-31-13 [Signature]

B. Approved as to Form and Legal Sufficiency:

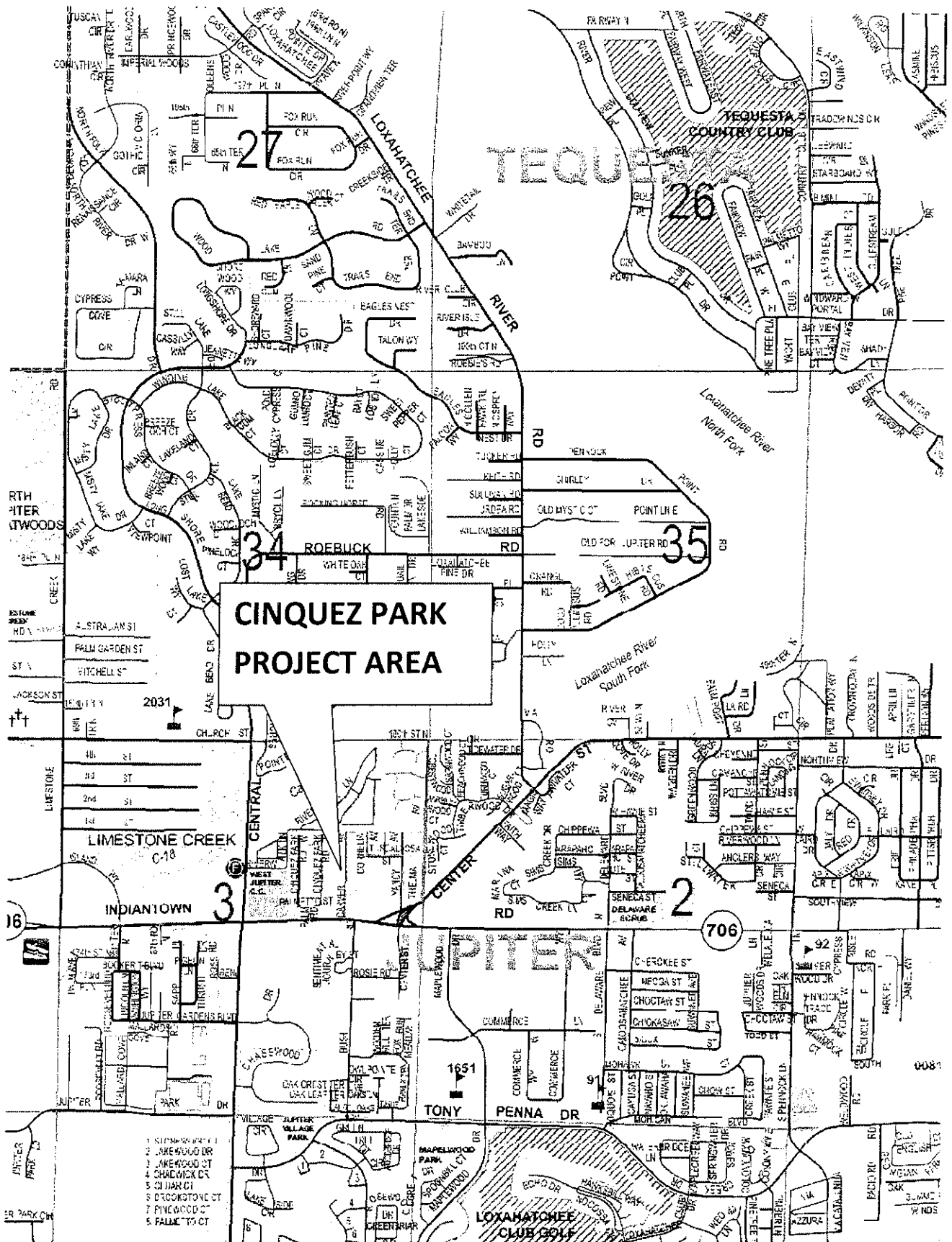
 [Signature]
Assistant County Attorney

C. Other Department Review:

Department Director

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

PROJECT LOCATION MAP



ESCROW AGREEMENT

THIS ESCROW AGREEMENT, hereinafter referred to as the "AGREEMENT", made and entered into this _____ day of _____, 2013, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY" and SHARON R. BOCK, Clerk & Comptroller of Palm Beach County, hereinafter referred to as "ESCROW AGENT".

WHEREAS, the COUNTY bid and contracted for the installation of sanitary sewer improvements which were constructed within the existing platted public rights of way for the Cinquez Park East Area Project No. 2006137, hereinafter referred to as the PROJECT; and

WHEREAS, the COUNTY provided a Letter of Understanding, dated March 26, 2008, which acknowledged requirements for the turnover and acceptance of the PROJECT by the Loxahatchee River Environmental Control District, hereinafter referred to as the "DISTRICT"; and

WHEREAS, ESCROW AGENT has agreed to act as escrow agent to hold a deposit of \$33,347 as surety (ESCROW) for a period of one (1) year from the acceptance of the PROJECT by the DISTRICT to protect the DISTRICT against any defects in the PROJECT material and/or workmanship; and

NOW, THEREFORE, for and consideration of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the COUNTY and the ESCROW AGENT do hereby agree as follows:

1. The recitals set forth above are hereby adopted and incorporated herein by this reference.
2. ESCROW AGENT
 - A. COUNTY shall deposit as a condition of acceptance of the PROJECT and ESCROW AGENT agrees to hold \$33,347 in escrow subject to the terms and conditions contained in this AGREEMENT.
 - B. Unless otherwise provided in this AGREEMENT, ESCROW AGENT shall disburse the ESCROW without interest in the amount shown on any invoices submitted by the DISTRICT for their repairs of the PROJECT material and/or workmanship. The invoice for repairs shall be accompanied by a signed statement that the invoice is for repairs to this PROJECT. The disbursements shall be made within thirty (30) days of the ESCROW AGENT's receipt of the invoice and signed statement. The disbursements are for repairs as a result of defects in design, materials or workmanship. The total ESCROW amount available to be disbursed is \$33,347, for only the one year period from execution of this Agreement.

- C. Agrees to submit to the COUNTY, copies of any invoices from the DISTRICT.
- D. Agrees to return any ESCROW funds remaining after the one year warranty period that have not been submitted by the DISTRICT.
- E. Shall not be deemed to have knowledge of any matter of thing unless and until ESCROW AGENT has actually received written notice of such matter or thing.
- F. COUNTY acknowledges and agrees that nothing in this AGREEMENT shall prohibit ESCROW AGENT from serving in a similar capacity on behalf of others.
- G. The ESCROW funds shall be deposited in an Escrow or Trust Account by the ESCROW AGENT who shall not be liable for the non-payment thereof nor responsible to enforce collection thereof.

3. LIABILITY OF ESCROW AGENT

It is agreed that the duties of the ESCROW AGENT are purely ministerial in nature and shall be expressly limited to the safe keeping of the ESCROW funds and for the disposition of the same in accordance with this AGREEMENT. To the extent permitted by law, the COUNTY shall indemnify, defend and hold harmless the ESCROW AGENT against any actions, claims or damages based on the ESCROW AGENT's performance of its duties pursuant to 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 agreement by the COUNTY to indemnify the ESCROW AGENT for the ESCROW AGENT's negligent, willful or intentional acts or omissions.

4. DISPUTES

- A. In the event ESCROW AGENT is joined as a party to a lawsuit by virtue to the fact that it is holding the ESCROW funding, ESCROW AGENT shall, at its option either (1) tender the ESCROW into the registry of the appropriate court or (2) disburse the ESCROW in accordance with the court's ultimate disposition of the case, and COUNTY hereby agrees to indemnify and hold ESCROW AGENT harmless in accordance with the provision of Article 4 herein.

B. In the event ESCROW AGENT tenders the ESCROW into the registry of the appropriate court and files an action of interpleader naming the COUNTY and any affected third parties of whom ESCROW AGENT has received actual notice, ESCROW AGENT shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith and COUNTY hereby agrees to indemnify and hold ESCROW AGENT harmless in accordance with the provisions of Article 3 herein.

5. TERM OF AGREEMENT

A. This AGREEMENT shall remain in effect unless and until it is canceled in any of the following manners:

1. Upon mutual written notice given by COUNTY and DISTRICT of cancellation of designation of ESCROW AGENT to act and serve in said capacity, in which event, cancellation shall take effect no earlier than twenty (20) days after notice to ESCROW AGENT of such cancellation; or
2. Upon ESCROW AGENT's resignation as ESCROW AGENT, which ESCROW AGENT may do at anytime upon giving notice to COUNTY of its desire to so resign; provided, however, that resignation of ESCROW AGENT shall take effect no earlier than ten (10) days after the giving of notice of resignation; or
3. Upon compliance with all escrow provisions as set forth in this AGREEMENT.
4. Upon one year from the execution date of the AGREEMENT, the provisions of this ESCROW shall terminate, except as to all pending submitted requests of the DISTRICT for disbursement, which shall be deemed to automatically extend the term of this AGREEMENT until the ESCROW is disbursed in accordance with this AGREEMENT.

B. In the event COUNTY fails to agree to a successor escrow agent within the time period described herein above, ESCROW AGENT shall have the right to deposit all of the ESCROW held hereunder into the registry of an appropriate court and request judicial determination of the rights of the COUNTY, by interpleader or other appropriate action, and the COUNTY hereby indemnifies and holds the ESCROW AGENT harmless in accordance with the provisions of Article 3 herein.

C. Upon termination of the duties of ESCROW AGENT in either manner set forth in subparagraphs 1 and 2 of Paragraph A of this Article 5, ESCROW AGENT shall deliver all of the ESCROW to the newly appointed Escrow Agent designated by the COUNTY.

D. ESCROW AGENT shall not be bound by any modification, cancellation or rescission of the AGREEMENT unless in writing and signed by ESCROW AGENT and COUNTY after written consent by the DISTRICT. In no event shall any modification of this AGREEMENT, which shall affect the rights or duties of ESCROW AGENT, be binding on ESCROW AGENT unless it shall have given it prior written consent.

6. NOTICES

All notices, requests consents and other communications required or permitted under this AGREEMENT shall be in writing and shall be hand delivered by prepaid express overnight courier of messenger services, or mailed by registered or certified mail to the following addresses:

COUNTY:

Palm Beach County Engineering Department
Attention: Tanya N. McConnell, P.E.
Deputy County Engineer
P.O. Box 21229, W. Palm Beach, FL 33416
Phone 561-684-4019

ESCROW AGENT:

Sharon R. Bock, Clerk & Comptroller of Palm Beach County
Clerk of the Circuit Court
Governmental Center
301 North Olive Avenue
9th Floor - Administration
West Palm Beach, FL 33401

DISTRICT:

Loxahatchee River District
Attention: Clinton R. Yerkes
Deputy Executive Director
2500 Jupiter Park Drive
Jupiter, Florida 33458
Phone 561-747-5700

If either party changes its mailing address or designated recipient for notices, such change shall be communicated in writing to the other party within thirty (30) days of the change.

7. CHOICE OF LAW AND VENUE

This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Florida. In the event any action, suit or proceeding is instituted as a result of any matter or thing affecting the AGREEMENT, the parties hereto hereby designate Palm Beach County, Florida as the proper jurisdiction and venue in which the same is to be instituted.

8. CUMULATIVE RIGHTS

No right, power or remedy conferred upon ESCROW AGENT by this AGREEMENT is exclusive of any other right, power or remedy, but each and every such right, power or remedy, shall be cumulative and concurrent and shall be in addition to any other right, power or remedy ESCROW AGENT may have under the AGREEMENT or now or hereafter existing at law, in equity or by statute. The exercise of one right, power or remedy by ESCROW AGENT shall not be construed as a waiver of any other right, power or remedy.

9. Binding Effect

All of the terms and provisions of this AGREEMENT, whether so expressed or not, shall be binding upon, effective to the benefit of, and be enforceable by the parties and their respective legal representatives, successors and permitted assigns.

10. Severability.

If any part of this AGREEMENT is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

11. Headings.

The headings contained in this AGREEMENT are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this AGREEMENT.

12. Attorney Fees.

It is hereby understood and agreed that in the event any lawsuit in any judicial system, including federal or state, is brought to enforce compliance with this AGREEMENT or interpret same, or if any administrative proceeding is brought for the same purposes, each party to said action shall be responsible for its own Attorney's fees and costs, including appellate costs.

13. Enforcement of Remedies.

The failure of any party to insist on a strict performance of any of the terms and conditions hereof shall be deemed a waiver of any subsequent breach or default in any terms and conditions.

14. Counterparts.

This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. Effective Date.

This AGREEMENT shall be effective as of the date it is executed by the COUNTY.

IN WITNESS WHEREOF, the parties hereto executed as of _____
have caused these presents to be

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

ESCROW AGENT:
SHARON R. BOCK, Clerk & Comptroller

Nancy L. Morrison-Evans
Signature

By: Sharon R. Bock
Clerk

Nancy L. Morrison-Evans
Print name of witness

Akilya Drake
Signature

Akilya Drake
Print name of witness

ATTEST:
SHARON R. BOCK,
CLERK AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA
By ITS BOARD OF COUNTY
COMMISSIONERS

Deputy Clerk

Steven L. Abrams, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS:

Assistant County Attorney

[Signature]
Engineering

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

BGEX 012313-754

FUND MSTU Improvement

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 01/23/13	REMAINING BALANCE
<u>CINQUEZ PARK EAST AREA IMPROVEMENT</u>								
3511-366-X092-6551	Road & Street Improvements	3,374	1,053	34,347	0	35,400	0	35,400
<u>RESERVES</u>								
3511-365-9900-9919	Res-St & Drng Improvements	9,426,747	9,128,751	<u>0</u>	<u>34,347</u>	9,094,404		
				34,347	34,347			

	SIGNATURE	DATE	By Board of County Commissioners
Engineering & Public Works	<u><i>A. White</i></u>	<u>1/23/13</u>	At Meeting of <u>03/12/13</u>
Administration / Budget Approval	_____	_____	_____
OFMB Department – Posted	_____	_____	Deputy Clerk to the Board of County Commissioners