

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

Meeting Date: June 3, 2014

Consent     Regular  
 Workshop     Public Hearing

Department:

Submitted By:        **Engineering & Public Works**  
Submitted For:        **Roadway Production Division**

**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to approve:** An Interlocal Agreement (Agreement) with the Town of Jupiter (Town) to allow Palm Beach County (County) to assess for the construction of water service improvements in the Imperial Woods Subdivision (Project), through the Municipal Service Taxing Units (MSTU) assessment program.

**SUMMARY:** Approval of this Agreement will allow the Town to proceed with the Project as desired. The Town desires to expand its water service into unincorporated Palm Beach County and assess for costs using the County's MSTU program. Chapter 163, Florida Statutes, as amended, permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage. The Town has agreed to advance the funds for design, permitting and construction of the Project. Upon completion of the Project, the County will assess the benefitting property owners over a 20 year period at an interest rate not to exceed 5% per annum through the MSTU assessment program. The County will then transfer the collected funds to the Town.

District 1 (MRE)

**Background and Justification:** The Town desires to expand its water service to the Imperial Woods Subdivision, located in unincorporated Palm Beach County and requested that the County assess the benefitting property owners, and transfer the assessed funds to the Town using the MSTU assessment program. Approval of this Agreement will allow the Town and the County to proceed with the Project and assessment of the property owners. The County distributed initial petitions and has received a positive response from a majority of the property owners within the Imperial Woods Subdivision which indicates their willingness to be assessed for the Project. Upon approval of this Agreement the Town will advertise the Project for bid and provide the cost information to the County for assessment purposes. The County will distribute notification letters informing of the assessment amount and announcement for a public hearing that will be held before the Board of County Commissioners and Town representatives. The Town will provide property owners an opportunity to execute an agreement to include water service connection fees in the final assessment. The Town will reimburse the County for costs incurred during the administration of the MSTU assessment program for the Project.

**Attachments:**

1. Location Sketch
2. Original Agreements (2)

Recommended by: Ornelis A. Fernandez 5/11/14 *[Signature]*  
Division Director Date

745

Approved By: S. J. Webb 5/13/14  
County Engineer Date

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	(\$7,500)	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
<b>NET FISCAL IMPACT</b>	<b>(\$7,500)</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget?    Yes    No

Budget Acct No.: Fund 3500    Dept. 360    Unit 4260    Object 4900  
Program

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

Transportation Improvement Fund  
Roadway Production

The unbudgeted revenue is to reimburse the County for staff time to administer the MSTU Program for this project. Once the project is complete the County will assess the property owners and transfer the collected funds to the Town of Jupiter.

C. Departmental Fiscal Review: *Alii Kovalainen*

**III. REVIEW COMMENTS**

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

*[Signature]* 5/15/2014  
OFMB 5/14/14  
AD 5/14

*[Signature]* 5/16/14  
Contract Dev. and Control  
5-16-14 *[Signature]*

**B. Approved as to Form and Legal Sufficiency:**

*[Signature]* 5/20/14  
Assistant County Attorney

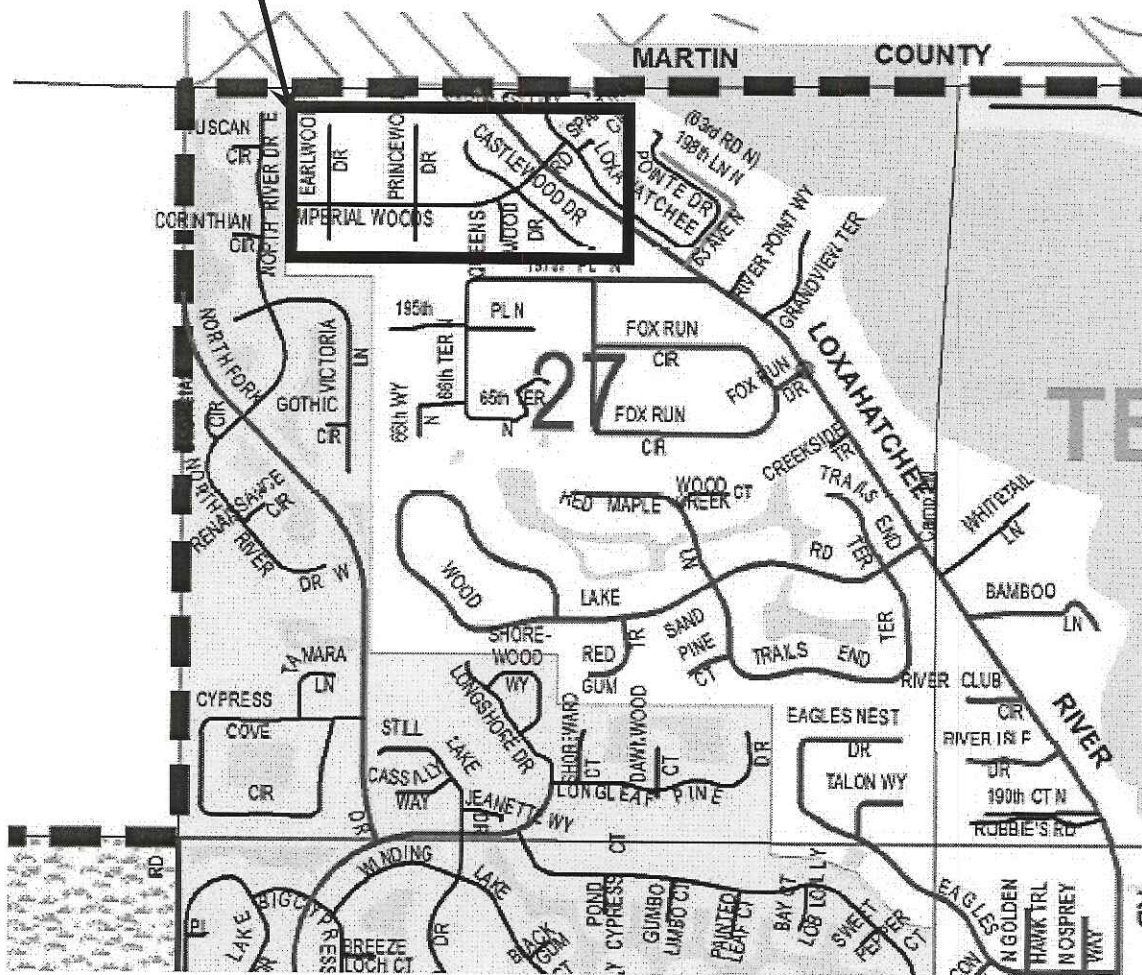
**C. Other Department Review:**

\_\_\_\_\_  
Department Director

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



# PROJECT LOCATION IMPERIAL WOODS SUBDIVISION PROJECT NO. 2013132



LOCATION SKETCH

**AGREEMENT BETWEEN THE TOWN OF JUPITER AND  
PALM BEACH COUNTY, FLORIDA  
FOR  
THE ASSESSMENT FOR THE CONSTRUCTION OF WATER SERVICE  
IMPROVEMENTS IN THE IMPERIAL WOODS SUBDIVISION**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the Town of Jupiter, a municipality in the State of Florida, hereinafter called and referred to as the "TOWN", and PALM BEACH COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as the "COUNTY".

**WITNESSETH:**

**WHEREAS**, the COUNTY and the TOWN are authorized to enter into this AGREEMENT pursuant to Chapter 163, Florida Statutes, as amended, which permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage; and

**WHEREAS**, the TOWN will cause to be prepared construction plans and specifications for the construction of water service improvements within the Imperial Woods Subdivision, hereinafter referred to as "PROJECT"; and

**WHEREAS**, the TOWN is desirous of funding and constructing the PROJECT which will extend TOWN water services and which is located in the unincorporated area of the COUNTY if the residents agree to reimburse; and

**WHEREAS**, the COUNTY is agreeable to assessing, over a twenty (20) year period at an interest rate not to exceed 5.0%, the property owners benefitting from the improvements and transferring the collected funds to the TOWN; and

**WHEREAS**, the TOWN is agreeable to including construction costs, connection fees and COUNTY fees in the assessment.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

The above recitals are true and correct and hereby adopted and incorporated herein.

**1. COUNTY Responsibilities:**

- A. The COUNTY has petitioned the benefitting property owners within the PROJECT and determined that a majority (51%) of the returned petitions are in favor of being assessed by the COUNTY for the water service improvements.



- B. Notify the benefitting property owners of their proposed assessment, once the design is done and the project is bid, and the Public Hearing date before the Palm Beach County Board of County Commissioners (BOARD). Notify benefitting property owners that they may contact the TOWN within 90 days from the date of the Public Hearing notice to sign a water service agreement for their property so that the connection fees can be included in the COUNTY assessment amount for their individual property. This assessment amount will only be added to those requesting it.
- C. Hold a Public Hearing in the Commissioners' chambers before the BOARD to confirm the benefitting property owners' assessments, once the bids are taken and actual costs are known.
- D. Revise the final assessment roll to reflect information received from the TOWN indicating the name, address and individual connection fees of those property owners who have agreed to be assessed for their connections. The COUNTY will include the fees in the final assessment roll.
- E. Provide the TOWN with a list of benefitting property owners based on the assessment roll approved at the COUNTY Public Hearing.
- F. Collect the assessments and transfer the collected funds to the TOWN on the first work day of each quarter of the calendar year.

**2. TOWN Responsibilities:**

- A. Design, obtain permits, construct and maintain the PROJECT utilizing the TOWN'S funds
- B. Allow the benefitting property owners within the PROJECT the opportunity to execute an agreement for water service connection fees so that the TOWN can immediately connect their residence to the water service system once it is completed.
- C. Participate in the Public Hearing before the BOARD to answer any questions.
- D. Prepare a list of those property owners that have taken advantage of the water service agreement and forward it, within 10 days of project completion, to the COUNTY for inclusion in the final assessment roll.
- E. Reimburse the COUNTY for costs incurred during the administration of the Municipal Service Taxing Units (MSTU) assessment program for this PROJECT, including but not limited to staff costs and mailing costs, at a predetermined lump sum for each milestone achieved:
  - Initial Petition Completion: \$2,500, regardless of the outcome of the petitions
  - Final Petition Completion: \$2,500, regardless of the outcome of the petitions
  - Construction Project Completion – Final Assessment Roll Filed: \$2,500
 The TOWN shall pay to the COUNTY compensation as set forth above within thirty (30) days of receiving written notification from the COUNTY of completion of the above milestones. COUNTY will not proceed with work for the next milestone until payment of the previous milestone is received.

**3. PERSONNEL:**

All of the services required herein under shall be performed by the TOWN's contractor and will be overseen by TOWN personnel. All 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.

As provided in Section 287.132-133, Fla. Stat., by entering into the agreement or performing any work in furtherance hereof, TOWN certifies that its' affiliates, suppliers, contractors, sub-contractors and consultants who perform work hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within 36 months immediately preceding the date hereof. This notice required by 287.133(3)(a), Fla. Stat.

All personnel while on COUNTY ROADS will comply with all COUNTY requirements governing conduct, safety and security.

**4. INDEMNIFICATION:**

A. The TOWN shall indemnify, defend, and hold harmless the COUNTY against any actions, claims, or damages arising out of TOWN'S negligence in connection with this AGREEMENT to the extent permitted by law. 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 to indemnify the COUNTY for the COUNTY'S negligent acts or omissions.

B. The COUNTY shall indemnify, defend, and hold harmless the TOWN against any actions, claims, or damages arising out of COUNTY'S negligence in connection with this AGREEMENT to the extent permitted by law. 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 to indemnify the TOWN for the TOWN'S negligent acts or omissions.

**5. NOTICE:**

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 or 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  
                                        tmcconne@pbcgov.org  
                                        Phone 561-684-4010



TOWN

Town of Jupiter Water Department  
Attention: David Brown, Director  
210 Military Trail, Jupiter, FL 33458  
davidb@jupiter.fl.us  
Phone 561-746-5134

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

**6. INSPECTOR GENERAL**

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County agreements, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the TOWN, its officers, agents, employees, and lobbyists in order to ensure compliance with agreement requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Fla. Stat., in the same manner as a second degree misdemeanor.

**7. MISCELLANEOUS PROVISIONS**

**A. REMEDIES:**

This Agreement shall be governed by the laws of the State of Florida. Any 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, 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.

**B. THIRD PARTY BENEFICIARIES:**

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or TOWN.

**C. ARREARS:**

The TOWN shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any agreement, debt, obligation, judgment, lien, or any form of indebtedness. The TOWN further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

**D. ACCESS AND AUDITS:**

The TOWN shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Agreement. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the TOWN's place of business.

**E. NONDISCRIMINATION:**

The TOWN will include in the construction contract that, the Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, and gender identity and expression.

**F. SEVERABILITY:**

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**G. ENTIRETY OF AGREEMENT**

The COUNTY and the TOWN agree that this Agreement 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 and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

**G. ATTORNEY FEES:**

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; provided, however, that this clause pertains only to the parties to the Agreement.

**I. GOVERNING LAW AND VENUE:**

This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to any contrary conflicts of laws principle. Venue of all proceedings in connection herewith shall be exclusively in Palm Beach County, Florida, and each party hereby waives whatever their respective rights may have been in the selection of the venue.



**J. LIABILITY:**

The parties to this Agreement shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party (or parties). Nothing contained herein shall be construed as a waiver by the parties, of the liability limits established in Section 768.28, Fla. Stat.

**K. LAWSUITS:**

TOWN shall promptly notify COUNTY of any lawsuit-related complaint, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement.

**L. DEFAULT:**

The parties expressly covenant and agree that in the event any of the parties is in default of its obligations under this Agreement, the parties not in default shall provide to the defaulting party thirty (30) days written notice before exercising any of their rights.

**M. 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.

**N. BINDING EFFECT:**

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

**O. 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.

**P. 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.

**Q. ENTIRE AGREEMENT:**

This agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof.

**R. ASSIGNABILITY:**

This agreement may not be assigned without prior written consent of all parties to this agreement, provided such consent may not be unreasonably withheld.

**S. 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.

**T. FILING:**

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

**U. EFFECTIVE DATE:**

This agreement shall be effective as of the last date that it is signed by all parties hereto.

THE REMAINDER OF PAGE INTENTIONALLY LEFT BLANK



EXECUTED by the TOWN OF JUPITER this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

(Authority Seal)



ATTEST:

*Sally Boylan*  
\_\_\_\_\_  
Sally Boylan, Town Clerk

*Karen J. Golonka*  
\_\_\_\_\_  
Karen J. Golonka, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

*Thomas J. Baird*  
\_\_\_\_\_  
Thomas J. Baird, Town Attorney

EXECUTED by COUNTY this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

(County Seal)

ATTEST:

SHARON R. BOCK,  
CLERK AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA  
By ITS BOARD OF COUNTY  
COMMISSIONERS

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Priscilla A. Taylor, Mayor

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

\_\_\_\_\_  
Assistant County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS:

*Ornela A. Fernandez*  
\_\_\_\_\_  
Engineering