

14/3/14
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	\$200,000	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<\$200,000>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>0</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?	Yes _____		No <u>X</u>		
Budget Account No.:	Fund <u>3654</u>	Department <u>381</u>	Unit <u>E459</u>		
	Object <u>var</u>				

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

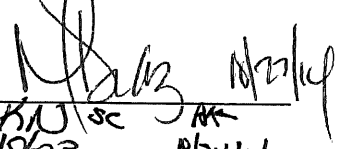
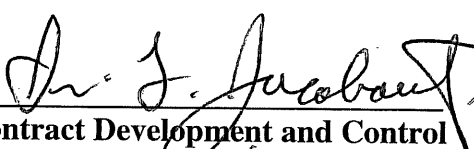
Florida Department of Transportation

C. Department Fiscal Review:

JP

III. REVIEW COMMENTS

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

 OFMB <i>10/23/13</i> <i>11/27/14</i> <i>10/23</i> <i>11/24/14</i>	 Contract Development and Control <i>10/30/14</i> <i>10-30-14</i> <i>Bocheeler</i>
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B. Legal Sufficiency:



Assistant County Attorney

C. Other Department Review:

Department Director

DUNS No.: 80-939-7102
CSFA No.: N/A

Contract No.: _____
FM No: 419013-1-78-01
FEID No: VF-596-000-743

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
JOINT PARTICIPATION AGREEMENT

THIS Joint Participation Agreement (hereinafter referred to as "AGREEMENT"), entered into this _____ day of _____, 20____, by and between the State of Florida Department of Transportation hereinafter called the DEPARTMENT, and Palm Beach County, located at 2300 North Jog Road, West Palm Beach, Florida 33411, hereinafter referred to as the COUNTY.

WITNESSETH

WHEREAS, the DEPARTMENT and the COUNTY are desirous of having the COUNTY provide maintenance services in connection with Financial Management (FM) Number 419013-1-78-01 (Funded in Fiscal Year 2014/2015) for post construction monitoring and maintenance and perpetual maintenance in Palm Beach County, Florida. Refer to **Exhibit A**, Scope of Services, attached hereto and made of part hereof; and

WHEREAS, for purposes of this Agreement, post-construction monitoring and maintenance and perpetual maintenance as stated above are hereinafter referred to as the Project; and

WHEREAS, the Project is in the interest of both the COUNTY and the DEPARTMENT and it would be more practical, expeditious, and economical for the COUNTY to perform such activities; and

WHEREAS, the COUNTY by Resolution No. _____ adopted on _____, 20____, a copy of which is attached hereto and made a part hereof, authorizes the proper officials to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the Project, the parties agree to the following:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. The COUNTY shall be responsible for assuring that the Project complies with all applicable Federal, State and Local laws, rules, regulations, guidelines and standards. The COUNTY shall also be responsible for the administration and overall coordination required for the Project.
3. The DEPARTMENT agrees to make all previous studies, maps, drawings, surveys and other data, and information pertaining to the Project available to the COUNTY at no extra cost.

4. The COUNTY shall have the sole responsibility for resolving claims and requests for additional work for the Project. The COUNTY will make best efforts to obtain the DEPARTMENT's input in its decisions.
5. Except as otherwise set forth herein, this Agreement shall continue in effect and be binding to both the COUNTY and the DEPARTMENT until the Project is completed as evidenced by the written acceptance of the DEPARTMENT or June 30, 2019, whichever occurs first.
6. The DEPARTMENT agrees to pay the COUNTY for services related to the Project as described in **Exhibit A**. The total DEPARTMENT's share towards this Project is an amount not to exceed TWO HUNDRED THOUSAND DOLLARS AND NO CENTS (\$200,000.00) for actual costs incurred as detailed in quarterly progress reports. In the event the actual cost of the Project exceeds the DEPARTMENT's participation of TWO HUNDRED THOUSAND DOLLARS AND NO CENTS (\$200,000.00), any additional cost shall be the sole responsibility of the COUNTY.
7. The COUNTY acknowledges and agrees that the DEPARTMENT'S obligation to pay the sum set forth herein is contingent upon an annual appropriation by the Florida Legislature.
8. In the event the Project costs or Project modifications increase or exceed the amount authorized in paragraph 6, the DEPARTMENT and the COUNTY shall meet and attempt to mutually agree to the amount and distribution of the additional funding needed to complete the Project. Any funding increase or modifications to the Project shall be added by means of an amendment to the Agreement to be signed by both parties before work is undertaken. However, in the event the COUNTY and the DEPARTMENT fail to negotiate an amendment for any reason whatsoever, then the increase in the Project costs will be the sole responsibility of the COUNTY.
9. The COUNTY shall provide the following quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The deliverables for the Project are shown in **Exhibit B**, Deliverables, attached hereto and made apart hereof. The COUNTY will need written approval from the DEPARTMENT, if deviating from the Deliverables set forth in **Exhibit B**.
10. The COUNTY will be reimbursed, on an annual basis, only for actual expenses incurred during the Agreement time period that are directly related to the Project as set forth in this Agreement. The COUNTY will submit written progress report by the 15th day of the month, following the end of each quarter (January 15th, April 15th, July 15th, October 15th) attesting to the actual services performed. Upon completion, the COUNTY will

notify the DEPARTMENT's Project Manager or designee, who will be responsible for verifying and accepting the services contemplated in this Agreement.

11. Invoices shall be submitted by the COUNTY, on a annual basis, in detail sufficient for proper preaudit and postaudit thereof, based on the quantifiable, measurable, and verifiable units of deliverables as established in **Exhibit B**. Deliverables must be received and accepted in writing by the COUNTY's Project Manager prior to payments.

Supporting documentation must establish that the deliverables were received and accepted in writing by the COUNTY and that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Paragraph 9 has been met.

12. The COUNTY must submit the final invoice to the DEPARTMENT within 180 days after the final acceptance of the Project. Invoices submitted after the 180 day time period may not be paid. The final balance due under this Agreement will be reimbursed upon the completion of all Project services and receipt of final cost documentation and proper submission of a detailed invoice and when the Project has been inspected, approved, and accepted to the satisfaction of the DEPARTMENT in writing.
13. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Department of Financial Services under Section 215.422(14), Florida Statutes, or by the Department's Comptroller under Section 334.044(29), Florida Statutes.
14. The COUNTY providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt of an invoice from the AGENCY, the DEPARTMENT has five (5) business days to inspect and approve the goods and services where business day is defined as any day of the week excluding Saturday, Sunday and any legal holiday as designated in Section 110.117, Florida Statutes. The DEPARTMENT has twenty (20) calendar days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) calendar days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
15. If payment is not available within forty (40) calendar days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the COUNTY. Interest penalties of less than one (1) dollar will not be enforced, unless the COUNTY requests payment. Invoices that have to be returned to the COUNTY because of COUNTY preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.

16. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Division of Consumer Services at 1-877-693-5236.
17. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred includes the COUNTY's general accounting records and the Project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the Project, and all other records of the contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.
18. In the event this contract is for services in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the department that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year."
19. The COUNTY will comply with all Federal, State, and Local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under the Agreement.
20. The COUNTY warrants that it has not employed or obtained any company or person, other than bona fide employees of the COUNTY, to solicit or secure this Agreement, and it has not paid or agreed to pay any company, corporation, individual or firm, other than a bona fide employee employed by the COUNTY. For breach or violation of this provision, the DEPARTMENT shall have the right to terminate the Agreement without liability.

21. To the fullest extent permitted by law the COUNTY's contractor shall indemnify and hold harmless the COUNTY, the DEPARTMENT, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of contractor and persons employed or utilized by contract in performance of this contract.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the DEPARTMENT's and the COUNTY's sovereign immunity.

22. To the fullest extent permitted by law the COUNTY's consultant shall indemnify and hold harmless the COUNTY, the DEPARTMENT, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused, in whole or in part, by the professional negligence, error or omission, recklessness, or intentional wrongful misconduct of the consultant and persons employed or utilized by the consultant in performance of this Agreement.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the DEPARTMENT's and the COUNTY's sovereign immunity.

23. With respect to any of the COUNTY's agents, consultants, subconsultants, contractors, and/or sub-contractors, such party in any contract for this Project shall agree to indemnify, defend, save and hold harmless the DEPARTMENT from all claims, demands, liabilities, and suits of any nature arising out of, because of or due to any intentional and/or negligent act or occurrence, omission or commission of such agents, consultants, subconsultants, contractors and/or subcontractors. The COUNTY shall provide to the DEPARTMENT written evidence of the foregoing upon the request of the DEPARTMENT. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the DEPARTMENT for its own negligence.

24. The COUNTY / Vendor/ Contractor:

- a. shall utilize the U.S. Department of Homeland Security's E-verify system to verify the employment eligibility of all new employees hired by the COUNTY / Vendor/Contractor during the term of the contract; and
- b. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

25. In the event it becomes necessary for the DEPARTMENT or COUNTY to institute suit for the enforcement of the provisions of this Agreement, each party shall be responsible to pay their own attorney fees and court costs. Venue with respect to any such litigation shall be in Broward County.
26. This Agreement is governed by and construed in accordance with the laws of the State of Florida.
27. This Agreement and any interest herein shall not be assigned, transferred or otherwise encumbered by the COUNTY under any circumstances without the prior written consent of the DEPARTMENT. However, this Agreement shall run to the DEPARTMENT and its successors.
28. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
29. Any or all notices (except invoices) given or required under this Agreement shall be in writing and either personally delivered with receipt acknowledged or sent by certified mail, return receipt requested. All notices delivered shall be sent to the following addresses:

If to the DEPARTMENT:

Florida Department of Transportation - District Four
3400 West Commercial Blvd.
Fort Lauderdale, Florida 33309-3421
Attn: Leos A. Kennedy, Jr.
With a copy to: David Bogardus, Project Manager
A second copy to: Office of the General Counsel

If to the COUNTY:

Palm Beach County
2300 North Jog Road
West Palm Beach, Florida 33411
Attn: Carman S. Vare
With A Copy to: County Attorney

IN WITNESS WHEREOF, this Agreement is to be executed by the parties below for the purposes specified herein. Authorization has been given to enter into and execute this Agreement by Resolution No. _____, hereto attached.

PALM BEACH COUNTY, Florida, A
Political Subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: _____
NAME: _____
TITLE: _____
_____ day of _____, 20____

BY: _____
GERRY O'REILLY, P.E.
DIRECTOR OF TRANSPORTATION DEVELOPMENT

ATTEST:
SHARON R. BOCK

LEGAL REVIEW:

CLERK & COMPTROLLER (SEAL)
CIRCUIT COURT

BY: _____
OFFICE OF THE GENERAL COUNSEL

APPROVED AS TO FORM

APPROVED:

BY: 
COUNTY ATTORNEY

BY: _____
DISTRICT PROGRAM MANAGEMENT ENGINEER

APPROVED AS TO TERMS AND CONDITIONS:

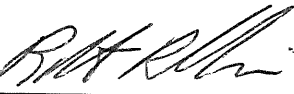
BY: 
DIRECTOR, ENVIRONMENTAL RESOURCES MANAGEMENT

EXHIBIT "A"
SCOPE OF SERVICES

The DEPARTMENT entered into an Agreement (Contract # APJ-29) with the COUNTY for the design, permitting, and construction of two mangrove, oyster, and seagrass restoration projects at the Snook Island Natural Area (SINA) and Bryant Park for advanced mitigation to offset anticipated wetland impacts caused by the replacement/repair of five (5) DEPARTMENT bridges in Palm Beach County. In accordance with **Exhibit "A"** of Contract #APJ-29, upon approval of the COUNTY'S final as-builts and time zero monitoring reports from the regulatory agencies, both the DEPARTMENT and COUNTY agreed to enter into a subsequent Joint Participation Agreement (JPA) to pay the COUNTY to perform the post construction mitigation monitoring and maintenance and perpetual maintenance as per permit conditions set forth by the South Florida Water Management District (SFWMD) Permit #50-04766-P and the United States Army Corps of Engineers (USACE) Permit # SAJ-2011-00033 (IP-GGL) for construction of the SINA and Bryant Park mitigation projects.

Funds to complete the post-construction mitigation monitoring and maintenance and perpetual maintenance have been programmed as part of the construction/replacement of the SR 80/Southern Boulevard Bridge, one of the five (5) above referenced bridges requiring seagrass and mangrove mitigation in Palm Beach County.

Project	FM#	Fiscal Year	Amount
Southern Boulevard Bridge	419013-1-78-01	14/15	\$200,000

The COUNTY will be paid for actual costs incurred for said services upon submission of invoices to the DEPARTMENT. The work to be performed pursuant to this Agreement includes the following listed services:

POST-CONSTRUCTION MONITORING AND MAINTENANCE PROGRAM

The monitoring duties will include the submittal of annual reports to the regulatory agencies in accordance with the permitting requirements and provide a copy of the reports to the DEPARTMENT. The maintenance activities shall be at a frequency to maintain the project below 5% coverage of exotic vegetation as per the permit conditions. The environmental permits require 5 years of post-construction monitoring and maintenance beginning upon acceptance of the project final construction as-builts and time-zero monitoring reports from the regulatory agencies. Based on this schedule, the 5 years of post-construction monitoring and maintenance for the environmental agencies would begin in mid to late 2014 and completed in mid to late 2019. This time period may be reduced by the agencies if the site performs above expectations for mangrove growth and the recruitment of seagrass.

PERPETUAL MAINTENANCE

As per the SFWMD Permit # 50-04766-P, Special Condition #24 and ACOE Permit # SAJ-2011-00033 (IP-GGL), Special Condition #14, the SINA and Bryant Park mitigation sites are required to be maintained in perpetuity by the COUNTY. The COUNTY shall perform site maintenance in perpetuity upon completion and acceptance of the 5 year monitoring and maintenance program by the regulatory agencies. A payment shall be provided to the COUNTY for perpetual maintenance upon approval of the project and release of all mitigation credits from the regulatory agencies.

EXHIBIT "B"
METHOD OF COMPENSATION & DELIVERABLES

The DEPARTMENT'S total contribution for the anticipated five (5) year post construction monitoring and maintenance and perpetual maintenance for the COUNTY's SINA and Bryant Park Mitigation projects is an amount not to exceed Two Hundred Thousand Dollars (\$200,000.00) as subject to the provisions of this Agreement as follows:

POST-CONSTRUCTION MONITORING AND MAINTENANCE PROGRAM

The total project cost for the post construction monitoring and maintenance program for the COUNTY's SINA and Bryant Park mitigation projects will be an amount not to exceed One Hundred and Fifty Thousand Dollars (\$150,000.00).

Prior to any request for payment for the work set forth in **Exhibit A**, the COUNTY must first deliver to the DEPARTMENT the following documents in a form satisfactory to the DEPARTMENT. The wetland monitoring reports shall be delivered on an annual basis over a period of five years and payment shall be on an annual basis up to an amount not to exceed Thirty Thousand Dollars (\$30,000.00). The deliverables are as follows:

- 1) A copy of the annual wetland monitoring and maintenance reports submitted to the regulatory agencies.
- 2) A copy of acknowledgement of receipt and acceptance from regulatory agencies for the monitoring reports.

PERPETUAL MAINTENANCE

In accordance with the SFWMD and ACOE special conditions, the SINA and Bryant Park mitigation projects are required to be maintained in perpetuity by the COUNTY. The payment for the perpetual maintenance of the COUNTY's SINA and Bryant Park mitigation projects will be in an amount not to exceed Fifty Thousand Dollars (\$50,000.00).

Prior to any request for payment for the work set forth in **Exhibit A**, the COUNTY must first deliver to the DEPARTMENT the following documents in a form satisfactory to the DEPARTMENT. The deliverables are as follows:

- 1) Letter from regulatory agencies with final approval and acceptance of the Project and release of the final wetland mitigation credits.
- 2) Final mitigation ledger.
- 3) Acceptance of COUNTY's perpetual maintenance by the regulatory agencies.

RESOLUTION NO. R-2014_____

**RESOLUTION OF THE BOARD OF COUNTY
COMMISSIONERS OF PALM BEACH COUNTY,
FLORIDA APPROVING A JOINT PARTICIPATION
AGREEMENT WITH THE STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION FOR PROVIDING
FUNDING FOR THE MONITORING AND MAINTENANCE
OF A MITIGATION SITE.**

WHEREAS, on June 16, 2009, the Florida Department of Transportation (FDOT) and Palm Beach County (County) entered into a Joint Participation Agreement (JPA) (R2009-0864) for the proposed mitigation area at Snook Island Phase II; and

WHEREAS, on September 28, 2011, June 3, 2013, and October 16, 2013, Amendments #1 (R2011-1396), #2 (R2013-0561), and #3 (R2013-1332) were executed that increased the project area to include Bryant Park Wetlands, provided for a one-year time extension and increased the project costs by \$1.2 M, respectively; and

WHEREAS, the Project has been completed and FDOT staff have requested assistance from the County to the monitor and maintain these sites to comply with permitting requirements; and

WHEREAS, the County currently manages the Snook Islands Natural Area and this additional work could readily be incorporated into its ongoing activities; and

WHEREAS, this work is in the best interest of both the County and FDOT and it would be more practical, expeditious, and economical for the County to perform such activities with FDOT responsible to cover all the costs.

(Intentionally Left Blank)

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY FLORIDA, that the following be established:

- 1. The recitations set forth herein above are true, accurate and correct, and are incorporated herein.
- 2. The Board of County Commissioners approves the JPA with FDOT and authorizes the Mayor to sign on behalf of the Board.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, was as follows:

- District 1: HAL R. VALECHE _____
- District 2: PAULETTE BURDICK _____
- District 3: SHELLEY VANA _____
- District 4: _____
- District 5: MARY LOU BERGER _____
- District 6: _____
- District 7: PRISCILLA A. TAYLOR _____

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2014.

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

By _____
Assistant County Attorney

By _____
Deputy Clerk

2015-

0/12

BGEX - 380 - 100614*048

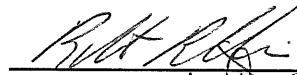
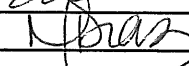
BGRV - 380 -100614*010

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDABUDGET AMENDMENTFund 3654 Environmental Resources Capital Projects

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED ENCUMBERED BUDGET / Expended	REMAINING BALANCE
<u>REVENUES</u>						
381-E459 Snook Island Mangrove Mitigation 4399-Other Phys Envir Revenue	1,204,474	1,204,474	200,000		1,404,474	1,404,474
TOTAL RECEIPTS & BALANCES	6,558,175	5,773,339	200,000	0	5,973,339	
<u>EXPENDITURES</u>						
381-E459 Snook Island Mangrove Mitigation 3401 - Other Contractual Services	603,033	386,172	200,000	0	586,172	586,172
TOTAL APPROPRIATIONS & EXPENDITURES	6,558,175	5,773,339	200,000	0	5,973,339	

Environmental Resources
ManagementINITIATING DEPARTMENT/DIVISION
Administration/Budget Department Approval
OFMB Department - Posted

Signatures & Dates



10/27/2014

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF

November 18, 2014

Deputy Clerk to the
Board of County Commissioners