

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	January 26, 2016	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
Department		<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing
Submitted By:	<u>Environmental Resources Management</u>		
Submitted For:	<u>Environmental Resources Management</u>		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve a Joint Participation Agreement (JPA) with the Florida Department of Transportation (FDOT) in the amount of \$222,870 for the maintenance costs of 2.584 "Functional Units" of mitigation at the agreed upon rate of \$86,250 per Functional Unit. The JPA will cover staff time and land management costs for maintaining a freshwater wetlands mitigation project in the Loxahatchee Slough Natural Area that will offset the impacts of the reconstruction of SR-786/PGA Boulevard from SR710 to west of the C-18 Canal and expiring no later than June 30, 2020;

B) adopt a Resolution to authorize entering into an agreement as a requirement of FDOT;

C) approve a Budget Amendment of \$222,870 in the Environmental Resources Natural Areas Fund (Fund 1226) to recognize the revenues from the Agreement; and

D) authorize the County Administrator, or her designee, to sign all future time extensions, task assignments, certifications and other documents associated with this Agreement and any necessary minor amendments to those documents that do not substantially change the scope of work or terms and conditions of this Agreement.

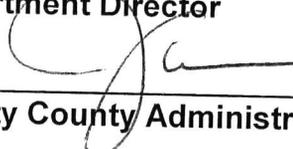
Summary: This Agreement will provide the necessary funding to implement the land management activities listed in the Scope of Services (Exhibit A) of the JPA. These activities will maintain an area of the Loxahatchee Slough Natural Area in the vicinity of the proposed PGA Boulevard bridge. FDOT funding will cover all land management staff costs for exotic vegetation and animal control, prescribed fire regimens, vegetation monitoring, and site security relative to the mitigation project area. There are no matching requirements. All costs associated with the FDOT mitigation work will be the responsibility of FDOT. District 1 (AH)

(Continued on Page 3)

Attachments:

1. Joint Participation Agreement
2. Resolution
3. Budget Amendment (3654)

Recommended by:		<u>12/22/15</u>
	Department Director	Date

Approved by:		<u>1-14-16</u>
	Deputy County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures					
Operating Costs	<u>44,574</u>	<u>44,574</u>	<u>44,574</u>	<u>44,574</u>	<u>44,574</u>
External Revenues	<u>(44,574)</u>	<u>(44,574)</u>	<u>(44,574)</u>	<u>(44,574)</u>	<u>(44,574)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>-0-</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 <input checked="" type="checkbox"/>		
Budget Account No.:	Fund _____	Department _____	Unit _____		
	Object _____				
	Program _____				

B. Recommended Sources of Funds/Summary of Fiscal Impact:
Florida Department of Transportation

C. Department Fiscal Review:
S. McLaughlin

III. REVIEW COMMENTS

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

Sherry Ann
OFMB ^{1/14} ^{1/15} ^{1/16}

Dr. J. Jacobson
Contract Development and Control
B. Wheeler 1-12-14

B. Legal Sufficiency:

Anne Delgent 1-13-16
Assistant County Attorney

C. Other Department Review:

Department Director

Background and Justification: The reconstruction of PGA Boulevard from SR 710 to the C-18 Canal requires mitigation for the wetlands impacted along the road right-of-way. FDOT staff has requested assistance from the County in maintaining the natural lands associated with the work to satisfy the permitting agencies' mitigation requirements. All costs for this maintenance effort will be the responsibility of FDOT. The funds will be dispersed to the County upon submittal of an invoice from the County to FDOT done in accordance with the deliverables stipulated in the JPA. Since this JPA provides for a Florida state agency to give the County funds, the Inspector General language usually found in agreements and contracts is not necessary nor included in the JPA.

ATTACHMENT 1

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

Contract No.: _____
FM No: 229396-2-C8-01
FEID No: VF-596-000-785

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 mitigation services in connection with Financial Management (FM) Number 229396-2-C8-01 (Funded in Fiscal Year 2015/2016) for the environmental mitigation services required for a portion of the COUNTY's Natural Area impacted by the SR-786/PGA Blvd. reconstruction from SR710 to West of FL Turnpike/ C-18 Canal 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, the mitigation services as stated above are hereinafter referred to as the Project and have been quantified as "functional units"; and

WHEREAS, the South Florida Water Management District (SFWMD) and the United States Army Corp of Engineers (USACE) have determined that the DEPARTMENT's proposed mitigation of the COUNTY's Natural area will produce 2.584 of functional units; 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, 2020, whichever occurs first.
6. The DEPARTMENT agrees to pay the COUNTY for services as described in **Exhibit A**. The DEPARTMENT and the COUNTY have mutually agreed that the amount of EIGHTY SIX THOUSAND TWO HUNDRED FIFTY DOLLARS (\$86,250.00) is the per "functional unit" rate in which the DEPARTMENT will reimburse the COUNTY. The DEPARTMENT total share for the Project is an amount not to exceed TWO HUNDRED TWENTY TWO THOUSAND EIGHT HUNDRED SEVENTY DOLLARS AND NO CENTS (\$222,870.00). Payment to the COUNTY will be made as a one-time lump sum payment after all the deliverables, shown in **Exhibit B** attached hereto and made a part hereof, are received by the DEPARTMENT.
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 this 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, identified as Project Number 229396-2-C8-01, are shown in **Exhibit B**. The

COUNTY will need written approval from the DEPARTMENT, if deviating from the Deliverables set forth in **Exhibit B**.

10. The COUNTY will be paid upon the DEPARTMENT receiving the deliverables as set forth in this Agreement. The COUNTY will submit quarterly 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.
11. Invoices shall be submitted by the COUNTY 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 concurred with 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. There shall be no reimbursement for travel expenses under this Agreement.
13. 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.
14. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under *Chapters 215 and 216, F.S.* If the DEPARTMENT determines that the performance of the COUNTY is unsatisfactory, the DEPARTMENT shall notify the COUNTY of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the DEPARTMENT. The COUNTY shall, within five days after notice from the DEPARTMENT, provide the DEPARTMENT with a corrective action plan describing how the COUNTY will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the DEPARTMENT, the COUNTY shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the COUNTY resolves the deficiency. If the deficiency is subsequently resolved, the COUNTY may bill the DEPARTMENT for the retained amount during the next billing period. If the COUNTY is unable to resolve the deficiency, the funds retained may be forfeited at the end of the Agreement's term.

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15. The COUNTY agrees to comply with Section 20.055(5), F.S., and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), F.S.
 16. The COUNTY providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt of an invoice from the COUNTY, 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.
 17. 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.
 18. 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.
 19. 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.
 20. 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."

21. The COUNTY and the DEPARTMENT 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.
22. 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.
23. The COUNTY agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants who perform with in connection with this agreement:

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.

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.

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. 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 DEPARTMENT with the exception of the Environmental Agencies, SWFMD & US Army Corp of Engineers.
27. This Agreement is governed by and construed in accordance with the laws of the State of Florida.
28. 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.
29. 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.

30. 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
Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, Florida 33411
Attn: Rob Robbins, Director
With A Copy to: County Attorney

THIS SPACE IS INTENTIONALLY LEFT BLANK

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: MARY LOU BERGER
TITLE: MAYOR
_____ day of _____, 20__

BY: _____
STACY L. MILLER, 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 MGMT ADMINISTRATOR

APPROVED AS TO TERMS AND CONDITIONS:

BY:  _____
ROBERT ROBBINS
DIRECTOR, ENVIRONMENTAL RESOURCES MANAGEMENT

EXHIBIT "A"
SCOPE OF SERVICES

The COUNTY will provide mitigation services in the COUNTY's Natural Area in accordance with the management guidelines used in the Loxahatchee Slough. Management activities include but are not limited to, the following:

- Removal of exotic vegetation
- Burn regiment
- Monitoring of vegetation
- Trapping and removal of feral domestic animals
- Security and Law Enforcement

EXHIBIT "B"
METHOD OF COMPENSATION & DELIVERABLES

The following two items, Environmental Permits, listed below are the deliverables for the Project. The DEPARTMENT shall not release payment until all deliverables are accepted in writing by the DEPARTMENT.

1. SFWMD ERP No.: 50-10769-P
2. USACE permit No.: SAJ-2013-02595

ATTACHMENT 2

RESOLUTION NO. R-2016 _____

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 THE MAINTENANCE OF A FLORIDA DEPARTMENT OF TRANSPORTATION MITIGATION PROJECT WITHIN THE LOXAHATCHEE SLOUGH NATURAL AREA.

WHEREAS, the Florida Department of Transportation (FDOT) and Palm Beach County (County) are desirous to enter into a Joint Participation Agreement (JPA) for the proposed mitigation project (Project) in the Loxahatchee Slough Natural Area; and

WHEREAS, the Project is in association with the reconstruction of SR-786/PGA Blvd from SR-710 to just west of the C-18 Canal; and

WHEREAS, through this Agreement, the County will maintain the Project by controlling exotic vegetation, animals, and feral domestic animals, and conducting prescribed fire regimens, vegetation monitoring, and site security and law enforcement relative to the mitigation project area; and

WHEREAS, the maintenance of the mitigation project improvements and enhancements are 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 maintenance activities.

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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 for the Project associated with the reconstruction of PGA Blvd from SR-710 to just west of the C-18 Canal 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:

COMMISSIONER MARY LOU BERGER, MAYOR	_____
COMMISSIONER HAL R. VALECHE, VICE MAYOR	_____
COMMISSIONER PAULETTE BURDICK	_____
COMMISSIONER SHELLEY VANA	_____
COMMISSIONER STEVEN L. ABRAMS	_____
COMMISSIONER MELISSA MCKINLAY	_____
COMMISSIONER PRISCILLA A. TAYLOR	_____

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2016.

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

BOARD OF COUNTY COMMISSIONERS
 PALM BEACH COUNTY, FLORIDA

BUDGET AMENDMENT
Fund 1226 Natural Areas Fund

ACCOUNT NAME AND NUMBER	ORIGINAL	CURRENT	INCREASE	DECREASE	ADJUSTED ENCUMBERED	REMAINING
	BUDGET	BUDGET			BUDGET / Expended	
						as of: 12/21/2015
<u>REVENUES</u>						
380-3162 - Natural Areas Management 4399 - Oth Physical Environment Rev	300,000	300,000	222,870	0	522,870	
TOTAL RECEIPTS & BALANCES	11,659,219	11,659,219	222,870	0	11,882,089	
<u>EXPENDITURES</u>						
380-3162 - Natural Areas Management 3401 - Other Contractual Services	5,038,581	5,038,581	222,870	0	5,261,451	422,312
TOTAL APPROPRIATIONS & EXPENDITURES	11,659,219	11,659,219	222,870	0	11,882,089	

ATTACHMENT 3

Environmental Resources
 Management

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

Signatures & Dates



BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF

January 26, 2016

Deputy Clerk to the

Board of County Commissioners