

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: July 12, 2016

Consent ☒ Regular ☐
Public Hearing ☐

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: (A) approve an Interlocal Agreement with the City of South Bay (City) Relating to Coordination of Road and Utility Construction; and (B) authorize the County Administrator or designee to execute a reimbursement memorandum, which is attached to the Interlocal Agreement as Exhibit "A" for future road improvement projects.

Summary: The Water Utilities Department (WUD) assumed responsibility for the provision of water and wastewater service to the City pursuant to the First Amendment to the Interlocal Agreement forming the Glades Utility Authority on January 15, 2013, (R2013-0094). The City remains the governmental entity responsible for roadway improvements throughout the City limits and those improvements can impact water and wastewater infrastructure owned and maintained by WUD. The Interlocal Agreement provides for coordination between WUD and the City in the planning and construction of the City's road improvement projects so that the relocation design of the WUD's facilities, when needed, can be done by the City's consultant and the relocation, construction and/or adjustment can be done by the City's road contractor and be included in the City's road improvement projects. District 6 (MJ)

Background and Justification: Since most of the underground water and wastewater utilities within the City are located within road rights-of-way, the City and WUD determined that it would be expedient and beneficial to work together to protect the integrity of the utility facilities. Such coordination between the City and WUD will yield monetary savings as well as reduce interruption of vehicular and pedestrian traffic, thereby resulting in a benefit to both the City and WUD.

Attachments:

1. Location Map
2. Two (2) Original Interlocal Agreements

Recommended By: _____


Department Director

6-22-16
Date

Approved By:  _____

Assistant County Administrator

7-5-16
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	<u>0</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>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund 0 Agency 0 Org. 0 Object 0

Is Item Included in Current Budget? Yes___ No X

Reporting Category N/A

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

* No Fiscal Impact

C. Department Fiscal Review: deluamoret

III. REVIEW COMMENTS

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

John M. W. 6/28/16
OFMB ET 6/27 6/27

Joe J. Jacobus 7/1/16
Contract Development and Control
7/1/16

B. Legal Sufficiency:

LOU 7/5/16
Assistant County Attorney

C. Other Department Review:

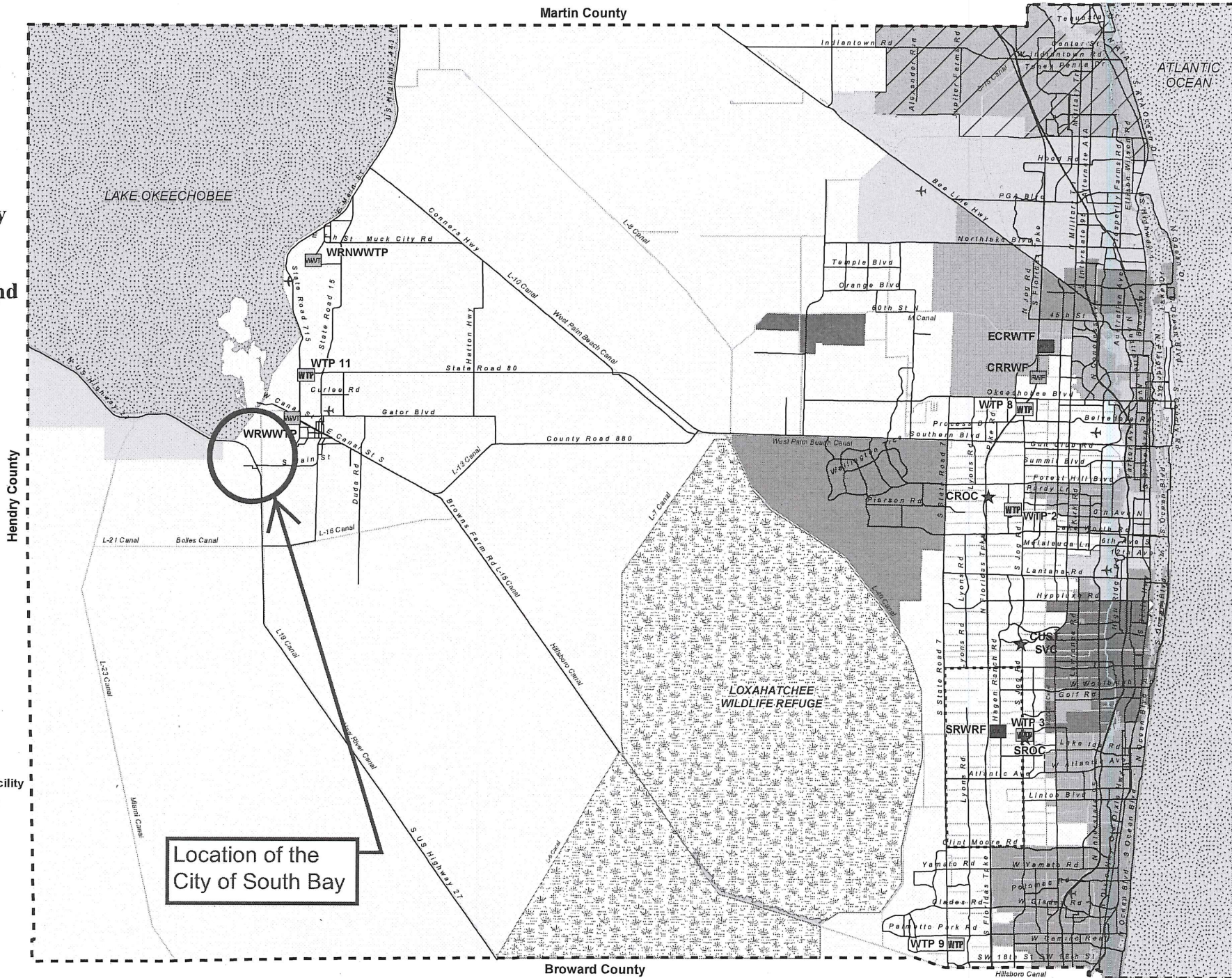
Department Director

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

ATTACHMENT #1



Palm Beach County Water Utilities Department Service Area (SA) and Major Facilities



- Legend**
- ★ Administration
 - WTP Water Treatment Plant
 - WWT Wastewater Treatment Plant
 - WWRF Wastewater Reclamation Facility
 - WWSRF Wastewater Service Reclamation Facility
 - Mandatory Reclaimed SA
 - - - Palm Beach County Limits
 - - - P.B.C.W.U.D. Service Area



**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY
OF SOUTH BAY RELATING TO COORDINATION OF ROAD AND UTILITY
CONSTRUCTION**

THIS AGREEMENT made and entered into this _____ day of _____, 2016, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "County"), and the **CITY OF SOUTH BAY, FLORIDA**, a municipality organized under the laws of the State of Florida (hereinafter "City").

WITNESSETH

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 and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, from time to time, the City hires contractors to perform improvement projects on roads that the City maintains (hereinafter "Projects"); and

WHEREAS, County owns and operates the public water and wastewater system located within the City, pursuant to that the First Amendment to the Interlocal Agreement Establishing the Glades Utility Authority dated 01/15/13 (County Resolution No 2013-0094); and

WHEREAS, certain Projects may impact existing County water and wastewater pipelines and related appurtenances (hereinafter "County Facilities") or may impact roadways in which the County may intend to relocate and/or install new County Facilities; and

WHEREAS, coordination of the City's Projects with the County's construction, relocation and/or adjustment of County Facilities will provide monetary savings, as well as reduce interruption to vehicular and pedestrian traffic, thereby providing benefits to both the City and the County; and

WHEREAS, County and City wish to cooperate in the construction, relocation, and/or adjustment of County Facilities in conjunction with future Projects undertaken by the City.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, County and City hereby covenant and agree as follows:

1. The foregoing statements are true and correct.
2. - Term/Effective Date. This Agreement shall become effective upon approval by both parties and continue for a period of twenty-five (25) years. The Effective Date of this Agreement shall be the date the Agreement is ratified by the Palm Beach County Board of County Commissioners (the "Effective Date").
3. Procedure. The parties agree to comply with the following procedure related to the coordination of road/utility construction: City shall notify County of any upcoming Projects prior to

bidding said Project. Should County wish to incorporate the construction, relocation, or adjustment of any County Facilities within the Project, County shall provide to City all terms and conditions related to construction, relocation, or adjustment of County Facilities that the County wishes to be included in the Project bidding/contract documents. Following the selection of a contractor and award of the contract by City, City shall notify the County of the total estimated costs related to the construction, relocation, or adjustment of County Facilities. The County Administrator or designee shall then prepare a cost estimate with respect to the County's expected contribution towards the project based upon all available data at the time and the parties shall then execute a memorandum, a copy of which is attached hereto and incorporated herein as Exhibit "A", in order to confirm that the County agrees to provide the funds for the utility work, surveying, geotechnical, inspections, mapping and plan drafting. Should changing conditions increase the estimated costs, City shall provide notice of the increase to the County, and, should the County wish to continue the construction, the County Administrator or designee shall execute a revised memorandum for the new estimated cost total.

4. Payment. During construction of the Project, City shall invoice the County based on approved pay applications submitted to the City for which the County shall not unreasonably refuse to pay. County will, within (7) days after receipt of each invoice, either by non response indicate agreement to pay City or return the invoice to City indicating in writing County's reasons for refusing to make payment due to payment being outside of the terms of the County's projected cost estimate. Where accepted, said payment shall be made by County within (45) days of receipt of invoice from the City. Following completion of the Project, and after "As-built" quantities are established, the City and County shall agree as to the final cost of the construction, relocation, or adjustment of County Facilities. City shall provide County with a final invoice. County will, within (25) days after receipt of final invoice, either indicate in writing agreement to pay City or return the invoice to City indicating in writing County's reasons for refusing to make payment, for which the County shall not unreasonably withhold. Where accepted, said payment shall be made by County within (45) days of receipt of invoice from the City. If it is determined that the County overpaid for the utility portion of the Project, a refund request shall be submitted in writing to City within (25) days of final invoice. Following payment by the County, a bill of sale in an agreed-upon form shall be provided to the County from the City and the City's contractor.

5. Completion of Work by Palm Beach County. Notwithstanding the foregoing, the County shall be permitted to complete any work on County Facilities by using its own personnel or contractors. In any such case, the work must be completed in a timely manner that will not result in any delays to the contractor selected by City to complete the Project.

6. Termination: The parties hereto expressly covenant and agree that in the event either party is in default of its obligations herein, the party not in default shall provide to the party in default ninety (90) days written notice to cure said default before exercising any of its rights as provided for in this Agreement. Failure to cure said default within ninety (90) days following notice may be grounds for termination of this Agreement. Termination of this Agreement by either party shall require thirty (30) days prior written notice to the other party prior to the termination date. The parties may mutually agree to extend the time for cure and/or termination.

7. No Transfer of Powers. Nothing contained in this Agreement shall be construed to constitute

a transfer of powers in any way whatsoever. This Agreement is solely an Agreement to provide services as authorized in Florida Statutes, Chapter 163. The governing bodies for County and City shall each maintain all legislative authority with regard to their respective political subdivision. All of the privileges and immunities from liability; exemption from laws, ordinances, and rules; and pensions and relief, disability, workers compensation and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extra-territorially under the provisions of this Agreement.

8. Indemnification County and City acknowledge the waiver of sovereign immunity for liability in tort contained in Florida Statutes 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or damage to property caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. County and City agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes Section 768.28, arising from the actions of their respective employees. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.

9. Force Majeure In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including, but not limited to, Acts of God or of the public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, disorder or demonstration, terrorism, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe or water plan failures and water main breaks, neither party shall be liable for such non-performance.

10. Remedies This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred 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 now or hereafter.

11. Successors and Assigns County and City each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither County nor City shall assign, sublet, convey or transfer its interest in this Agreement without prior written consent of the other.

12. Waiver The failure of either party to insist on the strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that said party may have to any subsequent breach, default, or non-performance, and

said party's right to insist on strict performance of this Agreement shall not be affected by any previous waiver of course or dealing.

13. 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 by any court of competent jurisdiction, then 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.

14. Notice. All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to City, shall be mailed or delivered to City at:

City of South Bay
335 SW 2nd Avenue
South Bay, FL. 33493
Attn: City Manager

And if to County, shall be mailed or delivered to:

Palm Beach County Water Utilities Department
8100 Forest Hill Boulevard
P.O. Box 16097
West Palm Beach, FL 33416-6097
Attn: Department Director

with a copy not to constitute notice to:

County Attorney
301 North Olive Ave.
Suite 601
West Palm Beach, FL 33401

15. Filing. This Agreement shall be filed with the Clerk of the Circuit Court for Palm Beach County.

16. Amendment and Modification. This Agreement may only be amended, modified, changed, supplemented, or discharged by an instrument in writing signed by the parties hereto.

17. Entirety of Agreement. County and City agree that this Agreement and any Exhibits hereto set forth the entire agreement between the parties, and that there are not 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.

18. Palm Beach County Office of the 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 contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of its officers, agents, employees, and lobbyists in order to ensure compliance with contract 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, Florida Statutes, in the same manner as a second degree misdemeanor.

19. No Third Party Beneficiary. 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 the City.

20. Non-discrimination. The Property Owner 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, gender identity and expression, or genetic information.

The City has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the City does not have a written non-discrimination policy or one that conforms to the County's policy, it has acknowledged through a signed statement provided to County that City will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, County and City have executed or have caused this Agreement to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ATTEST:
Sharon R. Bock, Clerk and Comptroller

PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS

By: _____
Clerk

By: _____
Mary Lou Berger, Mayor

(SEAL)

APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By: Jim Stiles
Director of Water Utilities

ATTEST: CITY OF SOUTH BAY, FLORIDA

By: Dessica Figueroa
Clerk

By: Joe Tyler
Mayor

APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY

By: [Signature]
City Attorney

EXHIBIT A - MEMORANDUM

In accordance with the Interlocal Agreement between Palm Beach County and the City of South Bay Relating to Coordination of Road and Utility Construction (County Resolution No. R _____) (hereinafter "Interlocal Agreement"), this memorandum shall confirm that Palm Beach County agrees to reimburse the City of South Bay the amount of _____ for utility construction, relocation, and/or adjustment in conjunction with City Project No. _____. Attached hereto and incorporated herein as Attachment 1 is a cost estimate detailing the agreed upon reimbursement. Payment terms shall be as set forth in the Interlocal Agreement.

PALM BEACH COUNTY

By: _____
County Administrator or Designee

Date: _____

WATER UTILITIES DEPARTMENT APPROVAL

By: _____
Director of Finance and Administration

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY**

By: _____
County Attorney

RESOLUTION NO. 22 - 2016

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE THE ATTACHED INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND CITY OF SOUTH BAY RELATING TO COORDINATION OF ROAD AND UTILITY CONSTRUCTION; PROVIDING FOR AN EFFECTIVE DATE

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 and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, from time to time, the City of South Bay ("City") hires contractors to perform improvement projects on roads that the City maintains (hereinafter "Projects"); and

WHEREAS, Palm Beach County ("County") owns and operates the public water and wastewater system located within the City, pursuant to the First Amendment to the Interlocal Agreement Establishing the Glades Utility Authority dated 01/15/13 (County Resolution No 2013-0094); and

WHEREAS, certain Projects may impact existing County water and wastewater pipelines and related appurtenances (hereinafter "County Facilities") or may impact roadways in which the County may intend to relocate and/or install new County Facilities; and

WHEREAS, coordination of the City's Projects with the County's construction, relocation and/or adjustment of County Facilities will provide monetary savings, as well as reduce interruption to vehicular and pedestrian traffic, thereby providing benefits to both the City and the County; and

WHEREAS, County and City wish to cooperate in the construction, relocation, and/or adjustment of County Facilities in conjunction with future Projects undertaken by the City; and

WHEREAS, the City Commission of the City of South Bay desires to enter into this Interlocal Agreement relating to Coordination of Road and Utility Construction and deems that the Agreement would be in the best interest of the residents of the City of South Bay.

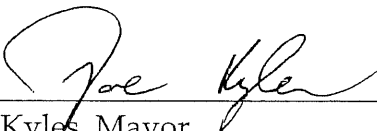
NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AS FOLLOWS:

Section 1. Adoption of Representations. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and the same are hereby made a specific part of this Resolution.

Section 2. Authorization of Mayor and City Manager. The City Commission of the City of South Bay hereby authorizes the Mayor and City Manager to execute the Interlocal Agreement between Palm Beach County and the City of South Bay relating to Coordination of Road and Utility Construction, attached hereto as Exhibit "A", and further authorizes the City Manager to take all necessary and expedient action to effectuate the intent of this Resolution.

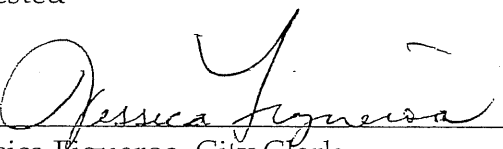
Section 3. Effective Date. This Resolution shall be effective immediately upon its passage and adoption.

PASSED and ADOPTED this 19th day of April 2016.



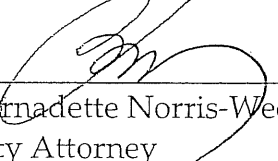
Joe Kyles, Mayor

Attested

By: 

Jessica Figueroa, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



Burnadette Norris-Week, Esquire
City Attorney

Moved by: Commissioner McKelvin

Seconded by: Commissioner Berry

VOTE:

Commissioner Berry	<u>✓</u> (Yes)	<u> </u> (No)
Commissioner McKelvin	<u>✓</u> (Yes)	<u> </u> (No)
Commissioner Scott	<u>✓</u> (Yes)	<u> </u> (No)
Vice-Mayor Wilson	<u> </u> (Yes)	<u> </u> (No)
Mayor Kyles	<u>✓</u> (Yes)	<u> </u> (No)