

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	July 12, 2016	(X) Consent	() Regular
Department		() Workshop	() 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 an Interlocal Agreement for Staging for the West Palm Beach Living Shoreline Projects at Currie and Osprey Parks (Agreement) with the City of West Palm Beach (City) for a term beginning upon execution and expiring March 1, 2017; and

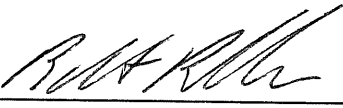
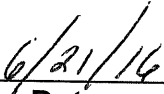

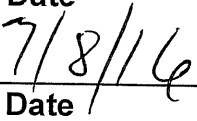
B) authorize the County Administrator or her designee to sign all future time extensions, and necessary minor amendments that do not significantly change the terms or conditions of the Agreement.

Summary: On June 6, 2016, the City approved the Agreement which provides for County use of Currie Park as a staging location for the construction of the West Palm Beach Living Shoreline Projects located at Currie and Osprey Parks (Project). There is no lease fee required however; the contractor must return the park to pre-use conditions upon completion of the Project. The Project construction Work Order No. 0650-3 was authorized by the Board on June 7, 2016 (R2016- 0707). District 7 (DC)

Background and Justification: The Project includes placement of rock and sand to construct living shoreline planters along the seawall at Currie and Osprey Parks, to create wetland habitat and to provide shoreline resilience against sea level rise. Upon completion, the Project will be planted with mangroves and spartina.

Attachments:

- 1. Interlocal Agreement

Recommended by:		
	Department Director	Date
Approved by:		
	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					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	x 0				
# ADDITIONAL FTE POSITIONS (Cumulative)					
Is Item Included in Current Budget?	Yes		No		
Budget Account No.:	Fund	Department	Unit	Object	
	Program				

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

There is no fiscal impact associated with this item.

C. Department Fiscal Review:

[Signature]

III. REVIEW COMMENTS

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

[Signature] 6/29/16 *[Signature]*
OFMB 6/24/16 6/27/16 6/28/16 Contract Development and Control
7/6/16 for

B. Legal Sufficiency:

[Signature]
Assistant County Attorney

C. Other Department Review:

Department Director

ATTACHMENT 1

RESOLUTION NO. 184-16

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL BETWEEN THE CITY AND PALM BEACH COUNTY GRANTING APPROVAL TO THE COUNTY TO USE A PORTION OF CURRIE PARK AS A STAGING AREA FOR FILL AND MATERIALS FOR THE INSTALLATION OF THE LIVING SHORELINE PROJECT ADJACENT TO CURRIE PARK AND OSPREY PARK; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, by Resolution 149-15 the City Commission approved the joint application with Palm Beach County for an environmental resources permit for the West Palm Beach Living Shoreline Project in two locations in the Lake Worth Lagoon adjacent to Currie Park and Osprey Park; and

WHEREAS, Palm Beach County will install the living shoreline which will include either raised planter beds with mangroves and oyster beds that act as filters for the lagoon or a break-water to slow down the effects of erosion; and

WHEREAS, the County has requested to use a portion of Currie Park as a staging area for the Project; and

WHEREAS, it is the best interest of the City to support the Project by allowing use of a portion of Currie Park as a staging area.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, that:

SECTION 1: The City Commission of the City of West Palm Beach hereby authorizes the Mayor to execute the Interlocal Agreement between the City and Palm Beach County granting approval to the County to use a portion of Currie Park as a staging area for the Living Shoreline Project in substantially the form attached hereto as Exhibit "A" ("Agreement").

SECTION 2: Upon execution of two (2) originals of the Agreement by the Mayor, both originals shall be forwarded to Leah Rockwell, Director of Parks and Recreation, for further handling. One fully executed original shall be returned to the City Clerk to maintain as a public record.

SECTION 3: This Resolution shall take effect as provided by law.

[SIGNATURES ON FOLLOWING PAGE]

RESOLUTION NO. 184-16

PASSED AND ADOPTED THIS 6TH DAY OF JUNE, 2016.

ATTEST:

X *Hazeline P. Carson*
CITY CLERK
Signed by: Hazeline Carson

CITY OF WEST PALM BEACH BY
ITS CITY COMMISSION:

X *Geraldine Muoio*
PRESIDING OFFICER
Signed by: Geraldine Muoio

APPROVED AS TO FORM AND LEGALITY:

6/3/2016
X *Nancy Urcheck*
CITY ATTORNEY
Signed by: NUrcheck
By NUrcheck for SPayson

Matter No. 17639
Res No. 184-16

**INTERLOCAL AGREEMENT FOR STAGING FOR THE WEST PALM BEACH
LIVING SHORELINE PROJECTS AT CURRIE AND OSPREY PARK.**

THIS AGREEMENT is made by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners (“County”), and the City of West Palm Beach, a Florida municipal corporation of the State of Florida (“City”).

WHEREAS, the County has worked with several municipalities on projects designed to enhance the water quality of the Lake Worth Lagoon, while at the same creating living shorelines along the waterfronts to support local fisheries, wading and shorebirds, manatees, and sea turtles; and

WHEREAS, on May 26, 2015 the City Commission approved Resolution No 149-15 to approve the development of the West Palm Beach Living Shorelines Project by Palm Beach County; and

WHEREAS, the County has secured funding and an Environmental Resource Permit from Florida Department of Environmental Protection and United States Army Corps of Engineers and

WHEREAS, the County, through its Department of Environmental Resource Management, has undertaken the construction of the West Palm Beach Living Shoreline Project at Currie and Osprey Park (“Project”); and

WHEREAS, the County requires a staging area for the transfer of materials onto barges for delivery to the Project sites; and

WHEREAS, Currie Park is the closest location that will allow trucks to deposit the materials onto barges; and

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 power 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, the City and County desire to enter into this Agreement establishing the terms and conditions of the County’s use of a portion of Currie Park as the staging area for the Project.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the County and the City agree as follows:

ARTICLE 1 – STAGING AREA; LICENSE; CONDITIONS

1.1 Grant of License. The City, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by the County, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to the County, its agents, contractors, successors and assigns, subject to the terms and conditions hereinafter provided, a license to use a portion of Currie Park, as further described in **Exhibit A** (the “Staging Area”), along with the right to access the Staging Area by means of the access road identified as “Access” on Exhibit A, for the staging and loading of rock, sand, and the equipment required to build the Project. The County shall be permitted to use the Staging Area between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday for the transport and temporary staging of rock and fill materials to the Project site. The City and County intend that this document shall be a license and a privilege and that no leasehold or other interest in the Staging Area is conferred upon the County under the provisions hereof. The County takes the Staging Area in its “as is” condition. The County understands and acknowledges that Currie Park is open to the public and that the County shall use its best efforts to not interfere with the public’s access to or use of the park except as expressly provided for in this Agreement.

1.2 “Conditions of License. The County shall:

- a. Store no more sand and rock than can be contained below the fence level and inside the fenced-in Staging Area.
- b. Hold a pre construction meeting with its contractor for the Project and the City prior to mobilization.
- c. Submit an operation plan for City approval prior to mobilization which shall, at a minimum, include security and signage, protection of existing utilities and resources, traffic maintenance plan, equipment list, construction schedule and post construction site restoration.
- d. Fence off the Staging Area with chain link fence with windscreen for dust control and silt fencing to contain the Staging Area prior to mobilization. County shall water down the Staging Area as necessary to maintain dust control.
- e. County shall install silt fencing and comply with Best Management Practices around areas adjacent to the water and flow paths to any stormwater inlet prior to mobilization.
- f. Install protection barriers around all trees and light poles within the Staging Area prior to mobilization.
- g. Mark all utilities in the Staging Area prior to mobilization.

- h. Maintain pedestrian access on existing sidewalks and trails within Currie Park.
- i. County shall provide project management including daily inspections and construction oversight.
- j. Obtain all required permits for the Staging Area and provide copies of the permits to the City.
- k. Install a kiosk, in a location designated by the City within Currie Park, for the display of all permits, project information, project schedule, and County contact information.
- l. Repair damage caused by the County's licensed use of the Park including but not limited to, the repair and replacement of irrigation, hardscape (including fishing pier, seawall, curb cuts, sidewalk replacements, light poles), signage replacements, and replacement of sod, damaged trees, and landscaping materials.

ARTICLE 2 – COMMENCEMENT AND TERM

This Agreement shall commence on the date approved by both the City the County and shall remain in effect until March 1, 2017, unless terminated earlier by either party, or extended by the mutual agreement of County and City.

ARTICLE 3 – REVOCATION; TERMINATION

The City shall have the right to revoke this Agreement in the event of failure by the County to comply with the terms, including but not limited to failure to comply with the conditions set forth in Section 1, provided the County is provided with five (5) days' prior written notice and has failed to remedy the noncompliance within such time. Either party shall have the right to terminate this Agreement with or without cause and without penalty, damages or recourse upon thirty (30) days' prior written notice to the other party.

ARTICLE 4 – DEMOBILIZATION; RESTORATION OF STAGING AREA.

At the expiration or earlier termination of this Agreement, the County shall quietly leave, surrender and yield to the City the Staging Area in good order.

ARTICLE 5 - INSURANCE

Without waiving the right to sovereign immunity as provided by s.768.28 Florida Statutes., the County acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$200,000 Per Person and \$300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In

the event the County maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under Section 768.28, Florida Statutes, the County shall agree to maintain said insurance policies at limits not less than \$1,000,000 combined single limit for bodily injury or property damage. The County agrees to maintain or to be self-insured for Worker’s Compensation & Employer’s Liability insurance in accordance with Chapter 440, Florida Statutes. When requested, the County shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which the City agrees to recognize as acceptable for the above mentioned coverages. Compliance with the foregoing requirements shall not relieve the County of its liability and obligations under this Agreement.

All contractors and subcontractors of the County shall comply with the City’s minimum insurance requirements which are as follows:

(1) General Liability – coverage in the minimum amounts specified below, and with a maximum deductible of \$25,000 per occurrence.

General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate annually
Property Damage	\$1,000,000 per occurrence \$2,000,000 aggregate annually

(2) Automobile Liability \$1,000,000 combined single limit per
occurrence

(3) Workers’ Compensation: Workers’ Compensation and Employer’s Liability Insurance with limits as required by Chapter 440, Florida Statutes.

In addition to the foregoing, the County’s prime contractor shall provide, or shall require, the appropriate subcontractor to provide Pollution Liability insurance in the minimum amounts of \$2,000,000 per occurrence and \$ 5,000,000 aggregate and shall deliver to the City a certificate of insurance naming the City as additional insured.

ARTICLE 6 - INDEMNIFICATION

Each party shall be liable for its own actions and negligence and, to the extent permitted by law, the County shall indemnify, defend and hold harmless the City against any actions, claims or damages arising out of the County’s negligence in connection with this Agreement, and the City shall indemnify, defend and hold harmless the County against any actions, claims, or damages arising out of the City’s negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party’s negligent, willful or intentional acts or omissions, nor shall the

same be construed as consent to be sued by third parties.

ARTICLE 7 - SUCCESSORS AND ASSIGNS

Neither party shall assign, delegate or otherwise transfer its rights and obligations as set forth in this Agreement to any other entity without the prior written consent of the other party.

ARTICLE 8 - 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. 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.

ARTICLE 9 – WAIVER OF JURY TRIAL

To encourage prompt and equitable resolution of any litigation, each party hereby waives its rights to a trial by jury in any litigation related to this agreement.

ARTICLE 10 – ATTORNEY FEES

It is hereby understood and agreed that in the event any lawsuit is brought to enforce compliance with this Agreement or interpret same, or if any administrative proceeding is brought for the same purposes each party shall be responsible for its own fees and costs, including legal, ex parte and/or appellate fees and costs.

ARTICLE 11 – DISPUTE RESOLUTION

Disputes under this Agreement may be resolved by the County’s Authorized Representative and City’s Authorized Representative. If such Authorized Representatives are unable to reach a resolution and either party believes that the issue is of sufficient merit, the parties shall select a mediator mutually acceptable to both parties to conduct a non-binding mediation of the issues involved and make a recommendation to both parties. The parties agree to be responsible for their respective costs and fees incurred during the mediation and that each party shall pay the mediator’s fees and costs in equal amounts.

ARTICLE 12 - EXCUSABLE DELAYS

Either party hereto shall be excused from performing any of its respective obligations or

undertakings provided in this Agreement for so long as the performance of such obligations are prevented or delayed, retarded or hindered (plus such additional time is mutually consented to by the parties) by act of God, weather of unusual severity, fire, earthquake, flood, hurricane, explosion, action of the elements, war (declared or undeclared), invasion, insurrection, riot, mob violence, sabotage, malicious mischief, inability to produce or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, public requisition, laws, order of government or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the respective party if such party hereto gives notice of such delay to the other party within twenty (20) days of the occurrence of such event.

ARTICLE 13 – PUBLIC RECORDS

The County shall comply with Florida’s Public Records Law with regard to any documents or other records relating to this Agreement.

ARTICLE 14 - INDEPENDENT CONTRACTOR RELATIONSHIP

In all respects, the County’s relationship to the City shall be that of Independent Contractor and not employees or agents of the City, and nothing herein contained shall be deemed to create an agency relationship between the County and the City. The County does not have the power or authority to bind the City in any promise, agreement or representation.

ARTICLE 15 - CONTINGENT FEES

The County warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the County to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the County, any fee, commission, percentage, gift , or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 16 - NONDISCRIMINATION

The County 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, sexual orientation, familial status, gender identity and expression, or genetic information.

ARTICLE 17 – 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.

ARTICLE 18- PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the County certifies that it, its affiliates, suppliers, subcontractors and contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 19 - SURVIVABILITY

Any covenant, agreement, representation, warranty or other provision of this Agreement that is of a continuing nature or which by its language or its nature imposes an obligation that extends beyond the term of this Agreement, including but not limited to representations relating to indemnification and the disclosure or ownership of documents, shall survive the expiration or early termination of this Agreement and the consummation of the transactions contemplated hereunder.

ARTICLE 20 - NOTICE

All notices required or permitted to be given or delivered by or to any party hereunder, shall be in writing and shall be hand delivered by messenger, courier service or prepaid overnight delivery service, by electronic transmission producing a written record, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the Notice if by personal delivery, courier services or prepaid overnight delivery service, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the address to which notices may be delivered, and delivery to such address shall constitute binding notice give to such party:

If sent to the COUNTY, notices shall be addressed to:

Palm Beach County
301 North Olive Avenue
West Palm Beach, Florida 33401-4791
Attn: County Administrator

And

Palm Beach County
Palm Beach County Attorney's Office

301 North Olive Avenue, 6th Fl
West Palm Beach, FL 33401

And

Palm Beach County
Department of Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411

If sent to the City, notices shall be addressed to:

City of West Palm Beach
401 Clematis Street, 2nd Floor
West Palm Beach, FL 33405
Attn: City Administrator

ARTICLE 21 - FILING

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

ARTICLE 22 - ENTIRETY OF CONTRACTUAL AGREEMENT

The County and the City 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 unless agreed to in writing by both parties. This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective assigns and successors in interest.

IN WITNESS WHEREOF, the City and County have caused this Interlocal Agreement to be executed the day and year set forth below.

ATTEST: SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: _____
Asst. County Attorney

ATTEST:

By: *Harlin F. Carson*
City Clerk

OFFICE OF THE CITY ATTORNEY
APPROVED AS TO FORM AND LEGALITY

By: *Don for SHP*
City Attorney

PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Commissioner Mary Lou Berger, Mayor

Date: _____

APPROVED AS TO TERMS AND CONDITIONS

By: *Robert Robbins*
Robert Robbins, Director, Palm Beach County
Dept of Environmental Resources Mgmt

CITY OF WEST PALM BEACH, FLORIDA

By: *Geraldine Muoio*
Geraldine Muoio, Mayor

Date: 6/17/16

EXHIBIT A



Palm Beach County Department of
Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, Florida 33411-2741
(561) 233-2400

Currie Park Living Shorelines Potential Staging

0 100 200 400 Feet