

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: **November 1, 2016** **Consent** **Regular**
 Ordinance **Public Hearing**

Department: **Department of Economic Sustainability**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:



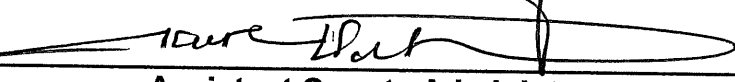
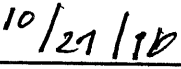
- A) an Interlocal Agreement with the City of West Palm Beach in the amount of \$40,000, and
- B) a Budget Amendment of \$40,000 in the Economic Development Fund.

Summary: On May 27, 2016, the City of West Palm Beach (City) was awarded a grant in the amount of \$200,000 from the Environmental Protection Agency (EPA) for the cleanup of a site located at 1400 Henrietta Avenue in West Palm Beach. The Palm Beach County Department of Economic Sustainability (DES) has partnered with the City's Department of Housing and Community Development to assist in the administration of this grant. DES assisted the City in preparing and submitting an application for the \$200,000 site clean-up grant from EPA. The project site is a vacant lot that is situated along the FEC railroad on the eastern edge of Coleman Park. The property has contaminated surface soils. Due to contamination, the current urban farm pilot project on-site is limited to planting in pots with community volunteers not disturbing the ground. Under the Agreement, DES will be reimbursed by the City for services provided up to a maximum of \$40,000. Services to be provided by DES include: providing staff to serve as the principal investigator and co-investigators for overall project direction and coordinating grant reporting, tracking outcome and output measures, working with the consultant/contractor on project planning, data collection and tracking, working with the City in the development and implementation of the Community Engagement Plan. **No County funds are required.** District 7 (JB)

Background and Justification: The City requested the assistance of DES who has in-house capability and a successful track record as the recipient of U.S. Environmental Protection Agency (EPA) grants. Not only does the contamination create a potential health concern for growing consumable items, it has created a stigma and community perception problem in this Environmental Justice neighborhood. There is concern among Coleman Park residents regarding the negative health impacts of food grown on a contaminated site. Following site cleanup, full scale implementation of the urban farm will become possible.

Attachments:

- 1. Interlocal Agreement with the City of West Palm Beach.
- 2. Budget Amendment

Recommended By:	 Department Director	 Date
Approved By:	 Assistant County Administrator	 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Grant Expenditures					
Operating Costs	\$40,000				
External Revenues	(\$40,000)				
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	0				

# ADDITIONAL FTE POSITIONS (Cumulative)					
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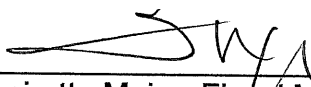
Is Item Included In Current Budget? Yes _____ No X
 Budget Account No.:

Fund _____ Dept _____ Unit _____ Object _____ Program Code/Period _____

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

The source of funds is the City of West Palm Beach for grant administration fee.

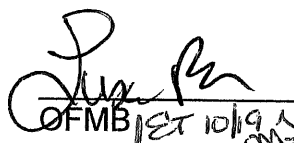
C. Departmental Fiscal Review:



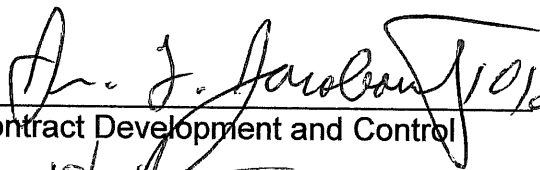
 Shairette Major, Fiscal Manager II
 10/18/16

III. REVIEW COMMENTS

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



 OFMB JET 10/19/16
 10/20/16



 Contract Development and Control
 10/24/16

B. Legal Sufficiency:



 Assistant County Attorney
 10/26/16

C. Other Department Review:

 Department Director

INTERLOCAL AGREEMENT
BETWEEN
THE City OF WEST PALM BEACH
AND
PALM BEACH COUNTY
(Department of Economic Sustainability)
REGARDING
BROWNFIELD CLEANUP AT 1400 HENRIETTA AVENUE

Contract No. 17856.001

THIS INTERLOCAL AGREEMENT (the "Agreement") by and between the City OF WEST PALM BEACH, a municipal corporation organized under the laws of the State of Florida (the "City") and PALM BEACH County, a political subdivision of the State of Florida (hereinafter "County") (the "County").

WHEREAS, Section 163.01, Florida Statutes, 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, the City has been awarded a Brownsfield Clean-up grant (the "Grant") from the U.S. Environmental Protection Agency (EPA) in the amount of \$200,000 with an additional contribution of \$40,000 from the City to be utilized for cleanup activities at 1400 Henrietta Avenue; and

WHEREAS, the grant must be utilized in accordance with the terms of the EPA Cooperative Agreement; and

WHEREAS, the Palm Beach County Department of Economic Sustainability (DES) has partnered with the City of West Palm Beach Department of Housing and Community Development on administration of the grant; and

WHEREAS, the parties desire to enter into this agreement to provide the roles and responsibilities of the respective parties.

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. INCORPORATION OF RECITALS. The recitals set forth above are incorporated herein and made a part of this Agreement.
2. EFFECTIVE DATE AND TERM OF AGREEMENT. This Agreement shall become effective upon its execution by last of the parties (the "Effective Date"). The Term of this Agreement shall

commence on the Effective Date and shall continue in full force and effect until the City's obligations hereunder has been completed.

3. PROJECT DESCRIPTION. The project is to provide cleanup planning, public outreach and remediation activities for the brownfield site located at 1400 Henrietta Avenue, legally described as:

16-43-43, ALL THE POINT OF N1/2 OF NE1/4 OF SE1/4 WEST OF RAILWAY
PCN 74-43-43-16-00-000-1120.

4. City's OBLIGATIONS. The City will be the lead organization and will manage the project and ensure compliance with the terms of the EPA Cooperative Agreement. In furtherance of these responsibilities the City will:

- a. Procure a Brownfield consultant/contractor who will conduct sight testing and remediation and assist with community outreach and reporting requirements.
- b. Provide for fiscal grant support including invoicing and payment to the Brownsfield consultant/contractor and the County, drawing down funding from the EPA grant and fiscal grant reporting to the EPA.
 1. The City will reimburse the County for eligible expenses incurred in accordance with the budget worksheet attached as Exhibit A. Eligible expenses must be submitted to the City must include proper documentation to support expenses including invoices, receipts and timesheets. The City will reimburse the county on a quarterly basis for expenses incurred up to the maximum amount of \$40,000 during the open grant period.
- c. Be responsible for data collection and entry into the EPA Assessment, Cleanup and Redevelopment Exchange System (ACRES) database as needed.

5. County's OBLIGATIONS. The County will:

- a. Provide staff to serve as the Principal Investigator and co-investigators who will provide overall project direction and coordinate grant reporting, outreach and interface with the City.
- b. In conjunction with the City, will track outcome and output measures in the EPA Assessment, Cleanup and Redevelopment Exchange System (ACRES) database on a quarterly and cumulative basis.
- c. Be responsible for working with the consultant/contractor on data collection and tracking.
- d. In conjunction with the City will direct the environmental consultant to develop a Site Specific Quality Assurance Project Plan (QAPP) that will be consistent with EPA Region 4's Interim Generic & Site Specific Quality Assurance Project Plan Guidance for Brownfield Site Assessments and/or Cleanups or updated QAPP checklist provided by the EPA Project Officer and FDEP Standard Operating Procedures.
- e. Work with the City in the development and implementation of the Community Engagement Plan.

6. BOOKS AND RECORDS. The City shall maintain books, records and documents in accordance with accounting procedures and practices which sufficiently and properly reflect all

expenditures of funds under this Agreement. Each party shall retain records related to this Agreement, and to any Project funded under this Agreement, in proper order for at least five (5) years following expiration of this Agreement. Each party shall have access to such records, for the purposes of inspection and audit, during this five (5) year period.

7. GENERAL PROVISIONS.

- a. 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 the County and the 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.
- b. Liability No party shall be deemed to assume any liability for the negligent or wrongful acts or omissions of another party. Nothing contained herein shall be construed as a waiver by either party of the liability limits established in Section 768.28 of the Florida Statutes. Liability for injury to personnel and the loss or damage of equipment shall be borne by the party employing such personnel or owning such equipment.
- c. 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 Parties.
- d. Non-Discrimination. The parties agree and certify that all of its employees are treated equally during The parties agree and certify 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.
- e. Termination. Either party has the right to terminate this Agreement, in whole or in part, with or without cause, or for its convenience, upon five (5) days written notice to the other party. In the event of termination, City shall compensate the County for all Services satisfactorily performed through the termination date. Upon termination, this Agreement shall have no further force or effect and the parties shall be relieved of all further liability, except those provisions intended to survive termination of this Agreement.
- f. Inspector General. Palm Beach County has established the Office of 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 investigate and audit matters relating to the negotiation and performance of this contract and 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 SELF, and its wholly owned subsidiaries, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with 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.

- f. Public Records. The parties shall comply with Chapter 119, Florida Statutes, regarding public records. Each party shall keep and maintain all documents, records, correspondence, computer files, emails, and/or reports prepared in order to perform under this Agreement. A request to inspect or copy public records relating to this Agreement may be made directly to the either party. If the party receiving the request does not possess the requested records, that party shall immediately notify the other of the request, and the other party shall provide the records or allow the records to be inspected or copied within a reasonable time at the cost that would not exceed the cost allowed by law. All records stored electronically must be provided upon request. Upon completion of this Agreement, both parties shall keep and maintain all public records. Records retained shall meet all applicable requirements for retaining public records. The parties shall ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed. Failure of either party to provide public records within a reasonable time or at allowable cost may be subject to penalties under Sec. 119.10, Fla. Stat., and may be cause for termination of the Agreement by the non-offending, in addition to any other remedies available under the Contract or by law.
- g. Assignment. This Agreement may not be assigned or transferred.
- h. Notices: Any notices required by this Agreement shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, or alternatively, may be sent by U.S. certified mail, return receipt requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery (provided a receipt is obtained), courier service (provided a receipt is obtained) or prepaid overnight delivery service; or, if mailed, upon the date which the return receipt is signed or delivery is refused, or the notice is designated by the postal authorities as non-deliverable, as the case may be.

Notices shall be provided to the following:

As to the City:

City of West Palm Beach
City Hall – 401 Clematis Street (33401)
Post Office Box 3366
West Palm Beach, Florida 33402-3366
Attention: City Administrator

with a copy to:

West Palm Beach City Attorney's Office
City Hall – 401 Clematis Street (33401)
P.O. Box 3366
West Palm Beach, Florida 33402-3366

As to the County:

with a copy to:

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

- i. No General Obligation. Nothing contained in this Agreement shall constitute or create a lien or be construed or deemed to constitute or create a lien, either legal or equitable, on any of the City's or the County's revenues or funds. No person shall ever have the right to compel any exercise of the ad valorem taxing power of the City or the county to make the payments herein provided against any property of the City or the County, nor shall this Agreement constitute a charge, lien or encumbrance, either legal or equitable, upon any property or funds of the City or the County, except as expressly herein provided.
- j. Independent Contractor. County and the City are and shall be, in the performance of all work, services and activities under this Agreement Independent Contractors and not employees, agents or servants of the other party. All County employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to County's sole direction, supervision, and control. All City employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to City's sole direction, supervision, and control. The Parties shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the parties relationship and the relationship of its employees to the other party shall be that of an Independent Contractor and not as employees or agents of the other. Neither County nor City has the power or authority to bind the other in any promise, Agreement or representation.
- k. Modification and Amendment. Except as expressly permitted herein, no modification, amendment or alteration in the terms or conditions contained in this Agreement shall be effective unless made in writing and executed by each of the parties.
- l. Governing Law, Venue, Remedies. This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Agreement shall be held in Palm Beach County, Florida. 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.

- m. No Waiver. Any waiver by either Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this agreement, shall not be deemed a waiver with respect to any subsequent default or other matter. The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.
- n. Filing. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.
- o. Termination. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party with or without cause or for the party's convenience without penalty, damages or recourse.
- p. Attorney Fees. It is hereby understood and agreed that in the event any legal or administrative action is brought to enforce compliance with this Agreement or interpret same, each party shall be responsible for its own fees and costs, including legal, ex parte and/or appellate fees and costs.
- q. 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 Liability 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.
- r. Entire Agreement. The Parties 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. 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.

CITY OF WEST PALM BEACH, FLORIDA

ATTEST:

By: _____
City Clerk

By: _____
Geraldine Muoio, Mayor

Date: _____

OFFICE OF THE CITY ATTORNEY
APPROVED AS TO FORM AND
LEGALITY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

ATTEST: SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Clerk

By: _____
Commissioner Mary Lou Berger, Mayor

Date: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: _____
County Attorney

By: _____

2017 -

**BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET AMENDMENT**

BGEX 143-101116*00045
BGRV 143-101116*00007

FUND 1539 Economic Development Office

ACCT.NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 10/04/16	REMAINING BALANCE
<u>REVENUES</u>								
143-2104-4137	DES Grant Prep & Admin Fees	0	0	40,000	0	40,000		
Total Receipts and Balances		6,525,839	6,525,839	40,000	0	6,565,839		
<u>EXPENDITURES</u>								
143-2102-1070	Charge-off Personal Services	-3,219,953	-3,219,953		40,000	(3,259,953)	0	(3,259,953)
143-2102-8201	Contributions-Non Gov't Agency	282,837	282,837	40,000	0	322,837	0	322,837
143-2104-1080	Personal Services-Indirect	20,000	20,000	40,000		60,000	0	60,000
Total Appropriations & Expenditures		6,525,839	6,525,839	80,000	40,000	6,565,839		

DEPARTMENT OF ECONOMIC SUSTAINABILITY
INITIATING DEPARTMENT/DIVISION
Administration/Budget Department Approval
OFMB Department - Posted

Signatures & Dates
Edward R. ... 10/18/2016

By Board of County Commissioners
At Meeting of:
November 1, 2016
Deputy Clerk to the
Board of County Commissioners