

**Submitted For: Roadway Production Division**

1. Location Map
2. Agreement with Exhibit A (2)
3. City of Boynton Beach Resolution

**Date**

Date \_\_\_\_\_

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	\$ 7,500	-0-	-0-	-0-	-0-
External Revenues	(\$7,500)	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ 0	-0-	-0-	-0-	-0-
# ADDITIONAL FTE					
POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes No  
Does this item include the use of federal funds? Yes No X

Budget Account No:  
Fund 3500 Dept 361 Unit 4260 Object 1201/6993

Recommended Sources of Funds/Summary of Fiscal Impact:  
Transportation Improvement Fund  
Roadway Production

\*\*This item has no fiscal impact. The Tax Collector's Office will transfer the collected funds to the City of Boynton Beach, which will pay for the project. Cost associated with the administration of the MSTU assessment program will be reimbursed by the City at a maximum of \$7,500.

C. Departmental Fiscal Review: Alii Koralaunen

III. REVIEW COMMENTS

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

Robert Brewer 4/6/18  
OFMB  
7/5/18  
sp 4/5  
sm 4/5/18  
Dr. J. Jacobson 4/10/18  
Contract Dev. and Control  
4/10/18

B. Approved as to Form  
and Legal Sufficiency:

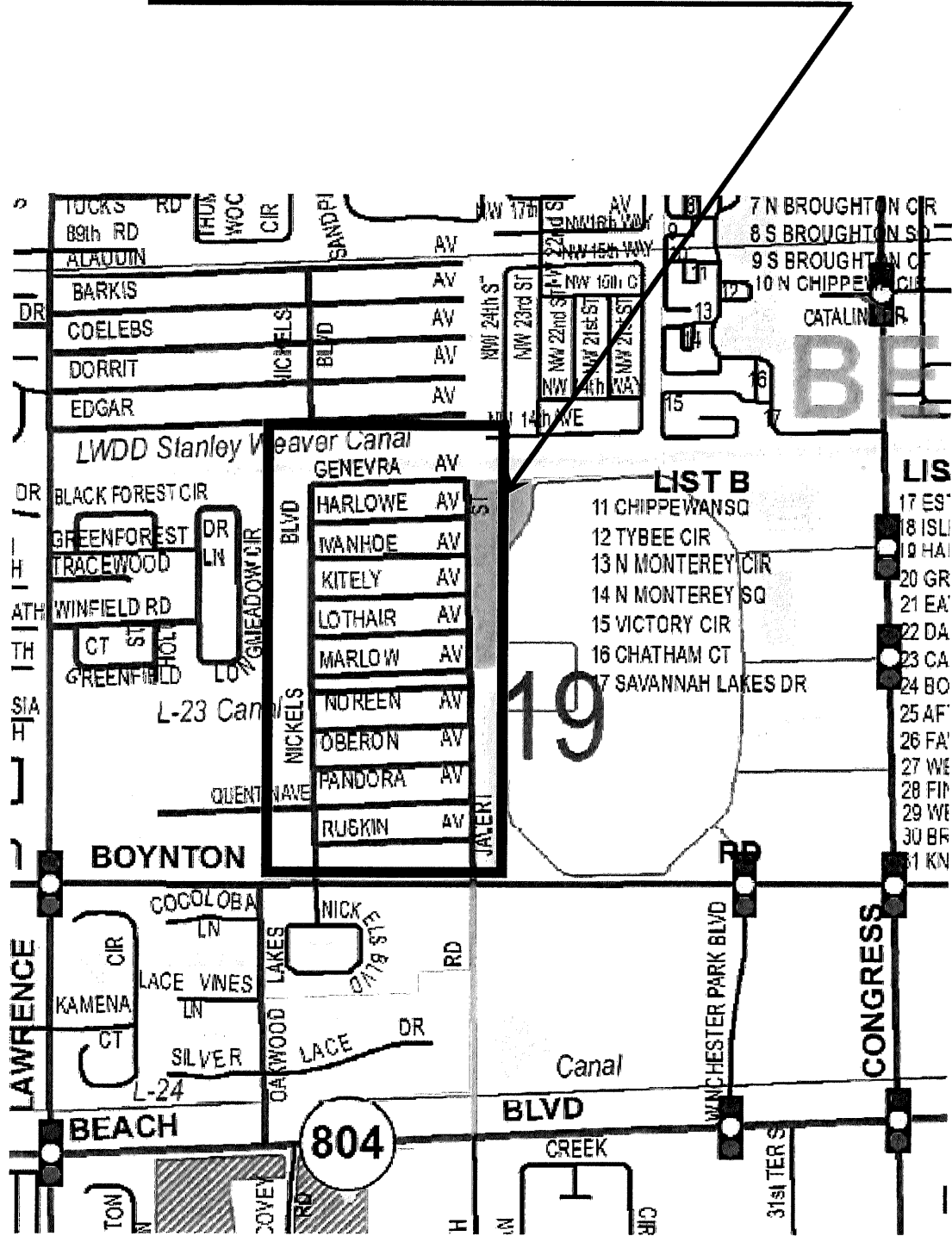
MB Herman 4/11/2018  
Assistant County Attorney

C. Other Department Review:

\_\_\_\_\_  
Department Director

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

WEST BOYNTON PLAT NO 2 B & C



LOCATION SKETCH

1218-02+

**AGREEMENT BETWEEN THE CITY OF BOYNTON BEACH AND  
PALM BEACH COUNTY, FLORIDA**

**FOR**

**THE MONETARY ASSESSMENT FOR THE CONSTRUCTION OF MUNICIPAL  
WATER AND SEWER SERVICE IN WEST BOYNTON PLAT NO 2B & C**

THIS AGREEMENT is made and entered into this 13<sup>th</sup> day of February, 2018, by and between the City of Boynton Beach, a municipality in the State of Florida, (CITY), and Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners, (COUNTY) (collectively "parties" and individually "party").

**W I T N E S S E T H:**

**WHEREAS**, the COUNTY and the CITY are authorized to enter into this AGREEMENT pursuant to Chapter 163, Florida Statutes, as amended, which permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage; and

**WHEREAS**, the CITY has requested the COUNTY to facilitate an assessment process per COUNTY Code, Chapter 26 – Special Districts, Article II, Municipal Service Taxing Units (MSTU) for the construction of water and sewer pipelines, fire hydrants, water meter boxes and other associated materials within the County Road right of way (PROJECT). The PROJECT includes but not limited to the cost the petition process, designing, bidding, construction and contract administration for the area shown in 'Exhibit - A' which a part of the West Boynton Plat No 2 B & C as recorded in Plat Book 15 pages 13-14 of the public records of Palm Beach County, Florida; and

**WHEREAS**, the CITY will cause to be prepared, scope of services and specifications for the PROJECT; and

**WHEREAS**, the CITY is desirous of funding and facilitating the PROJECT if at least 51% of initial petitions returned by the benefitting property owners agree to the PROJECT; and

**WHEREAS**, the COUNTY is agreeable to assessing the property owners benefitting from the PROJECT over a TWENTY (20) year period at an interest rate not to exceed 5.5% per annum, and transferring the collected funds to the CITY; and

**WHEREAS**, the CITY is agreeable to including the COUNTY administrative fees in the funding of the PROJECT.

**NOW, THEREFORE,** in consideration of the mutual covenants, promises, and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

The above recitals are true and correct and hereby adopted and incorporated herein.

**1. COUNTY Responsibilities:**

- A. Petition the benefitting property owners within the PROJECT boundary to determine if a majority (51%) of the returned petitions are in favor of being assessed by the COUNTY for the PROJECT.
- B. Notify the benefitting property owners, by letter, of their proposed assessment which will be established and confirmed at a public hearing before the Palm Beach County Board of County Commissioners (BCC). Letter will be sent when all PROJECT costs have been determined, including but not limited to the CITY received bid, Palm Beach County Property Appraisers', Office of the Clerk & Comptrollers' and Tax Collectors' fees. Letter must also include the public hearing date and location.
- C. Hold a said public hearing before the BCC to establish and confirm the benefitting property owners' assessment.
- D. Provide the CITY with a list of benefitting property owners based on the assessment roll approved at the COUNTY Public Hearing.
- E. Transfer the assessments collected to the CITY on the first workday of each quarter of the calendar year.

**2. CITY Responsibilities:**

- A. Design, obtain all necessary permits including COUNTY permits, Construct and maintain the Project during and after completion at the City's sole cost.
- B. Participate in the Public Hearing before the BCC to answer any questions.
- C. Reimburse the COUNTY for costs incurred during the administration of the MSTU assessment program for the PROJECT, including but not limited to staff costs, initial petition process, public hearing process and mailing costs, at the following lump sum for each milestone achieved:
  - 1. Initial Petition process Completion: \$2,500, regardless of the outcome of the petitions;
  - 2. Public Hearing process: \$2,500, regardless of the outcome of the Public Hearing; and
  - 3. PROJECT Completion - Final Assessment Roll filed: \$2,500.

The CITY shall pay to the COUNTY compensation as set forth above within thirty (30) days of receiving written notification from the COUNTY of completion of the above milestones. COUNTY will not proceed with work for the next milestone until payment of the previous milestone is received.

D. The CITY shall require each contractor engaged by the CITY for work associated with the AGREEMENT to maintain:

a. Commercial General Liability coverage, including vehicle coverage, in combined single limits of not less than ONE MILLIONS DOLLARS (\$1,000,000.00). The COUNTY shall be named as an additional insured on the certificate of insurance.

b. A payment and performance bond for the total amount of the PROJECT in accordance with Florida Statute 255.05.

c. Workers' Compensation coverage in accordance with Florida Statutes

### **3. PERSONNEL:**

All of the PROJECT services required herein shall be performed by the CITY's contractor and will be overseen by CITY personnel. All personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

As provided in Section 287.132-133, Fla. Stat., by entering into the agreement or performing any work in furtherance hereof, CITY certifies that its' affiliates, suppliers, contractors, sub-contractors and consultants who perform work hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within 36 months immediately preceding the date hereof. This notice is required by Section 287.133(3)(a), Fla. Stat.

### **4. INDEMNIFICATION:**

Each Party shall be liable for its own actions and negligence and, to the extent permitted by law, County shall indemnify, defend and hold harmless City against any actions, claims or damages arising out of County's negligence in connection with this Agreement, and City shall indemnify, defend and hold harmless County against any actions, claims, or damages arising out of 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 Florida Statutes, Section 768.28, 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.

### **5. NOTICE:**

All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be hand delivered by prepaid express overnight courier or messenger services, or mailed by registered or certified mail to the following addresses:

COUNTY	Palm Beach County Engineering Department
	Attention: Tanya N. McConnell, P.E.
	Deputy County Engineer
	P.O. Box 21229, W. Palm Beach, FL 33416

CITY

City of Boynton Beach Public Services  
Attention: Colin Groff, PE  
Assistant City Manager – Public Services  
100 E Boynton Beach Blvd.,  
Boynton Beach, FL 33435

If either party changes its mailing address of designated recipient for notices, such change shall be communicated in writing to the other party within thirty (30) days of the change.

**6. MISCELLANEOUS PROVISIONS**

**A. 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. The failure of any party to insist on a strict performance of any of the terms and conditions hereof shall not be deemed a waiver of any subsequent breach or default in any terms and conditions.

**B. THIRD PARTY BENEFICIARIES:**

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 CITY.

**C. ARREARS:**

The CITY shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any agreement, debt, obligation, judgment, lien, or any form of indebtedness. The CITY further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

**D. ACCESS AND AUDITS:**

The CITY shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Agreement. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CITY's place of business.

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 agreements, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CITY, its officers, agents, employees, and lobbyists in order to ensure compliance with agreement 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, Fla. Stat., in the same manner as a second-degree misdemeanor.

**E. NONDISCRIMINATION:**

The CITY will include in the contract that, the Contractor 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.

**F. 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.

**G. ENTIRETY OF 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, except by written instrument executed by the parties hereto.

**F. ATTORNEY FEES:**

Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties; provided, however, that this clause pertains only to the parties to the Agreement.

**I. GOVERNING LAW AND VENUE:**

This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to any contrary conflicts of laws principle. Venue of all proceedings in connection herewith shall be exclusively in Palm Beach County, Florida, and each party hereby waives whatever their respective rights may have been in the selection of the venue.



**J. LIABILITY:**

The parties to this Agreement shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party (or parties). Nothing contained herein shall be construed as a waiver by the parties, of the liability limits established in Section 768.28, Fla. Stat.

**K. LAWSUITS:**

CITY shall promptly notify COUNTY of any lawsuit-related complaint, or cause of action threatened or commenced against it, which arises out of or relates, in any manner, to the performance of this Agreement.

**L. DEFAULT:**

The parties expressly covenant and agree that in the event any of the parties is in default of its obligations under this Agreement, the parties not in default shall provide to the defaulting party thirty (30) days written notice before exercising any of their rights.

**M. JOINT PREPARATION:**

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial constraint, be construed more severely against one of the parties than the other.

**N. BINDING EFFECT:**

All of the terms and provisions of this Agreement whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors and permitted assigns.

**O. HEADINGS:**

The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

**P. COUNTERPARTS:**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Q. ASSIGNABILITY:**

This Agreement may not be assigned without prior written consent of all parties to this Agreement, provided such consent may not be unreasonably withheld.

**R. ANNUAL APPROPRIATION:**

County's performance and obligation to pay under the Agreement is contingent upon an annual appropriation by the Board.

**S. FILING:**

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

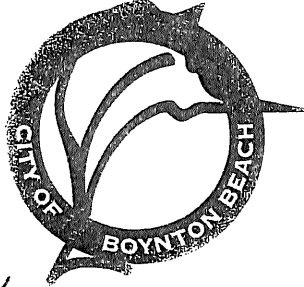
**T. EFFECTIVE DATE:**

This Agreement shall be effective as of the last date that it is signed by all parties hereto.

**THIS SPACE LEFT BLANK  
INTENTIONALLY**

EXECUTED by the CITY OF BOYNTON BEACH this 23rd day of February 2018.

(Authority Seal)



ATTEST:

Judith Pyle  
Judith Pyle, CITY Clerk

CITY OF BOYNTON BEACH

Steven B. Grant  
Steven B. Grant, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

[Signature]  
CITY Attorney

EXECUTED by COUNTY this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

(County Seal)

ATTEST:  
SHARON R. BOCK,  
CLERK AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA  
By ITS BOARD OF COUNTY  
COMMISSIONERS

\_\_\_\_\_  
Deputy Clerk,

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

[Signature]  
Assistant County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS:

[Signature]  
Division Director  
KPS



Map Created By: Greg Owens  
Date: November 27th, 2017

# EXHIBIT "A"

RESOLUTION R18-027

A RESOLUTION OF THE CITY OF BOYNTON BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH PALM BEACH COUNTY TO FACILITATE AN ASSESSMENT PROCESS AS PART OF PALM BEACH COUNTY'S MUNICIPAL SERVICE TAXING UNITS (MSTU) FOR THE CONSTRUCTION OF WATER AND SEWER PIPELINES, FIRE HYDRANTS, WATER METER BOXES AND OTHER ASSOCIATED MATERIALS WITHIN THE COUNTY ROAD RIGHT OF WAY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, as part of Palm Beach County's Municipal Service Taxing Unit (MSTU) program, the City of Boynton Beach and the County will enter into an agreement for implementation of a water and wastewater expansion project which includes, but is not limited to, the cost of the petition process, designing, bidding, construction and contract administration for providing water and sewer service to approximately 230 homes; and

WHEREAS, the City will be responsible for implementing the water and sewer improvement program and the County will assess the property owners for the cost of the program and transfer the collected funds to the City; and

WHEREAS, the City Commission upon recommendation of staff, deems it to be in the best interest of the citizens and residents of the City of Boynton Beach to authorize the Mayor to sign an Agreement with Palm Beach County for the monetary assessment for the construction of water and sewer pipelines, fire hydrants, water meter boxes and other associated materials within the County Road right-of-way as part of Palm Beach County's MSTU program.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

Section 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as

31 hereof.

32           Section 2.       The City Commission approves and authorizes the Mayor to sign an  
33   Agreement with Palm Beach County for the monetary assessment for the construction of water  
34   and sewer pipelines, fire hydrants, water meter boxes and other associated materials within the  
35   County Road right-of-way as part of Palm Beach County's MSTU program, a copy of the  
36   Agreement is attached hereto and made a part hereof as Exhibit "A".

37 Section 3. That this Resolution shall become effective immediately upon passage.

38 **PASSED AND ADOPTED** this 20<sup>th</sup> day of February, 2018.

CITY OF BOYNTON BEACH, FLORIDA

YES NO

Mayor – Steven B. Grant

100

Vice Mayor – Justin Katz



Commissioner – Mack McCray

✓

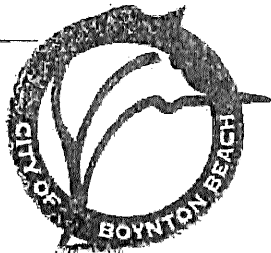
Commissioner – Christina L. Romelus

Commissioner – Joe Casello

VOTE 5-0

ATTEST:

Judith A. Pyle, CMC  
City Clerk



(City Seal)

**AGREEMENT BETWEEN THE CITY OF BOYNTON BEACH AND  
PALM BEACH COUNTY, FLORIDA**

**FOR**

**THE MONETARY ASSESSMENT FOR THE CONSTRUCTION OF MUNICIPAL  
WATER AND SEWER SERVICE IN WEST BOYNTON PLAT NO 2B & C**

THIS AGREEMENT is made and entered into this 13<sup>th</sup> day of February, 2018, by and between the City of Boynton Beach, a municipality in the State of Florida, (CITY), and Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners, (COUNTY) (collectively "parties" and individually "party").

**WITNESSETH:**

**WHEREAS**, the COUNTY and the CITY are authorized to enter into this AGREEMENT pursuant to Chapter 163, Florida Statutes, as amended, which permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage; and

**WHEREAS**, the CITY has requested the COUNTY to facilitate an assessment process per COUNTY Code, Chapter 26 – Special Districts, Article II, Municipal Service Taxing Units (MSTU) for the construction of water and sewer pipelines, fire hydrants, water meter boxes and other associated materials within the County Road right of way (PROJECT). The PROJECT includes but not limited to the cost the petition process, designing, bidding, construction and contract administration for the area shown in 'Exhibit - A' which a part of the West Boynton Plat No 2 B & C as recorded in Plat Book 15 pages 13-14 of the public records of Palm Beach County, Florida; and

**WHEREAS**, the CITY will cause to be prepared, scope of services and specifications for the PROJECT; and

**WHEREAS**, the CITY is desirous of funding and facilitating the PROJECT if at least 51% of initial petitions returned by the benefitting property owners agree to the PROJECT; and

**WHEREAS**, the COUNTY is agreeable to assessing the property owners benefitting from the PROJECT over a TWENTY (20) year period at an interest rate not to exceed 5.5% per annum, and transferring the collected funds to the CITY; and

**WHEREAS**, the CITY is agreeable to including the COUNTY administrative fees in the funding of the PROJECT.

**NOW, THEREFORE,** in consideration of the mutual covenants, promises, and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

The above recitals are true and correct and hereby adopted and incorporated herein.

**1. COUNTY Responsibilities:**

- A. Petition the benefitting property owners within the PROJECT boundary to determine if a majority (51%) of the returned petitions are in favor of being assessed by the COUNTY for the PROJECT.
- B. Notify the benefitting property owners, by letter, of their proposed assessment which will be established and confirmed at a public hearing before the Palm Beach County Board of County Commissioners (BCC). Letter will be sent when all PROJECT costs have been determined, including but not limited to the CITY received bid, Palm Beach County Property Appraisers', Office of the Clerk & Comptrollers' and Tax Collectors' fees. Letter must also include the public hearing date and location.
- C. Hold a said public hearing before the BCC to establish and confirm the benefitting property owners' assessment.
- D. Provide the CITY with a list of benefitting property owners based on the assessment roll approved at the COUNTY Public Hearing.
- E. Transfer the assessments collected to the CITY on the first workday of each quarter of the calendar year.

**2. CITY Responsibilities:**

- A. Design, obtain all necessary permits including COUNTY permits, Construct and maintain the Project during and after completion at the City's sole cost.
- B. Participate in the Public Hearing before the BCC to answer any questions.
- C. Reimburse the COUNTY for costs incurred during the administration of the MSTU assessment program for the PROJECT, including but not limited to staff costs, initial petition process, public hearing process and mailing costs, at the following lump sum for each milestone achieved:
  - 1. Initial Petition process Completion: \$2,500, regardless of the outcome of the petitions;
  - 2. Public Hearing process: \$2,500, regardless of the outcome of the Public Hearing; and
  - 3. PROJECT Completion - Final Assessment Roll filed: \$2,500.

The CITY shall pay to the COUNTY compensation as set forth above within thirty (30) days of receiving written notification from the COUNTY of completion of the above milestones. COUNTY will not proceed with work for the next milestone until payment of the previous milestone is received.



D. The CITY shall require each contractor engaged by the CITY for work associated with the AGREEMENT to maintain:

- a. Commercial General Liability coverage, including vehicle coverage, in combined single limits of not less than ONE MILLIONS DOLLARS (\$1,000,000.00). The COUNTY shall be named as an additional insured on the certificate of insurance.
- b. A payment and performance bond for the total amount of the PROJECT in accordance with Florida Statute 255.05.
- c. Workers' Compensation coverage in accordance with Florida Statutes

**3. PERSONNEL:**

All of the PROJECT services required herein shall be performed by the CITY's contractor and will be overseen by CITY personnel. All personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

As provided in Section 287.132-133, Fla. Stat., by entering into the agreement or performing any work in furtherance hereof, CITY certifies that its' affiliates, suppliers, contractors, sub-contractors and consultants who perform work hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within 36 months immediately preceding the date hereof. This notice is required by Section 287.133(3)(a), Fla. Stat.

**4. INDEMNIFICATION:**

Each Party shall be liable for its own actions and negligence and, to the extent permitted by law, County shall indemnify, defend and hold harmless City against any actions, claims or damages arising out of County's negligence in connection with this Agreement, and City shall indemnify, defend and hold harmless County against any actions, claims, or damages arising out of 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 Florida Statutes, Section 768.28, 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.

**5. NOTICE:**

All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be hand delivered by prepaid express overnight courier of messenger services, or mailed by registered or certified mail to the following addresses:

COUNTY	Palm Beach County Engineering Department
	Attention: Tanya N. McConnell, P.E.
	Deputy County Engineer
	P.O. Box 21229, W. Palm Beach, FL 33416

CITY

City of Boynton Beach Public Services  
Attention: Colin Groff, PE  
Assistant City Manager – Public Services  
100 E Boynton Beach Blvd.,  
Boynton Beach, FL 33435

If either party changes its mailing address of designated recipient for notices, such change shall be communicated in writing to the other party within thirty (30) days of the change.

**6. MISCELLANEOUS PROVISIONS**

**A. 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. The failure of any party to insist on a strict performance of any of the terms and conditions hereof shall not be deemed a waiver of any subsequent breach or default in any terms and conditions.

**B. THIRD PARTY BENEFICIARIES:**

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 CITY.

**C. ARREARS:**

The CITY shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any agreement, debt, obligation, judgment, lien, or any form of indebtedness. The CITY further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

**D. ACCESS AND AUDITS:**

The CITY shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Agreement. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CITY's place of business.

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 agreements, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CITY, its officers, agents, employees, and lobbyists in order to ensure compliance with agreement 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, Fla. Stat., in the same manner as a second-degree misdemeanor.

**E. NONDISCRIMINATION:**

The CITY will include in the aquatic management contract that, the Contractor 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.

**F. 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.

**G. ENTIRETY OF 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, except by written instrument executed by the parties hereto.

**F. ATTORNEY FEES:**

Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties; provided, however, that this clause pertains only to the parties to the Agreement.

**I. GOVERNING LAW AND VENUE:**

This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to any contrary conflicts of laws principle. Venue of all proceedings in connection herewith shall be exclusively in Palm Beach County, Florida, and each party hereby waives whatever their respective rights may have been in the selection of the venue.

**J. LIABILITY:**

The parties to this Agreement shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party (or parties). Nothing contained herein shall be construed as a waiver by the parties, of the liability limits established in Section 768.28, Fla. Stat.

**K. LAWSUITS:**

CITY shall promptly notify COUNTY of any lawsuit-related complaint, or cause of action threatened or commenced against it, which arises out of or relates, in any manner, to the performance of this Agreement.

**L. DEFAULT:**

The parties expressly covenant and agree that in the event any of the parties is in default of its obligations under this Agreement, the parties not in default shall provide to the defaulting party thirty (30) days written notice before exercising any of their rights.

**M. JOINT PREPARATION:**

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial constraint, be construed more severely against one of the parties than the other.

**N. BINDING EFFECT:**

All of the terms and provisions of this Agreement whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors and permitted assigns.

**O. HEADINGS:**

The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

**P. COUNTERPARTS:**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Q. ASSIGNABILITY:**

This Agreement may not be assigned without prior written consent of all parties to this Agreement, provided such consent may not be unreasonably withheld.

**R. ANNUAL APPROPRIATION:**

County's performance and obligation to pay under the Agreement is contingent upon an annual appropriation by the Board.

**S. FILING:**

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

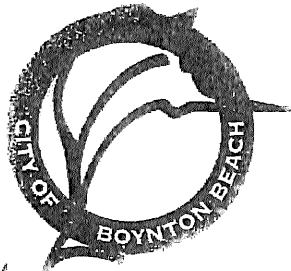
**T. EFFECTIVE DATE:**

This Agreement shall be effective as of the last date that it is signed by all parties hereto.

**THIS SPACE LEFT BLANK  
INTENTIONALLY**

EXECUTED by the CITY OF BOYNTON BEACH this 23rd day of February 2018.

(Authority Seal)



ATTEST:

Judith Pyle  
Judith Pyle, CITY Clerk

CITY OF BOYNTON BEACH

Steven B. Grant  
Steven B. Grant, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

[Signature]  
CITY Attorney

EXECUTED by COUNTY this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

(County Seal)

ATTEST:  
SHARON R. BOCK,  
CLERK AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA  
By ITS BOARD OF COUNTY  
COMMISSIONERS

\_\_\_\_\_  
Deputy Clerk,

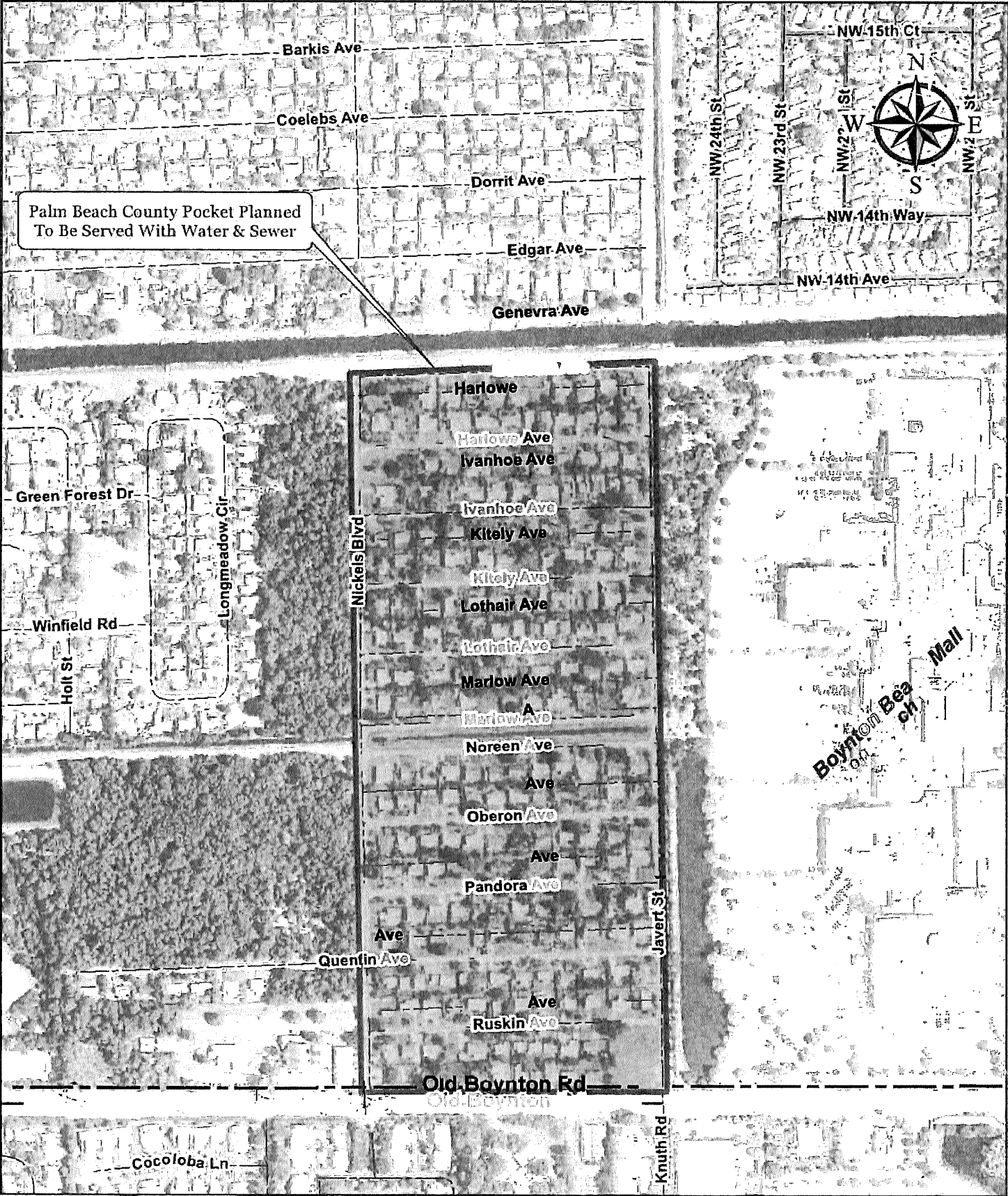
\_\_\_\_\_  
Mayor

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS:

\_\_\_\_\_  
Assistant County Attorney

\_\_\_\_\_  
Division Director



**EXHIBIT "A"**

Map Created By: Greg Owens  
Date: November 27th, 2017