

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

<b>Meeting Date:</b>	May 7, 2019	[X] Consent	[ ] Regular
		[ ] Ordinance	[ ] Public Hearing

**Department:** Department of Housing and Economic Sustainability

**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to approve: A)** an Interlocal Agreement with the Boynton Beach Community Redevelopment Agency (CRA) to provide assistance related but not limited to economic development impact analyses for a period of five (5) years, and renewals; and **B)** Delegation of authority to the County Administrator, or designee, to execute future amendments or modifications to said Agreement.

**Summary:** This Agreement with the CRA is intended to provide services based on a written scope of services requested and provided by the CRA on an as needed basis. Based on CRA's requested scope of services, the County will provide a good faith estimate of the cost to perform the scope of services. The written scope of work combined with the good faith estimate, shall be approved by the County Administrator, or designee, and CRA's Executive Director. District 7 (JB)

**Background and Justification:** The CRA has executed an Interlocal Agreement with Palm Beach County to provide services which will be defined on a case by case basis, consistent with Section 163.01, Florida Statutes, known as the Florida Interlocal Cooperation Act of 1969 (FICA). FICA authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on the 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 permitting public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege or authority which such agencies share in common and which each might exercise separately.

The County has historically entered into agreements with entities including municipalities, for the purpose of creating partnerships toward accomplishing economic development goals. The County entered into an Interlocal Agreement R2014-0679 with the City of West Palm Beach to provide services related to evaluation of economic development opportunities within the City; R2015-0682 with the City of Lake Worth to secure and implement an infrastructure grant to stimulate demand for the Lake Worth Park of Commerce; R2015-1564 with the Treasure Coast Regional Planning Council for site specific economic redevelopment; R2015-1708 with the Florida Atlantic Research and Development Authority to secure and implement a grant for the feasibility of a northern county Research Park; and R2016-1597 with the City of West Palm Beach for the cleanup of a site for economic redevelopment.

**Attachment(s):**

1. Interlocal Agreement with the Boynton Beach Community Redevelopment Agency

<b>Recommended By:</b>	 Department Director	4/22/19 Date
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<b>Approved By:</b>	 Assistant County Administrator	4/30/19 Date
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**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>					

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes \_\_\_\_\_ No X  
 Does this Item include the use of Federal funds? Yes \_\_\_\_\_ No X

Budget Account No.:

Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_ Program Code/Period \_\_\_\_\_

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

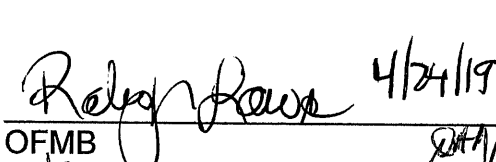
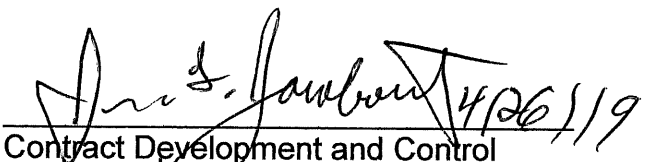
Fiscal impact is indeterminable. Approval of this agenda item will generate income to the County from the Boynton Beach CRA for services rendered on an as needed basis.

**C. Departmental Fiscal Review:**

  
 Beverley Reid, Division Manager

**III. REVIEW COMMENTS**

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

 4/24/19  
 OFMB 4/23  
 4/26/19  
 Contract Development and Control  
 4/26/19 TW

**B. Legal Sufficiency:**

 4/29/19  
 Assistant County Attorney

**C. Other Department Review:**

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

## INTERLOCAL AGREEMENT

This Interlocal Agreement is made, between the City of Boynton Beach Community Redevelopment Agency (CRA), a dependent special district established by the City of Boynton Beach pursuant to Chapter 163, Part III, Florida Statutes, located in Palm Beach, Florida (hereinafter "CRA") and Palm Beach County, a political subdivision of the State of Florida, (hereinafter "COUNTY"), each one constituting a public agency as defined in Part I and Part III of Chapter 163, Florida Statutes.

### W I T N E S S E T H

**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**, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

**WHEREAS**, The COUNTY has the ability to provide services related to the evaluation of economic development opportunities to the CRA, and the CRA desires to utilize such services; and

**WHEREAS**, The CRA and the COUNTY have determined that providing such services to the CRA is cost effective and in the best interests of the citizens of the COUNTY.

**NOW THEREFORE**, in consideration of the mutual representations, terms, and covenants hereinafter set forth, the parties hereby agree as follows:

#### **Section 1. Purpose**

The purpose of this Agreement is to provide assistance with the evaluation of economic development opportunities.

#### **Section 2. Definitions**

The following definitions shall apply to this Agreement:

"Act" means Part I of Chapter 163, Florida Statutes.

"Agreement" means this Interlocal Agreement, including any amendments or supplements hereto, executed and delivered in accordance with the terms hereof.

“**County Services**” means services provided to the CRA by the COUNTY concerning economic development, including evaluation of economic development opportunities within the CRA in the form of economic impact analyses and such other similar services as the Parties may agree to in the manner provided for in this Agreement.

“**Public Agency**” means any governmental or special district entity as defined by Part I and Part III of Chapter 163, Florida Statutes.

**Section 3. Representative/Monitoring Position**

The COUNTY'S representative/Agreement monitor during the term of this Agreement shall be Alan Chin Lee, whose telephone number is (561) 233-3607 and whose email address is achinlee@pbcgov.org.

The CRA'S representative/Agreement monitor during the term of this Agreement shall be Thuy Shutt, whose telephone number is (561) 600-9098 and whose email address is ShuttT@bbfl.us.

**Section 4. Effective Date/Term**

The Effective Date shall be the date upon which the Palm Beach County Board of County Commissioners approves this Agreement at a formal meeting of the Board. The term of this Agreement shall be for a period of five (5) years unless terminated earlier as provided hereinafter.

**Section 5. CRA Responsibilities and Duties**

When the CRA desires to use County Services, the CRA will provide to the COUNTY a written notice of required services, which may be sent by electronic mail to the COUNTY's representative/Agreement monitor at the email address provided in Section 3. The notice will include a scope of a proposed County Services project, proposed budget for the County Services project, an estimated time frame within which the County Services project needs to be completed, and any other back-up information necessary to support the notice. If, upon the receipt of a good faith cost estimate from the COUNTY as described in Section 6, the CRA desires to move forward with the County Services project, the CRA will provide written authorization (which may be in electronic or email format) to the COUNTY for the COUNTY to move forward. The COUNTY and the CRA may negotiate and revise the proposed scope, price, and other aspects of County Services project to the satisfaction of both parties prior to the CRA providing such authorization; however, any such revisions to the notice must be in writing (writing may including emails).

**Section 6. COUNTY Responsibilities and Duties.**

Upon receipt of the notice of required services from the CRA as provided in Section

5, the COUNTY will provide the CRA a notice of acceptance of the required services, and provide the CRA with a good faith cost estimate to perform the County Services project described in the notice. Upon receipt of written authorization from the CRA to perform the County Services as described in Section 5, the COUNTY will perform the County Services as agreed upon. The COUNTY will not invoice the CRA for amount that would cause the County Services project to exceed the good faith estimate without prior written approval by the CRA which may be given by email..

#### **Section 7. Payments/Invoicing and Reimbursement**

The COUNTY shall submit invoices either at the completion of the County Services project and delivery of all deliverables to the CRA; or, if the County Services project will exceed 2 months, the COUNTY will submit monthly invoices to the CRA. Invoices will include a reference to this Agreement, identify the County Services project, and identify the amount due and payable to the COUNTY. Invoices shall be itemized in sufficient detail for prepayment audit thereof. The COUNTY shall supply any further documentation deemed necessary by the CRA. Invoices received from COUNTY will be reviewed and approved by the CRA Finance Department, and then will be sent to the CRA Board for final approval. Invoices will normally be paid within thirty (30) days following approval by the CRA Board. The CRA will not approve a final payment for a County Services project until such project is complete and the CRA has received and accepted all deliverables associated with that Project. The CRA may decline to pay for invoiced County Services that default on or breach the terms of this Agreement or fail to substantially comply with the requirements of a County Services project.

#### **Section 8. Funding Source**

Funds used to compensate the COUNTY or services rendered will be those of the CRA only.

#### **Section 9. Access and Audits**

The COUNTY shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work. The CRA shall have access to all books, records and documents as required in this section for the purpose of inspection or audit during normal business hours.

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 COUNTY, 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 to the extent required by law 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.

#### **Section 10. Renewal**

Renewal of this Agreement must be by mutual consent of the parties hereto, such renewal to be in written form.

#### **Section 11. Breach/Opportunity to Cure**

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 thirty (30) days written notice to cure said default before exercising any of its rights as provided for in this Agreement.

#### **Section 12. Termination**

This Agreement may be terminated by either party for any reason upon 30 days written notice to the other party. In the event the CRA so terminates this Agreement, such termination shall be contingent upon the CRA making payment to the COUNTY for all services rendered by the COUNTY to the CRA up to and including the date of the termination, except in the event that the CRA terminates this Agreement due to COUNTY's default or breach of this Agreement or COUNTY's failure to substantially comply with the requirements of a County Services project, in which case termination shall not be contingent on the CRA making payment to the COUNTY.

#### **Section 13. Enforcement Costs**

Neither party shall be liable to the other party for any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement.

#### **Section 14. Annual Appropriation**

Each party's performance and obligation to pay under this Agreement is contingent upon an annual budgetary appropriation by its respective governing body for subsequent fiscal years.

#### **Section 15. Notice**

All notices required to be given under this Agreement shall be deemed sufficient to each party when delivered by United States Mail to the following:

**COUNTY**

Jonathan Brown

Director of the Department of Housing  
And Economic Sustainability  
100 Australian Avenue, 5<sup>th</sup> Floor  
West Palm Beach, FL 33406

**CRA**

Michael Simon

Executive Director  
Boynton Beach CRA  
710 N. Federal Highway  
Boynton Beach, FL 33435

with a copy to

Tara W. Duhy, Esq.  
Lewis, Longman & Walker, P.A.  
515 North Flagler Drive, Suite 1500  
West Palm Beach, FL 33401

Either party may change the names and addresses in this Section by providing written notice to the other party. Where explicitly permitted in this Agreement, a party may provide notice by sending an email to the other party's representative/Agreement monitor designated in Section 3.

**Section 16. Delegation of Duty**

Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or city officers.

**Section 17. Filing**

The COUNTY shall file a copy of this Agreement with the Clerk of the Circuit Court in and for Palm Beach County.

**Section 18. Liability**

Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, (Statute), CRA and COUNTY represent that each is a political sub-division of the state subject to the limitations of Florida Statutes 768.28 as amended. CRA and COUNTY each agree to maintain fiscally sound and prudent liability programs with regard to their respective obligations under this Agreement.

Should either CRA and/or COUNTY contract with a third-party to perform any services related to this AGREEMENT, CRA and/or COUNTY shall require the third-party to provide the following minimum insurance:

Commercial General Liability insurance with minimum limits of \$1,000,000

combined single limit for property damage and bodily injury per occurrence and \$2,000,000 per aggregate. Such policy shall be endorsed to include CRA and COUNTY as Additional Insureds.

Workers' Compensation insurance in compliance with Chapter 440, Florida Statutes, and such policy shall include coverage for Employer's Liability with minimum limits of \$100,000 each accident.

**Section 19. Indemnification**

The CRA agrees to protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers, and each of them free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature whether arising in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission or fault whether active or passive of CRA, of anyone acting under CRA's direction or control, or on CRA's behalf in connection with or incident to the performance of this Agreement. The aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall apply to the fullest extent permitted by law but in no event shall they apply to liability caused by the negligence or willful misconduct of the COUNTY, its respective agents, servants, employees or officers. Nothing in this Agreement shall be read to waive the liability limits set forth in 768.28, Florida Statutes.

**Section 20. Remedies**

This Agreement shall be construed by and 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 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 or 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.

**Section 21. Time of the Essence**

The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

**Section 22. Equal Opportunity Provision**

The COUNTY is committed to assuring equal opportunity in the award of Agreements and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution



R2017-1770, as may be amended, the CRA warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, 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 or expression, or genetic information. Failure to meet this requirement may be considered a default of the Agreement.

**Section 23. Captions**

The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

**Section 24. Severability**

In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

**Section 25. Entirety of Agreement**

This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreement, either written or oral, relating to this Agreement.

**Section 26. Public Records**

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the CRA: (i) provides a service; and (ii) acts on behalf of the COUNTY as provided under Section 119.011(2) F.S., the CRA shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The CRA is specifically required to:

- A. Keep and maintain public records required by the COUNTY to perform services as provided under this Agreement.
- B. Upon request from the COUNTY's Custodian of Public Records, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The CRA further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for

the duration of the Agreement term and following completion of the Agreement, if the CRA does not transfer the records to the COUNTY.

- D. Upon completion of the Agreement the CRA shall transfer, at no cost to the COUNTY, all public records in possession of the CRA unless notified by COUNTY's representative/Agreement monitor, on behalf of the COUNTY's Custodian of Public Records, to keep and maintain public records required by the COUNTY to perform the service. If the CRA transfers all public records to the COUNTY upon completion of the Agreement, the CRA shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the CRA keeps and maintains public records upon completion of the Agreement, the CRA shall meet all applicable requirements for retaining public records. All records stored electronically by the CRA must be provided to COUNTY, upon request of the COUNTY's Custodian of Public Records, in a format that is compatible with the information technology systems of COUNTY, at no cost to COUNTY.

Failure of the CRA to comply with the requirements of this article shall be a material breach of this Agreement. COUNTY shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. CRA acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

**IF THE CRA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CRA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT [RECORDSREQUEST@PBCGOV.ORG](mailto:RECORDSREQUEST@PBCGOV.ORG) OR BY TELEPHONE AT 561-355-6680.**

#### **Section 27. Counterparts and Transmission.**

To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The executed signature page(s) from each original may be joined together and attached to one such original and it shall constitute one and the same instrument. In addition, said counterparts may be transmitted electronically (i.e., via facsimile or .pdf format document sent via electronic mail), which transmitted document shall be deemed an original document for all purposes hereunder.

**Section 28. Agreement Deemed to be Drafted Jointly.**

This Agreement shall be deemed to be drafted jointly and shall not be construed more or less favorably towards any of the parties by virtue of the fact that one party or its attorney drafted all or any part thereof. Any ambiguity found to exist shall be resolved by construing the terms of this Agreement fairly and reasonably in accordance with the purpose of this Agreement.

**Section 29. Ownership of Deliverables.**

All deliverables from the County to the CRA for any and all County Services projects shall be the property of the CRA and subject to Section 27 herein above.

**[Signatures on Next Page]**

(COUNTY SEAL BELOW)

**PALM BEACH COUNTY, FLORIDA, a  
Political Subdivision of the State of Florida**

**BOARD OF COUNTY COMMISSIONERS**

ATTEST: Sharon R. Bock,  
Clerk & Comptroller

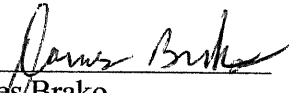
By: \_\_\_\_\_  
Mack Bernard, Mayor

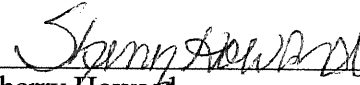
By: \_\_\_\_\_  
Deputy Clerk

Document No.: \_\_\_\_\_

Approved as to Form  
and Legal Sufficiency

Approved as to Terms and Conditions  
Dept. of Housing and Economic Sustainability

By:   
James Brako,  
Assistant County Attorney

By:   
Sherry Howard,  
Deputy Director

ATTEST:

BOYNTON BEACH COMMUNITY  
REDEVELOPMENT AGENCY, BY ITS  
BOARD



(SEAL)

By: [Signature]  
Board Chair

Print: Steven B Grant

Date: 4/13/2019

WITNESSES:

Vicki Hill  
Print

[Signature]  
Signature

BONNIE NICKLIEN  
Print

[Signature]  
Signature

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: [Signature]  
CRA Attorney