

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 2, 2021

Consent [X]

Regular [ ]

Public Hearing [ ]

Department: Water Utilities Department

I. EXECUTIVE BRIEF

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

**Summary:** Palm Beach County Water Utilities Department (PBCWUD) owns and operates the public water distribution system and wastewater collection system located within the limits of the City, which can be impacted by the City's road improvement projects. The proposed ILA provides for coordination between PBCWUD and the City for the planning and construction of the City's road improvement projects. The ILA includes the relocation design of PBCWUD facilities, and when needed, can be done by the City's consultant. The relocation, construction and or adjustment of PBCWUD facilities can be done by the City's road contractor and be included in the City's road improvement projects. District 6 (MJ)

**Background and Justification:** PBCWUD owns and maintains the public water distribution and wastewater collection systems located within the limits of the City pursuant to the First Amendment to the Interlocal Agreement forming the Glades Utility Authority on January 15, 2013 (R2013-0094). The City remains the governmental entity responsible for roadway improvements throughout the City limits. However, since most of the underground utilities are located within the road rights-of-way, the City and PBCWUD have determined that it is necessary and mutually beneficial to cooperate on roadway and utility projects to protect the integrity of the utility facilities. The coordination between the City and PBCWUD will yield monetary savings as well as reduce interruption of vehicular and pedestrian traffic.

**Attachments:**

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

Recommended By:

*Ali Bayat*

Department Director

*10/6/21*

Date

Approved By:

*Wesley J. Blum*

Assistant County Administrator

*10/21/2021*

Date

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Costs	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	0	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund                      Dept                      Unit                      Object

Is Item Included in Current Budget?                      Yes \_\_\_\_      No X

Does this item include the use of federal funds?                      Yes \_\_\_\_      No N/A

Reporting Category N/A

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

There is no fiscal impact at the time the Agreement is approved. Amounts are not encumbered until the Memorandum is issued.

### C. Department Fiscal Review:

[Signature] GE

## III. REVIEW COMMENTS

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

[Signature] 10/13/21  
OFA 10/13/21 OFMB 10/13

[Signature] 10/19/21  
Contract Development and Control  
10-18-21

### B. Legal Sufficiency:

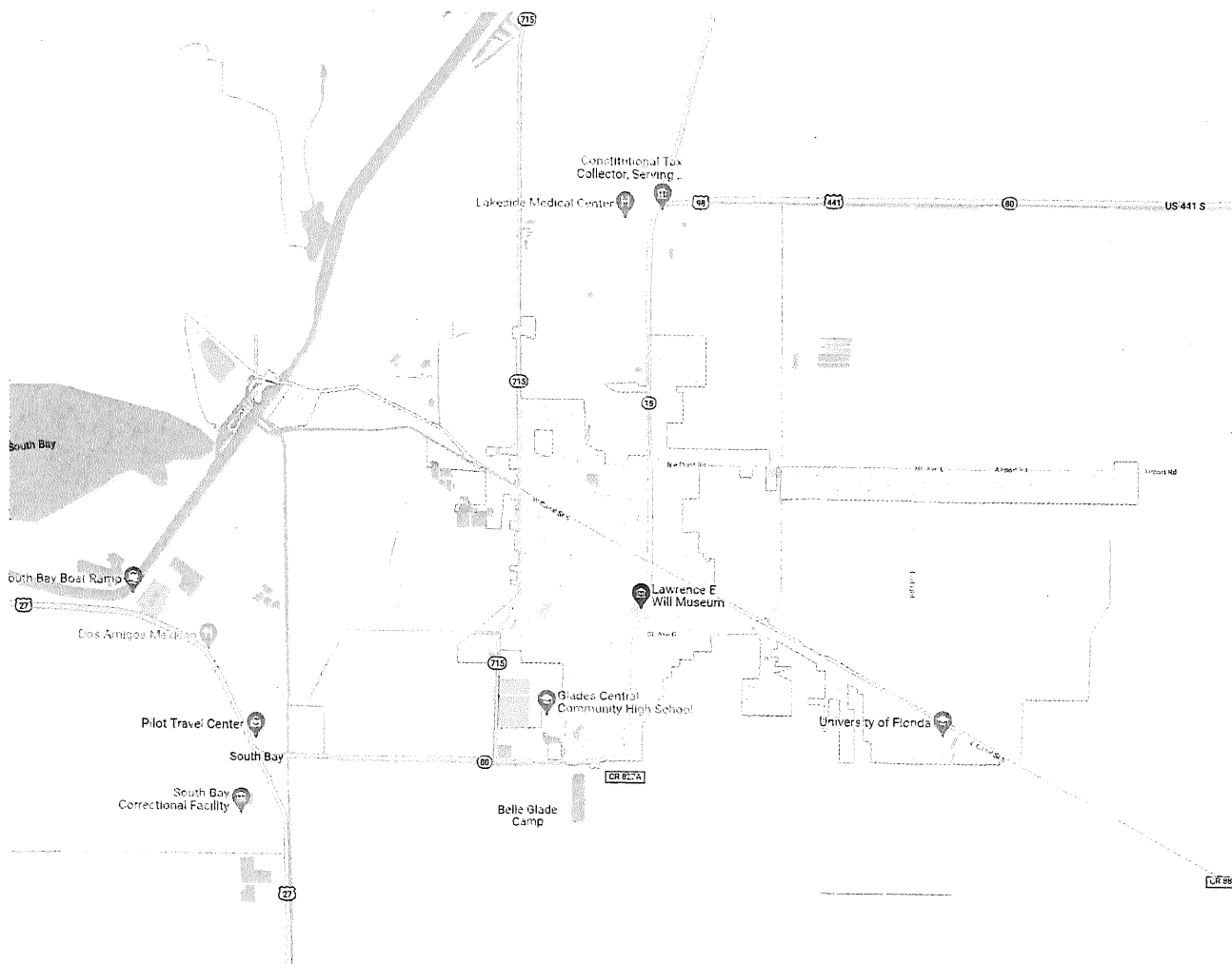
[Signature] 10/19/21  
Assistant County Attorney

### C. Other Department Review:

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

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

ATTACHMENT 1



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

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "County"), and the **CITY OF BELLE GLADE, FLORIDA**, a municipality organized under the laws of the State of Florida (hereinafter "City").

**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**, from time to time, the City undertakes certain road improvement projects (hereinafter "Projects"); and

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

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

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

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

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

1. The foregoing statements are true and correct.
2. Term/Effective Date. This Agreement shall become effective upon approval by both parties and continue for a period of twenty-five (25) years. The Effective Date of this

Agreement shall be the date the Agreement is ratified by the Palm Beach County Board of County Commissioners (the "Effective Date").

3. Procedure. The parties agree to comply with the following procedure related to the coordination of road/utility construction: City shall notify County of any upcoming Projects within a reasonable period of time prior to bidding said Project. Should County wish to incorporate the construction, relocation, or adjustment of any County Facilities within the Project, County shall provide to City all terms and conditions related to construction, relocation, or adjustment of County Facilities that the County wishes to be included in the Project bidding/contract documents. Prior to bidding the Project, the City shall have the option to decline the incorporation of County work into a City project when found to be in the best interest of the City. Otherwise, the City shall also have the option to decline the incorporation of County work if the City does not have adequate funds to advance on the County's behalf for the work to be done on the County Facilities. However, if the City deems that it does not have adequate funds, the City shall immediately notify the County and cooperate with the County to develop an alternative payment method. The City shall also have the option to decline the incorporation of County work if the County fails to provide, in a reasonably timely manner, responses or documentation necessary to incorporate the work based upon the City's schedule for the Project. Following the selection of a contractor and award of the contract by City, City shall notify the County of the total estimated costs related to the construction, relocation, or adjustment of County Facilities. The County Administrator or designee shall then execute a memorandum, a copy of which is attached hereto and incorporated herein as Exhibit "A", in order to confirm that the County agrees to provide the funds for the utility work. The County will forward the executed memorandum to the City no later than prior to the start of construction on the project. Should changing conditions increase the estimated costs, City shall provide notice of the increase to the County, and, should the County wish to continue the construction, the County Administrator or designee shall execute a revised memorandum for the new estimated cost total.

4. Payment. During construction of the Project, City shall invoice the County based on approved pay applications submitted to the City. County will, within (7) days after receipt of each invoice, either by non response indicate agreement to pay City or return the invoice to City indicating in writing County's reasons for refusing to make payment. Where accepted, said payment shall be made by County within (45) days of receipt of invoice from the City. Following completion of the Project, and after "As-built" quantities are established, the City and County shall agree as to the final cost of the utility portion of the Project. City shall provide County with a final invoice. County will, within (25) days after receipt of final invoice, either indicate in writing agreement to pay City or return the invoice to City indicating in writing County's reasons for refusing to make payment. Where accepted, said payment shall be made by County within (45) days of receipt of invoice from the City. If it is determined that the County overpaid for the utility portion of the Project, a refund request shall be submitted in writing to City within (25) days of final invoice. Following payment by the County, a bill of sale in an agreed-upon form shall be provided to the County from the City and the City's contractor.

5. Completion of Work by Palm Beach County. Notwithstanding the foregoing, the

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

6. Termination: The parties hereto expressly covenant and agree that in the event either party is in default of its obligations herein, the party not in default shall provide to the party in default ninety (90) days written notice to cure said default before exercising any of its rights as provided for in this Agreement. Failure to cure said default within ninety (90) days following notice may be grounds for termination of this Agreement. Termination of this Agreement by either party shall require thirty (30) days prior written notice to the other party prior to the termination date. The parties may mutually agree to extend the time for cure and/or termination. Either party may terminate this Agreement without cause with ninety (90) days written notice to the other party. If a project is in progress when a party terminates this Agreement without cause, this Agreement shall not terminate for that project until such project is completed and the final invoice is paid or upon the expiration of the 90 days, whichever is later, or as otherwise agreed to in writing by both parties.

7. No Transfer of Powers. Nothing contained in this Agreement shall be construed to constitute a transfer of powers in any way whatsoever. This Agreement is solely an Agreement to provide services as authorized in Florida Statutes, Chapter 163. The governing bodies for County and City shall each maintain all legislative authority with regard to their respective political subdivision. All of the privileges and immunities from liability; exemption from laws, ordinances, and rules; and pensions and relief, disability, workers compensation and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extra-territorially under the provisions of this Agreement.

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

9. Force Majeure In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including, but not limited to, Acts of God or of the public enemy,

war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, disorder or demonstration, terrorism, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe or water plan failures and water main breaks, neither party shall be liable for such non-performance.

10. Remedies. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter.

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

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

13. Severability If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

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

Office of the City Manager  
  
110 Dr. Martin Luther King Jr. Blvd.  
  
Belle Glade, Fl 33430  
  
Attn: Robert L. Rease, City Manager

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

Palm Beach County Water Utilities

8100 Forest Hill Boulevard

West Palm Beach, FL 33416

Attn: Department Director

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

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

17. Entirety of Agreement. County and City agree that this Agreement and any Exhibits hereto set forth the entire agreement between the parties, and that there are not promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties.

18. Palm Beach County Office of the Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General is authorized with the power to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

19. No Third Party Beneficiary. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or the City.

20. Non-discrimination. The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the City 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 shall be considered default of the Agreement.

21. E-Verify. City warrants and represents that it is in compliance with section 448.095,



Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov), and beginning January 1, 2021, uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of the Participant’s contractors and subcontractors performing any duties and obligations of this Agreement are registered with the E-Verify System, and beginning January, 1, 2021, use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

County shall terminate this Agreement if it has a good faith belief that City has knowingly violated Section 448.09(1), Florida Statutes as may be amended.

**(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)**

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

ATTEST:

Joseph Abruzzo, Clerk of the Circuit  
Court & Comptroller, Palm Beach County

PALM BEACH COUNTY, BY ITS  
BOARD OF COUNTY COMMISSIONERS

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

By: \_\_\_\_\_  
Dave Kerner, Mayor

(SEAL)

APPROVED AS TO FORM AND TO  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

By: \_\_\_\_\_  
County Attorney

By: *Al. Borat*  
Director of Water Utilities

ATTEST:

CITY OF BELLE GLADE,  
FLORIDA

For By: *Debra R. Buff*  
Debra R. Buff, MMC, City Clerk

By: *Steve B. Wilson*  
Steve B. Wilson, Mayor

APPROVED AS TO FORM AND TO  
LEGAL SUFFICIENCY

By: *Glen J. Torcivia*  
Glen J. Torcivia, City Attorney

**EXHIBIT A - MEMORANDUM**

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

**PALM BEACH COUNTY**

By: \_\_\_\_\_  
County Administrator or Designee

Date: \_\_\_\_\_

**WATER UTILITIES DEPARTMENT APPROVAL**

By: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY**

By: \_\_\_\_\_  
County Attorney