

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date:	May 3, 2022	<input checked="" type="checkbox"/>	Consent	<input type="checkbox"/>	Regular
		<input type="checkbox"/>	Workshop	<input type="checkbox"/>	Public Hearing

Department:	Engineering & Public Works Department
Submitted By:	Engineering & Public Works Department
Submitted For:	Roadway Production Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Interlocal Agreement (Agreement) with the Town of Jupiter (Town) for joint funding of the design, permitting and construction of drainage improvements on A1A from Indiantown Road to approximately 650 feet north (Project).

SUMMARY: Approval of this Agreement will allow Palm Beach County (County) and the Town to share the costs for design and construction of the Project to improve the existing drainage system on A1A from Indiantown Road to approximately 650 feet north, located within the Town. The Town observed flooding on A1A north of Indiantown Road during peak storm events. Depending on the severity of the rain event, both lanes of A1A are under water for more than a day. The Town has requested the County participate in joint funding for the Project. The County is responsible for maintaining A1A within the Project's limits. The Town agrees to fund the design, permitting, and post design services of the Project at an estimated cost of \$71,000. The County agrees to bid, fund and inspect the construction of the Project at an estimated cost of \$780,000. Construction costs shall be based upon actual contract costs using contract unit prices and actual construction quantities, said quantities being measured by the County. District 1 (YBH)

Background and Justification: The Engineering Department recommends approval of the Agreement by the Board of County Commissioners.

Attachments:

1. Location Map
 2. Interlocal Agreement with the Town of Jupiter (2 originals)
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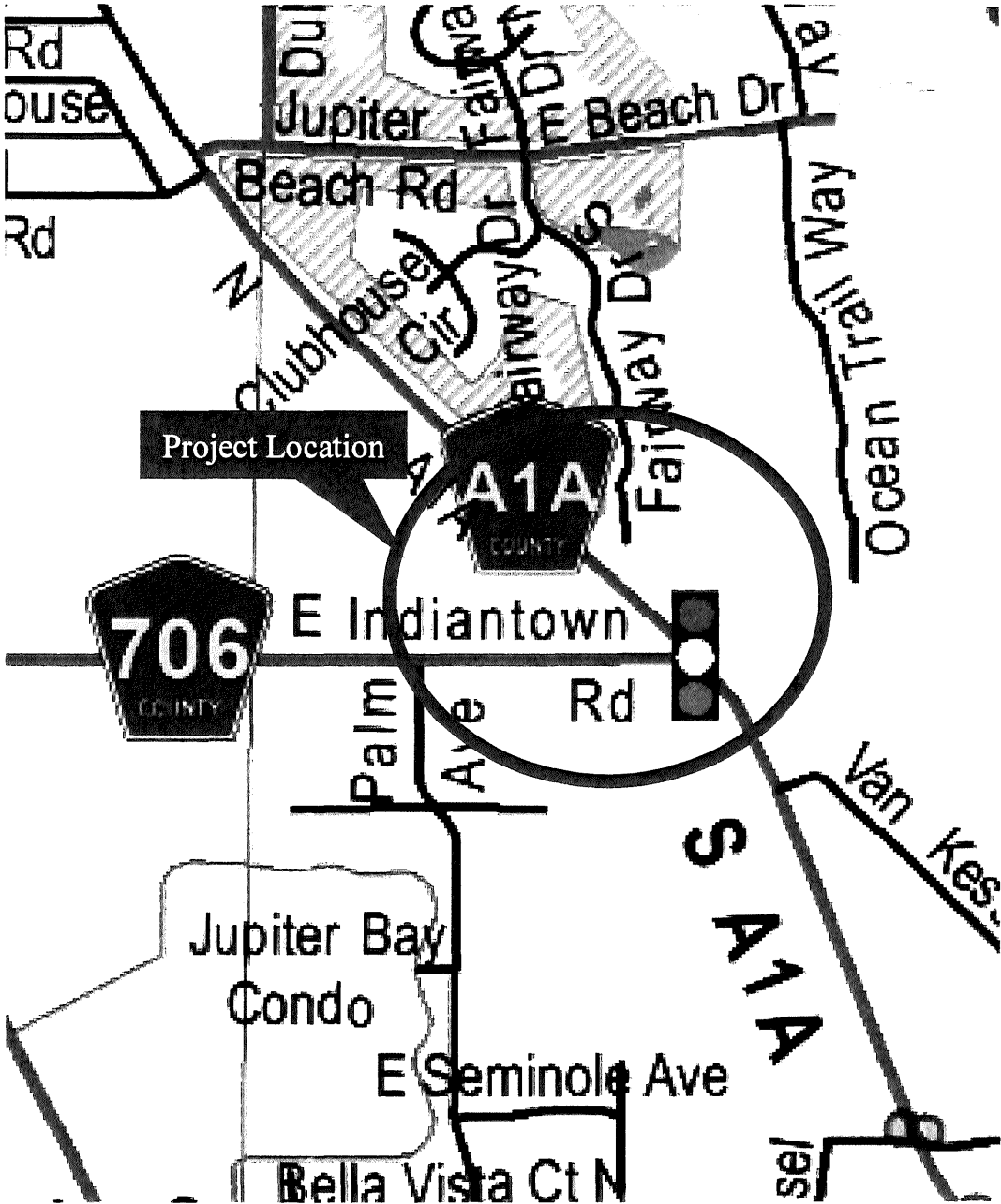
<i>TKR</i> Recommended by: <i>smk</i> <i>KCS</i> <i>KOF</i> YBH/TEL	<i>David Z. Pitt</i> _____ County Engineer	<i>3/28/22</i> _____ Date
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Approved By: _____	<i>Pat</i> _____ Assistant County Administrator	<i>4/10/22</i> _____ Date
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PROJECT LOCATION

A1A from Indiantown Road to approximately 650' north

PALM BEACH COUNTY PROJECT #2020027



LOCATION MAP

n:\roadway\local_roads_section_projects\drainage_2020027 - a1a north of indiantown rd\drainage\ipa_bcc_mtg_dis\draft\10-21-21.docx

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH
COUNTY, FLORIDA AND THE TOWN OF JUPITER FOR JOINT
FUNDING OF THE DESIGN, PERMITTING AND
CONSTRUCTION OF DRAINAGE IMPROVEMENTS ON A1A
FROM INDIANTOWN ROAD TO APPROXIMATELY 650 FEET
NORTH PALM BEACH COUNTY PROJECT NO. 2020027, PALM
BEACH COUNTY, FLORIDA**

THIS Interlocal Agreement, (Agreement), for drainage improvements on A1A from Indiantown Road to approximately 650 feet north, is made and entered into this ____ day of _____, 2022, by and between Palm Beach County, a political subdivision in the State of Florida, by and through its Board of County Commissioners ("**County**") and the Town of Jupiter, a municipal corporation existing under the laws of Florida, (hereinafter "**Town**"), each one constituting a public agency defined in Part I of Chapter 163, Florida Statutes (individually Party and collectively Parties).

W I T N E S S E T H:

WHEREAS, Section 163.01 of the Florida Statutes allows governmental units to make the most efficient use of their powers by enabling them to cooperate with other agencies on a basis of mutual advantage and thereby provide services and facilities that will harmonize geography, economy, 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 **Town** has observed flooding issues on A1A north of Indiantown Road; and

WHEREAS, the **Town** desires improvements be made to the existing drainage system to alleviate the flooding issues on A1A from Indiantown Road to approximately 650 feet north, all of which is located within the **Town** (hereinafter, the "**Project**"); and

WHEREAS, the **Town** agrees to fund the cost for design and permitting of the **Project** which is estimated to be Seventy One Thousand Dollars (\$71,000); and

WHEREAS, the **County** agrees to bid and fund the construction of the **Project** which is estimated to be Seven Hundred and Eighty Thousand Dollars (\$780,000). Costs shall be based upon actual contract costs using contract unit prices and actual constructed quantities, said quantities being measured by the **County**; and

WHEREAS, the **County** is responsible for maintenance of A1A within the **Project** limits; and

WHEREAS, the **Town** has requested **County** to participate in joint funding of construction for the **Project**; and

WHEREAS, both the **County** and the **Town** declare it to be in the public interest that the **Project** be constructed.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein,

the Parties agree as follows:

1. **Recitals.** The above recitals are true and correct to the best of the knowledge of the Parties and are incorporated herein by this reference.
2. The purpose of this Agreement is to specify the Parties' respective roles and obligations regarding design, permitting, bidding, construction, funding and maintenance of the Project.
3. **TOWN RESPONSIBILITIES**
 - A. The Town shall be responsible for obtaining and undertaking the design services to provide plans for bidding and construction of the Project. The Town shall include the County in the design process and submit progress plans and support documents at 50% and 100% of the design phases for review and comment. The County comments will be incorporated or addressed as required. An explanation will be provided by the Town if County comments are not incorporated into the design. Upon completion of the design and permitting of the Project, the Town shall provide to the County plans and final documents in accordance with the Palm Beach County Roadway Design Procedures.
 - B. The Town shall be responsible for obtaining all necessary clearances and permits required for the construction of the Project from the appropriate permitting authorities including final acceptance and approval from the County Engineering Department.
 - C. The Town will fund Post Design Services from the design engineer for the duration of the Project construction.
 - D. The Town shall not sublet, assign or transfer any responsibilities under this Agreement without the prior written consent of the County.
4. **COUNTY RESPONSIBILITIES**
 - A. The County will review progress design plans at 50% and 100% phase of completion submitted by the Town and provide any comments within 30 calendar days.
 - B. The County shall publically bid, administer, construct and inspect the Project in accordance with all applicable federal, state and local statutes, rules and regulations, and standards.
 - C. The County shall be solely responsible for, and agrees to provide or cause to be performed, all inspection services during construction of the Project.
 - D. Upon final acceptance of the Project, the County shall be solely responsible for the full maintenance of the Project in perpetuity.
5. **PAYMENT**
 - A. The Town agrees to fund all costs associated with the design and permitting of the Project.
 - B. The County agrees fund all costs associated with the bidding and construction of the Project, as outlined and shown in the bid documents.

6. **TERMINATION AND DEFAULT**

- A. This Agreement may be terminated by either Party upon sixty (60) days written notice to the other Party, except as otherwise addressed in this Agreement. However, once the Project has commenced, it shall be prosecuted to completion and this Agreement shall be binding upon the Parties and neither Party shall have the right to terminate the subject Agreement.
- B. If either Party determines that the other Party is not performing its responsibilities satisfactorily, the Party shall notify the other Party of the deficiency with a requirement that the deficiency be corrected within a specified time. If the deficiency identified is not corrected within the specified time, this Agreement shall automatically terminate at the end of the specified correction period.
- C. If either Party requires termination of the Agreement for reason other than unsatisfactory performance by the other Party, the Party shall notify the other Party of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

7. **GENERAL PROVISIONS**

- A. Liability. Each Party shall be liable for its own actions and negligence and, to the extent permitted by law, each Party shall indemnify, defend and hold harmless the other Party against any actions, claims or damages arising out of the other Party'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.
- B. Budgetary Conditions. All provisions of this Agreement calling for the expenditure of money by either Party prior to the time actual construction of the Project begins, are subject to annual budgetary funding. Each Party's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by their respective governing bodies. Once the Town commences work on design and permitting of the Project, all work including construction by the County shall be prosecuted to completion, unless a Party notifies the other Party that further work on the Project must cease. In that event the Party notifying the other Party that work must cease shall be responsible for all future costs incurred relating to the Project.
- C. Notice. Any notice, request, instruction, demand, consent, or other communication required or permitted to be given under this Agreement shall be in writing (including facsimile or electronically) and shall be delivered, as elected by the Party, by means of courier or messenger service, by facsimile or email (followed by mailing of hard copy by U.S. mail) or by certified mail, postage prepaid, and certified return receipt requested to the following addresses or such other addresses as the Parties may provide to each other in writing:

To the Town:

Town of Jupiter
Attn: David Brown
Director of Utilities
P.O. Box 8900
Jupiter, FL 33468-8900

To the County:

Morton L. Rose, P.E., Director,
Roadway Production Division
Engineering and Public Works Department
P.O. Box 21229
West Palm Beach, FL 33416-1229

- D. Legal Fees. The Parties shall bear their own costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms and conditions of this Agreement.
- E. Amendments. Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless agreed to by the Parties in writing and executed in the same manner as was this Agreement.
- F. Venue. This Agreement shall be construed and governed by the laws of the State of Florida. Venue for any and all legal action necessary to enforce this Agreement shall be held in Palm Beach County. No remedy conferred upon either Party by this Agreement is intended to be exclusive of any other remedy existing at law, in equity or otherwise. No single or partial exercise by either Party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.
- G. Preparation. Preparation of this Agreement was a joint effort of the Parties and should not be construed more severely against one Party than the other.
- H. Non-Discrimination. The Parties agree that no person shall be excluded on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement. 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 Town warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, it does not practice discrimination on the bases of 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.
- I. Severability. In the event any provision hereof is held invalid by a court of competent jurisdiction, the remaining portions of the Agreement shall remain in full force and effect.
- J. Entire Understanding. This Agreement represents the entire understanding of the Parties and supersedes all other negotiations, representations or agreements, written or oral, relating to this Agreement.
- K. Inspector General. The 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 contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of Town, its officers, agents, employees, and lobbyists in order to ensure compliance

with contract 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, Florida Statutes, in the same manner as a second-degree misdemeanor.

- L. **Records.** The County and Town shall maintain books, records, and documents to justify all charges, expenses and costs incurred or paid by them under this Agreement in performance of the term of this Agreement, in accordance with Generally Accepted Accounting Principles (GAAP), as promulgated by the Government Finance Officers Association from time to time. The County and Town shall have access to all books, records, and documents as required in this Agreement, and for at least five (5) years after completion of the Project.

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Town: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Town shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Town 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 Town 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 contract term and following completion of the Agreement, if the Consultant does not transfer the records to the public agency.
- d. Upon completion of the Agreement, the Town shall transfer, at no cost to the County, all public records in possession of the Town unless notified by County's representative/liaison, 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 Town transfers all public records to the County upon completion of the Contract, the Town shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Town keeps and maintains public records upon completion of the Contract, the Town shall meet all applicable requirements for retaining public records. All records stored electronically by the Town 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.
- e. Failure of the Town to comply with the requirements of this section 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. Town 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 TOWN HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TOWN'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 OR BY TELEPHONE AT 561-355-6680

M. Contractual Relationship. County and Town 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 Town employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to Town'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. The County and Town do not have the power or authority to bind each other in any promise, agreement or representation without the prior written consent of the other Party.

N. Required Consultants/Personnel. Town represents that it has, or will secure, all necessary personnel required to perform the Project services required of it under this Agreement. Such personnel shall not be agents, employees of or have any contractual relationship with the County. All of the Town services required hereunder shall be performed by Town or its consultants and contractors, with any such personnel engaged in performing such services to be fully qualified and, if required, authorized, licensed or permitted under State and local law to perform such services.

County represents that it has, or will secure, all necessary personnel required to perform the Project services required of it under this Agreement. Such personnel shall not be agents, employees of or have any contractual relationship with the Town. All of the County services required hereunder shall be performed by County or its consultants and contractors, with any such personnel engaged in performing such services to be fully qualified and, if required, authorized, licensed or permitted under State and local law to perform such services.

All of County's personnel, contractors and all subcontractors while on County premises will conduct themselves in an acceptable manner and follow acceptable safety and security procedures.

O. 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.

- P. Legal Compliance. County and Town shall abide by all applicable federal, State and local laws, orders, rules and regulations when performing under this Agreement. County and Town further agree to the inclusion of this provision in all subcontracts issued as a result of this Agreement.
- Q. Waiver of Jury Trial. The Parties hereby waive any rights either of them may have to a jury trial in any litigation arising out of or related to this Agreement and agree that they shall not elect a trial by jury. The Parties hereto have separately, knowingly and voluntarily given this waiver of right to trial by jury with the benefit of competent legal counsel.
- R. Convicted Vendor List. As provided in Sections 287.132-133, Florida Statutes, as may be amended from time to time, by entering into this Agreement or performing any work in furtherance hereof, Town shall have its contractor certify that their affiliates, suppliers and sub-consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date hereof.
- S. Scrutinized Companies. As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Town certifies that it, its affiliates, contractors, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.
- T. 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 the Town.
- U. Survivability. The obligations, rights, and remedies of the Parties hereunder, which by their nature are intended to survive the termination of this Agreement or the completion of the Project, shall survive such termination or Project completion and inure to the benefit of the Parties.
- V. Effective Date. This Agreement shall be effective and binding upon the Parties hereto once the Agreement has been signed by both Parties and filed with the Clerk of the Court in and for Palm Beach County, Florida.

(INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals on the day and date first written above.

TOWN:
Town of Jupiter, a municipal corporation of the State of Florida

By: Todd Wodraska Date: 1/27/22
Todd Wodraska, Mayor

ATTEST:

By: Laura E. Cahill
Laura E. Cahill, Town Clerk

(SEAL)



APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: [Signature]
Town Attorney

{SIGNATURE PAGES CONTINUED}

COUNTY:
Palm Beach County, a Political Subdivision
of the State of Florida, by and through its
Board of County Commissioners

By: _____
Robert S. Weinroth, Mayor

ATTEST:
Joseph Abruzzo
Clerk of the Circuit Court & Comptroller

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: */s/ Yelizaveta B. Herman*

Yelizaveta B. Herman, Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: *Morton L. Rose*

Morton L. Rose, P.E., Director of Roadway Production
KRS