

Agenda Item #: 7C-1

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: February 5, 2008

☐ Consent

☒ Regular

☐ Workshop

☐ Public Hearing

Department:

Submitted By: **Engineering and Public Works**

Submitted For: **Land Development Division**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: On Preliminary Reading and advertise for Public Hearing on Tuesday March 11, 2008 at 9:30 a.m.: An Ordinance amending Chapter 23, Article 3 known as the Right-of-Way Construction Permitting Ordinance (Ordinance 2001-063); amending Section 23-38, providing an exception to permit requirement; amending section 23-39, concerning permit application format requirements; amending section 23-41, concerning Palm Beach County (County) Rights-of-Way; providing for severability; providing for repeal of ordinances in conflict; providing for inclusion in the code of laws and ordinances; providing for a savings clause; and providing for an effective date.

Summary: The proposed Ordinance will amend Chapter 23, Article 3 known as the Right-of-Way Construction Permitting Ordinance (Ordinance 2001-063), and provide an exception to permit requirements, amend permit application format requirements and amend requirements for road maintenance.

District: Countywide (MRE)

Background and Policy Issues: This Ordinance amends Ordinance No. 2001-063. The adoption of this Ordinance will only require a road construction permit from the County in publicly dedicated rights-of-way when the road maintenance will be done by the County. It also provides for the electronic processing of permit applications and requires that all roads being offered to the County be permitted and constructed to County road construction standards.

Attachments:

1. Proposed Ordinance

Recommended by: _____

Division Director

Date

Approved by: _____

County Engineer

Date

Sgt. T. Webb

1/22/08

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____

#ADDITIONAL FTE
POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No _____

Budget Acct No: Fund _____ Dept. _____ Unit _____ Object _____ Program _____

B. Recommended Source of Funds/Summary of Fiscal Impact

There is no additional impact required for this item.

C. Department Fiscal Review: R.D. Ward 1/16/08

III. REVIEW COMMENTS

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

Jan Durb 1-24-08 Jan J. [Signature] 1/25/08
 OFMB SN 1/24/08 CN 1/23/08 Contract Dev. and Control 6. [Signature] 1/25/08

B. Approved as to Form and Legal Sufficiency:

Marlene R. [Signature] 1/25/08
 Assistant County Attorney

C. Other Department Review:

Department Director

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

ORDINANCE NO. 2008-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA TO BE KNOWN AS THE RIGHT-OF-WAY CONSTRUCTION PERMITTING ORDINANCE; PROVIDING FOR TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR PERMIT; PROVIDING FOR PERMIT APPLICATION; PROVIDING FOR OBLIGATIONS OF PERMITTEE; PROVIDING FOR COUNTY RIGHTS-OF-WAY; PROVIDING FOR SUSPENSION OF PERMITS; PROVIDING FOR PERMIT REVOCATION; PROVIDING FOR APPEALS; PROVIDING FOR ENFORCEMENT REMEDIES; PROVIDING FOR INSURANCE; PROVIDING FOR INDEMNIFICATION; PROVIDING FOR CONSTRUCTION BOND PROVIDING FOR ABANDONMENT OF FACILITIES; PROVIDING FOR FORCE MAJEURE; PROVIDING FOR RESERVATION OF RIGHTS AND REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, Section 125.42, Florida Statutes, authorizes the Board of County Commissioners to grant a license to any person or private corporation to construct, maintain, repair, operate, and remove the lines for the transmission of water, sewage, gas, power, telephone, other public utilities and television under, on, over, across and along any County highway or any public road or highway acquired by the County or public by purchase, gift devise, dedication, or prescription; and

WHEREAS, Section 337.401, Florida Statutes, provides that local governments are authorized to prescribe and enforce reasonable rules and regulations with reference to the placing and maintaining of utilities along, across, or on any road and may grant to a resident or corporation organized or licensed in Florida the use of the Right-of-Way in accordance with said rules and regulations; and

WHEREAS, Chapter 125, Florida Statutes, empowers counties to establish, coordinate and enforce regulations as are necessary for the protection of the public, to adopt technical codes and regulations, to regulate arterial and other roads and related facilities, and to perform other acts not inconsistent with the laws of the State of Florida; and

WHEREAS, Palm Beach County is a Charter County and has all powers of local self-government; and

WHEREAS, the Board of County Commissioners of Palm Beach County has determined that the comprehensive system of permitting regulations set forth herein furthers the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1 – Title

This Ordinance shall be known as the "Right-of-Way Construction Permitting Ordinance."

Section 2 – Definitions

For purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined shall be construed to mean the common and ordinary meaning.

1. "Abandonment" shall mean the permanent cessation of all uses of a Facility; provided that this term shall not include cessation of all use of a Facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "Abandonment" of a Facility in Rights-of-Way.

2. "County" shall mean Palm Beach County, Florida.

3. "Engineer" shall mean Palm Beach County Engineer or his or her designee.

4. "Facility" shall mean any permanent or temporary plant, equipment and property, including but not limited to sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables or conduit, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and other equipment, construction, or pathway placed or maintained or to be placed or maintained in Rights-of-Way of the County.

5. "In Rights-of-Way" or "in the Rights-of-Way" shall mean in, on, over, under or across Rights-of-Way.

6. "Ordinance" shall mean this Ordinance.
7. "Permit" shall mean a Right-of-Way Construction Permit that must be obtained before placing or maintaining Facilities in the Right-of-Way.
8. "Permittee" shall mean any Person who obtains or seeks to obtain a Permit pursuant to this Ordinance.
9. "Person" shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, and shall include the County to the extent the County places or maintains Facilities in its Rights of Way.
10. "Place or maintain" or "placement or maintenance" or "placing or maintaining" shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate Facilities in Rights-of-Way.
11. "Rights-of-Way" shall mean a public right-of-way, public utility easement, highway, street, bridge, tunnel or alley for which the County is the authority that has jurisdiction and control and may lawfully grant access to pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface. "Rights-of-Way" shall not include private property. The term also includes but is not limited to associated sidewalks, the roadbed, all culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, bridges, and viaducts. "Rights-of-Way" shall not include County buildings, fixtures, poles, conduits, Facilities or other structures or improvements, regardless of whether they are situated in Rights-of-Way.

Section 3 – Permit Required

1. A Permittee shall at all times comply with and abide by all applicable provisions of the State and Federal law and County ordinances, codes and regulations in placing or maintaining a Facility in Rights-of-Way. Obtaining a Permit pursuant to the terms of this Ordinance does not excuse a Permittee from complying with all applicable County Ordinances.
2. No person shall commence to place or maintain a Facility in Rights-of-Way without first having obtained a Permit as set forth in this Ordinance, except either (1) in the case of

an emergency- or (2) for road construction in a platted road right-of-way dedicated to the Public and not maintained by the County, or not intended to be maintained by the County.

3. The term "emergency" as set forth in this Section shall mean a condition that threatens the public's health, safety or welfare, and includes an unplanned out-of-service condition of a pre-existing service. Permittee shall provide prompt notice to the County of the placement or maintenance of a Facility in Rights-of-Way in the event of an emergency, and shall be required to obtain an after-the-fact permit if a Permit would have originally been required to perform the work undertaken in Rights-of-Way in connection with the emergency.

4. Permittee acknowledges that as a condition of granting Permits, the County may impose reasonable rules, conditions or regulations governing the placement or maintenance of a Facility in Rights-of-Way.

5. Permits shall apply only to the areas of Rights-of-Way specifically identified in the Permit and to dates set forth therein, unless modified by the Engineer.

6. Permits issued shall be conspicuously displayed at all times or immediately available at the indicated work site for inspection by the County.

7. To the extent not otherwise prohibited by State or Federal law, the County shall have the power to prohibit or limit the placement of new or additional Facilities within a particular area of Rights-of Way.

8. A Permittee shall be required by the County to coordinate placement or maintenance activities under a Permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur in the subject Rights-of-Way, and Permittee shall be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in Rights-of-Way.

9. A Permit from the County constitutes authorization to undertake only certain activities in Rights-of-Way in accordance with this Ordinance, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the Rights-of-Way.

Section 4 - Permit Application

1. A Permit application to place a new or replace an existing Facility in Rights-of-Way shall include engineering drawings showing the location of the proposed installation of Facilities in the Rights-of-Way. If the engineering drawings so provided require revision based

upon actual installation, the Permittee shall promptly provide revised engineering drawings. The engineering drawings shall be in an electronic format specified by the County or in a hard copy format and an electronic format specified by the County upon the County's request, provided such electronic format is maintained by the Permittee. Such plans in a format maintained by the Permittee shall be provided at no cost to the County.

2. Each applicant for a Permit shall submit a non-refundable application fee at the time of Permit application. The amounts shall be established by Resolution of the Palm Beach County Board of County Commissioners, but in no event shall exceed the County's costs incurred in reviewing the application and processing the Permit, and in monitoring construction work authorized by the Permit. Such fees shall not be applies in the following circumstances:

(a) Where the construction performed is for the benefit of a governmental agency and that agency is a direct party to the contract for the construction.

(b) Where the Right-of-Way lies within the corporate boundaries of a municipality and the municipality charges a permit fee for the same construction or installation work.

(c) Where providers of communications services seek a Permit under this Ordinance. For the purposes of this Section, "communications services" shall mean the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. Prior to seeking a Permit under this Ordinance, providers of communications services are first required to register pursuant to Palm Beach County Ordinance 2000-009, Palm Beach County Code, section 23, Article VII as may be amended.

3. As part of any Permit application to place or maintain or to replace an existing Facility in Rights-of-Way, the Permittee shall provide the following:

(a) Engineering drawings depicting the location of the proposed Facilities, including a description of the Facilities to be installed, where the Facilities are to be located, the size of Facilities that will be located in Rights-of-Way, and an indication of the manner in which the Facility will be installed (i.e. installation methods or techniques);

(b) A maintenance of traffic plan may be required to address any disruption of Rights-of-Way;

(c) Information on the ability of Rights-of-Way to accommodate the proposed Facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other Persons);

(d) An engineer's cost estimate including but not limited to maintenance of traffic plan, survey costs, mobilization, unit prices for each Facility installed, linear footage, and cost of restoration as appropriate. Survey costs, mobilization, and unit prices for each Facility installed and linear footage, shall not be required to be a part of an engineer's cost estimate when the work proposed by the permit application is for the provision of communications services as that term is defined in section 4.2.(c) of this Ordinance.

(e) The timetable for construction of the project or each phase thereof, and the areas of the County which will be affected; and

(f) Such additional information as the County finds reasonably necessary with respect to the placement or maintenance of the Facility that is the subject of the Permit application to review such Permit application.

Section 5 – Obligations of Permittee

1. All Facilities shall be placed or maintained so as not to unreasonably interfere with the use of Rights-of-Way by the public and with the rights and convenience of property owners who adjoin any of the Rights-of-Way. The use of trenchless technology (i.e., directional boring, horizontal drilling, micro tunneling, or other similar method) for the installation of Facilities in Rights-of-Way as well as joint trenching or the co-location of Facilities in existing conduit is strongly encouraged, and should be employed wherever feasible. The Engineer may promulgate reasonable rules and regulations concerning the placement or maintenance of a Facility in Rights-of-Way consistent with this Ordinance and other applicable law.

2. A Permittee shall place and maintain its Facility in Rights-of-Way in a manner consistent with accepted industry practice and applicable law.

3. In connection with excavation in Rights-of-Way, a Permittee shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, Florida Statutes (2000), as it may be amended.

4. Permittee shall use and exercise due caution, care and skill in performing permitted work in Rights-of-Way and shall take all reasonable steps to safeguard work site areas.

5. A Permittee shall not place or maintain its Facilities so as to interfere with, displace, damage or destroy any Facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the County or any other Person's Facilities lawfully occupying Rights-of-Way of the County. A Permit does not excuse a Permittee from obtaining access or pole attachment agreements before placing or maintaining its Facilities on another Person's Facilities.

6. A Permittee shall, on the request of any Person holding a Permit issued by the County, temporarily raise or lower its Facilities to allow the work authorized by the Permit. The expense of such temporary raising or lowering of Facilities shall be paid by the Person requesting the same, and the Permittee shall have the authority to require such payment in advance. The Permittee shall be given advance written notice not less than thirty (30) days prior to commencement of the activity requiring the temporary raising or lowering of its Facilities to arrange for such temporary relocation.

7. After the completion of any placement or maintenance of a Facility in Rights-of-Way or each phase thereof, a Permittee shall, at its own expense, restore Rights-of-Way to its original condition before such permitted work. If the Permittee fails to make such restoration within thirty (30) days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the County may perform restoration and charge the costs of the restoration against the Permittee in accordance with Section 337.402, Florida Statutes (2000), as it may be amended. For twelve (12) months following written acceptance of the permitted work by the Engineer, the Permittee shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this Ordinance at its own expense.

8. The County shall have the right to make such inspections of Facilities placed or maintained in Rights-of-Way as it finds necessary to ensure compliance with this Ordinance.

Section 6 – County Rights-of-Way

1. The County makes no warranties or representations regarding the fitness, suitability, or availability of County's Rights-of-Way for the Permittee's Facilities and any performance of permitted work, costs incurred or services provided by Permittee shall be at Permittee's sole risk. Nothing in this Ordinance shall affect the County's authority to add, vacate or abandon Rights-of-Way pursuant to applicable state or local law, and the County makes no warranties or representations regarding the availability of any added, vacated or abandoned Rights-of-Way for Facilities.

2. The County reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of Facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the County in Rights-of-Way occupied by the Permittee. The County further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of Rights-of-Way within the limits of the County and within said limits as same may from time to time be altered.

3. Removal or relocation at the direction of the County of a Permittee's Facility in Rights-of-Way shall be governed by the provisions of Section 125.42 and Sections 337.403 and 337.404, Florida Statutes (2000), as they may be amended.

4. All road construction intended to be maintained by the County will be required to be permitted in accordance with this Ordinance and be constructed to minimum County standards.

Section 7 – Suspension of Permits

The County may suspend a Permit for work in Rights-of-Way for one or more of the following reasons:

1. Violation of Permit conditions, including conditions set forth in the Permit, this Ordinance or other applicable County ordinances, codes or regulations governing placement or maintenance of Facilities in Rights-of-Way;
2. Misrepresentation or fraud by Permittee in a Permit application to the County;
3. Failure to relocate or remove Facilities as may be lawfully required by the County; or

4. As to Telecommunications service providers, failure to properly renew or ineffectiveness of Registration as required by Palm Beach County Code Section 23, Article VII as may be amended.

The Engineer shall provide notice and an opportunity to cure any violation of 1 through 4 above, each of which shall be reasonable under the circumstances. Failure to cure the violation in a manner and within the time frame specified by the Engineer may result in a suspension of the Permit. Such notice of suspension is subject to appeal as set forth in Section 9 - Appeals of this Ordinance.

Section 8 – Permit Revocation

1. The County may revoke a Permit if:

(a) a Federal or State authority suspends, denies, or revokes any applicable certification or license required by Permittee to provide services related to the placement or maintenance of Facilities in the Rights-of-Way;

(b) the Permittee ceases to use all of its Facilities in Rights-of-Way and has not complied with Section 14 – Abandonment of Facilities of this Ordinance; or

(c) the Permittee's placement or maintenance of a Facility in the Rights-of-Way presents an extraordinary danger to the general public or other users of the Rights-of-Way and the Permittee fails to remedy the danger promptly after receipt of written notice.

2. Prior to revocation, the Permittee shall be notified by the Engineer with a written notice setting forth all matters pertinent to the proposed revocation action, including which of (a) through (c) above is applicable as the reason therefore, and describing the proposed action of the County with respect thereto. The Permittee shall have sixty (60) days after receipt of such notice within which to address or eliminate the reason, or within which to present a plan, satisfactory to the Engineer, to accomplish the same. In the event revocation is based on subsection 1(c) above, the Engineer may demand such response from the Permittee in less than sixty (60) days based on the nature of the danger to the general public. If the plan is rejected, the Engineer shall provide written notice of such rejection to the Permittee and shall provide written notice of revocation of the Permit. This notice of revocation may be appealed as set forth in Section 9 – Appeals of this Ordinance.

3. In the event of revocation, the former Permittee shall: (a) notify the County of the assumption or anticipated assumption by another Permittee of ownership of the Permittee's

Facilities in Rights-of-Way; or (b) provide the County with an acceptable plan for disposition of its Facilities in Rights-of-Way. If a Permittee fails to comply with this subsection 3, which determination of non-compliance is subject to appeal as provided in Section 9 – Appeals, the County may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of the Facilities (where another Person has not assumed the ownership or physical control of the Facilities) or requiring the Permittee within 90 days of the revocation, or such longer period as may be agreed to by the County, to remove some or all of the Facilities from the Rights-of-Way and restore the Rights-of-Way to its original condition before the removal.

4. In any event, a former Permittee shall take such steps as are necessary to render safe every portion of the Facilities remaining in Rights-of-Way of the County.

5. In the event of revocation, this Section does not authorize the County to cause the removal of Facilities used to provide another service for which the Permittee or another Person who owns or exercises physical control over the Facilities holds a valid certification or license with the governing Federal or State agency, if required for provision of such service.

Section 9 – Appeals

Final, written decisions of the Engineer revoking, suspending or denying a Permit, are subject to appeal before a Hearing Officer as established in Palm Beach County Unified Land Development Code, Section 4.15. An appeal must be filed with the Engineer within thirty (30) days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall be waived. The hearing shall occur within thirty (30) days of the receipt of the appeal, unless waived by the Permittee, and a written decision shall be rendered within twenty (20) days of the hearing. Upon correction of the grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted.

Section 10 – Enforcement Remedies

1. A Permittee's failure to comply with provisions of this Ordinance shall constitute a violation of this Ordinance and shall subject the Permittee to the Suspension provisions of this Ordinance and the code enforcement provisions set forth in the Palm Beach County Unified Land Development Code, Article 14. In addition, violation of this Ordinance may be punishable as provided in Section 125.69, Florida Statutes, as it may be amended, or any other legal or equitable remedy available at law.

2. Failure of the County to enforce any requirements of this Ordinance shall not constitute a waiver of the County's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

Section 11 - Insurance

1. Except where the County or one of its Departments is a Permittee, a Permittee shall provide, pay for and maintain satisfactory to the County the types of insurance described herein.

All insurance shall be from responsible companies duly authorized to do business in the State of Florida and having a rating reasonably acceptable to the County. All liability policies shall provide that the County is an additional insured as to the activities under this Ordinance. The required coverages must be evidenced by properly executed Certificates of Insurance forms. The Certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the County annually. Thirty (30) days advance written notice by registered, certified or regular mail or facsimile as determined by the County must be given to the County of any cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the County.

2. The limits of coverage of insurance required shall be not less than the following:

(a) Worker's Compensation and Employer's Liability Insurance

Worker's Compensation-Florida Statutory Requirements

Employer's Liability - \$100,000 each accident

- \$500,000 disease--policy limit

- \$100,000 disease--each employee

(b) Comprehensive General Liability

Bodily injury and property damage -

\$1,000,000 each occurrence

\$3,000,000 general aggregate

(c) Automobile Liability

Bodily injury and property damage-

\$1,000,000 combined single limit each

accident.

Section 12 – Indemnification

1. A Permittee shall, at its sole cost and expense, indemnify, hold harmless, and defend the County, its officials, boards, members, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the County arising out of the placement or maintenance of its Facilities in Rights-of-Way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Ordinance; provided, however, that a Permittee's obligation hereunder shall not extend to any claims caused by the negligence, gross negligence or wanton or willful acts of the County. This provision includes, but is not limited to, the County's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. County agrees to notify the Permittee, in writing, within a reasonable time of County receiving notice, of any issue it determines may require indemnification. Nothing in this Section shall prohibit the County from participating in the defense of any litigation by its own counsel and at its own cost if in the County's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this Section shall be construed or interpreted: (a) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; or (b) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes (2000), as it may be amended.

2. The indemnification requirements shall survive and be in effect after the revocation or expiration of a Permit.

Section 13 – Construction Bond

1. Prior to issuing a Permit where the work under the Permit will require restoration of Rights-of-Way, the County may require a construction bond in an amount equal to the engineer's cost estimate to secure the restoration of the Rights-of-Way. Twelve (12) months after the completion of the restoration in Rights-of-Way in accordance with the bond, the Permittee may eliminate the bond. However, the County may subsequently require a new bond for any subsequent work in Rights-of-Way. The construction bond shall be issued by a surety having a rating

reasonably acceptable to the County; shall be subject to the approval of the Engineer; and shall provide that: "For twelve (12) months after issuance of this bond, this bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the County, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew.

2. The rights reserved by the County with respect to any construction bond established pursuant to this Section are in addition to all other rights and remedies the County may have under this Ordinance, or at law or equity.

3. The rights reserved to the County under this Section are in addition to all other rights of the County, whether reserved in this Ordinance, or authorized by other law, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the County may have.

Section 14 – Abandonment of Facilities

1. Upon Abandonment of a Facility owned by a Permittee in Rights-of-Way, the Permittee shall notify the County within ninety (90) days.

2. The County may direct the Permittee by written notice to remove all or any portion of such Abandoned Facility at the Permittee's sole expense if the County determines that the Abandoned Facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such Facility: (a) compromises safety at any time for any Rights-of-Way user or during construction or maintenance in Rights-of-Way; (b) prevents another Person from locating Facilities in the area of Rights-of-Way where the Abandoned Facility is located when other alternative locations are not reasonably available; or (c) creates a maintenance condition that is disruptive to the Rights-of-Way's use. In the event of (b), the County may require the third Person to coordinate with the Permittee that owns the existing Facility for joint removal and placement, where agreed to by the Permittee.

3. In the event that the County does not direct the removal of the Abandoned Facility, the Permittee, by its notice of Abandonment to the County, shall be deemed to consent to the alteration or removal of all or any portion of the Facility by the County or another Person at such third party's cost.

4. If the Permittee fails to remove all or any portion of an Abandoned Facility as directed by the County within a reasonable time period as may be required by the County under the

circumstances, the County may perform such removal and charge the cost of the removal against the Permittee.

Section 15 – Force Majeure

In the event a Permittee's performance of or compliance with any of the provisions of this Ordinance is prevented by a cause or event not within the Permittee's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such Permittee uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this Ordinance, causes or events not within a Permittee's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within Permittee's control, and thus not falling within this Section, shall include, without limitation, Permittee's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Permittee's directors, officers, employees, contractors or agents.

Section 16 – Reservation of Rights and Remedies

1. The County reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.
2. This Ordinance shall be applicable to all Facilities placed in Rights-of-Way on or after the effective date of this Ordinance and shall apply to all existing Facilities in Rights-of-Way prior to the effective date of this Ordinance, to the full extent permitted by State and Federal law.
3. The adoption of this Ordinance is not intended to affect any rights or defenses of the County or a Permittee under any existing franchise, license or other agreements with a Permittee.
4. Nothing in this Ordinance shall affect the remedies the County or the Permittee has available under applicable law.
5. Any Person who uses the Facilities of a Permittee, other than the Permittee that owns the Facilities, shall not be entitled to any rights to place or maintain such Facilities in excess of the rights of the Permittee that places or maintains the Facilities.

Section 17 – Severability

The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 18 – Repeal of Ordinances in Conflict

The Construction in Public Right-of-Way Ordinance, adopted as Ordinance No. 76-2, as amended, and codified at Sections 23-36 through 23-53, Code of Laws and Ordinances of Palm Beach County, Florida, are hereby repealed, as are other applicable rules and regulations to the extent that they conflict with the provisions of this Ordinance.

Section 19 – Inclusion in the Code of Laws and Ordinances

The provisions of this Ordinance shall become and be made part of the Code of Laws and Ordinances of Palm Beach County, Florida, and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and the words “section” or “subsection” may be changed.

Section 20 – Savings Clause

All Right-of-Way construction Permits issued pursuant to Ordinance No. 76-2, as amended, along with all conditions relating to such Permits and all applicable Ordinance requirements; and the Palm Beach County Land Development Fee Schedule adopted June 9, 1999 (R99-1071), shall continue in full force and effect and without interruption.

Section 21 – Effective Date

This Ordinance shall be effective immediately upon filing with the Department of State.

APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach

County, Florida, this _____ day of _____, 2008.

SHARON R. BOCK, CLERK
& COMPTROLLER

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

EFFECTIVE DATE: Filed with the Department of State on this _____ day of _____, 2008.