

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ -0-	-0-	-0-	-0-	-0-

ADDITIONAL FTE POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No _____
 Budget Acct No.: Fund _____ Dept. _____ Unit _____ Object _____
 Program _____

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

This item has no additional fiscal impact.

C. Departmental Fiscal Review: R. D. Wald 3/10/08

III. REVIEW COMMENTS

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

[Signature] 3-28-08
 OFMB
 [Stamp: 3/28/08] [Stamp: 3/24/08] [Stamp: 3/27/08]
[Signature] 3/31/08
 Contract Dev. and Control

B. Approved as to Form and Legal Sufficiency:

[Signature] 3/3/08
 Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Department Review:

 Department Director

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

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY
AND THE CITY OF DELRAY BEACH REGARDING OPEN CUTS
UNDER COUNTY THOROUGHFARES**

THIS AGREEMENT, made and entered into this 3rd day of March, 2008, by and between the **BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA**, (hereinafter "**COUNTY**"), and the **CITY OF DELRAY BEACH, FLORIDA, A MUNICIPAL CORPORATION EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA**, (hereinafter "**CITY**").

WHEREAS, the **COUNTY** has adopted certain policies and procedures regarding open cuts across its thoroughfare and non-thoroughfare roads; and

WHEREAS, the **CITY** has agreed to follow the policies and procedures set forth by the **COUNTY** regarding open cuts on **COUNTY** roads, however the **CITY** shall not be required to obtain a surety bond for the open cut, but, instead will be bound by the terms and conditions of this Interlocal Agreement; and

WHEREAS, the **CITY** agrees to be responsible for repairing the open cut, in accordance with **COUNTY** policies and procedures, and all costs associated with such repair.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, the parties agree as follows:

Section 1. The above recitations are true and correct and are incorporated herein.

Section 2. **COUNTY Policy:** The **COUNTY** has adopted policies and procedures, PPM EL-O-3605 and PPM EL-O-3606, regarding open cuts on **COUNTY** thoroughfare and non-thoroughfare roads. The policies set forth the requirements of permitting the open cut, construction of the open cut, maintenance of the open cut as well as the requirement to obtain a surety bond to insure the proper repair of the open cut.

Section 3. Work performed by the CITY: The CITY (any reference to CITY shall include work performed not only by the City but by its contractors or sub-contractors) shall be required to follow all of the requirements of the policies of the COUNTY regarding open cuts. However, except as provided in d) below, the CITY shall not be required to obtain a surety bond for such work and instead shall be bound by the following terms and conditions:

- a) The CITY shall be responsible for repairing the open cut for a 6 month period after the final restoration of the open cut.
- b) During the 6 month period the COUNTY may request certain repairs or further restoration be made to the open cut, in which case, the CITY shall make such repairs or restoration within 30 days of receiving written notice from the COUNTY.
- c) In the event the CITY fails to make such repairs within the time frame allowed, or such repairs are inadequate, the COUNTY may make such repairs as it deems necessary and invoice the CITY for the cost of such work. Upon receiving such invoice the CITY shall, within 45 days, make payment to the COUNTY.
- d) Work performed for the City by Contractors, having a value of more than \$200,000, shall be bonded under a Public Construction Bond and name the County as an obligee.

Section 4. Area Subject to Agreement: The terms of this Agreement shall apply to all open cuts performed, by the CITY, on COUNTY thoroughfare and non-thoroughfare roads located in the CITY'S utility service area.

Section 5. Term: This Agreement shall have an initial term of five years and may be renewed, upon mutual consent of both parties, for additional 5 year renewal terms.

Section 6. Indemnification: In the event a claim or lawsuit is brought against the COUNTY, its officers, employees, servants or agents, the CITY, to the extent set forth in Florida Statute 768.28 (\$100,000.00 per person/\$200,000.00 per claim) agrees to save, defend, reimburse, indemnify and hold harmless the COUNTY, its officers, employees, servants and agents from any and all claims, demands, damages, liabilities, causes or actions, legal or administrative proceedings, judgments, interest, attorney's fees, costs and expenses of whatsoever kind or nature, whether arising in any manner directly or indirectly caused.

The CITY'S aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall apply to the extent set forth in F.S. 768.28, but in no event shall they apply to liability caused by the negligence of the COUNTY, or its agents, servants employees or officers.

Section 7. **Notice of Complaints or Suits:** Each party will promptly notify the other of any citizen complaint, claim, suit, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement.

Section 8. **Breach and Opportunity to Cure:** The parties expressly covenant and agree that in the event either party is in default of its obligations under this Agreement, the party not in default shall provide to the defaulting party thirty (30) days written notice before exercising any of its rights.

Section 9. **Enforcement Costs:** Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties; provided, however, that this clause pertains only to the parties to this Agreement.

Section 10. **Notice:** All notices required to be given under this Agreement shall be in writing, and deemed sufficient to each party when sent by United States Mail, postage prepaid, to the following:

As to the COUNTY:

Palm Beach County Engineering Department
Land Development Division
Ken Rogers, P.E., Director
2300 North Jog Road
West Palm Beach, Florida 33411-2745

As to the CITY:

The City of Delray Beach
City Hall: 100 N.W. First Avenue
Delray Beach, Florida 33444

Section 11. **Modification and Amendment:** Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith.

Section 12. **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 this Agreement shall 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 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 13. **Joint Preparation:** The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial constraint, be construed more severely against one of the parties than the other.

Section 14. **Execution:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 15. **Filing:** A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

Section 16. **Termination:** This Agreement may be terminated by either party, with or without cause, upon thirty (30) days written notice to the other party.

Section 17. **Effective Date:** This Agreement shall take effect upon execution.

Section 18. **Compliance with Codes and Laws:** Each party agrees to abide by all laws, orders, rules, policies and regulations.

IN WITNESS WHEREOF, the undersigned parties have executed this Interlocal Agreement

on the day and year first written above.

ATTEST:
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

APPROVED AS TO TERMS AND CONDITIONS

By: _____
Assistant County Attorney

By: *[Signature]*

ATTEST:

CITY OF DELRAY BEACH

By: *[Signature]*
City Clerk

By: *[Signature]*
Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: *[Signature]*
City Attorney