

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

Meeting Date: May 19, 2009

☒ Consent
☐ Workshop

☐ Regular
☐ Public

Department:

Submitted By: Engineering and Public Works
Submitted For: Land Development Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: An Interlocal Agreement with the Village of Palm Springs (Village) regarding open cuts in County maintained roadways.

SUMMARY: The Village has agreed to follow the policies and procedures set forth by the County regarding open cuts in County roads; however, the Village is requesting that it not be required to provide surety bonds for the open cuts, as required by County Policy, but instead will be bound by the terms and conditions of this Interlocal Agreement.

District 3 (RPB)

Background and Justification: The County has a policy that requires a guarantee to be posted for any construction in County right-of-ways that result in the open cutting of the pavement. The Village has requested that the County instead enter into an Interlocal Agreement which would require them to make any required repairs upon request by the County. The Village will be bound by the terms and conditions of this Interlocal Agreement. The Agreement will have an initial term of five years and may be renewed upon mutual consent of both parties, for additional five year renewal terms.

The proposed Interlocal Agreement is consistent with Section 163.01 of Florida Statutes, known as the Florida Interlocal Cooperation Act of 1969.

Attachments:

1. Interlocal Agreement (Exhibit A)

Recommended by: [Signature]
Division Director

20 April 2009
Date

Approved by: [Signature]
County Engineer

4/20/09
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u> X </u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes _____ No _____
 Budget Account No.: Fund _____ Agency _____ Org. _____ Object _____
 Program _____

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

☒ No additional fiscal impact as a result of this item.

C. Departmental Fiscal Review: as will hit

III. REVIEW COMMENTS

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

Jim Burt 5-9-09
 OFMB UD 5/10/09 CN 5/15/09 JP 5/16/09

Don J. Jambour 5/12/09
 Contract Dev. and Control E. Jones 5/11/09

B. Legal Sufficiency:

This Contract complies with our contract review requirements.

Marlene R. Pitt 5/15/09
 Assistant County Attorney

C. Other Department Review:

 Division Director

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

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY
AND THE VILLAGE OF PALM SPRINGS
REGARDING OPEN CUTS UNDER COUNTY ROADS**

THIS AGREEMENT, made and entered into this _____ day of _____, 200 __, 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 VILLAGE OF PALM SPRINGS, FLORIDA, A MUNICIPAL CORPORATION EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA, (hereinafter "VILLAGE").

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

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

WHEREAS, the VILLAGE 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 guaranty, (Letter of Credit or cash) to insure the proper repair of the open cut.

Section 3. **Work performed by the VILLAGE:** The VILLAGE (any reference to VILLAGE shall include work performed not only by the Village 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 VILLAGE shall not be required to obtain a guarantee (Letter of Credit or cash) for such work and instead shall be bound by the following terms and conditions:

a) The VILLAGE 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 VILLAGE fails to make such repairs within the time frame allowed, or such repairs are inadequate in the judgment of the COUNTY, the COUNTY may make such repairs as it deems necessary and invoice the VILLAGE for the cost of such work. Upon receiving such invoice the VILLAGE shall, within 45 days, make payment to the COUNTY for the full amount of the invoice.

d) Work performed for the VILLAGE 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 VILLAGE, on COUNTY thoroughfare and non-thoroughfare roads located in the VILLAGE'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 VILLAGE, 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.

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, however that this clause pertains only to the parties of 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 VILLAGE:

Village of Palm Springs
Public Service Department
William Davis, Director
226 Cypress Lane
Palm Springs, FL 33461

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

Section 16. **Effective Date:** This Agreement shall take effect upon execution.

Section 17. **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:

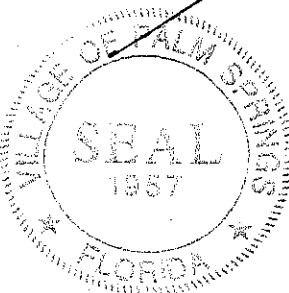
VILLAGE OF PALM SPRINGS, FLORIDA

By: Virginia M. Walton
Village Clerk

By: John M. Warren
Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: CSB/4 FOR
Village Attorney



ATTEST:

Sharon R. Bock, Clerk
& Comptroller

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

By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

APPROVE AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____

By: _____

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY
AND THE VILLAGE OF PALM SPRINGS
REGARDING OPEN CUTS UNDER COUNTY ROADS**

THIS AGREEMENT, made and entered into this _____ day of _____, 200 __, 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 VILLAGE OF PALM SPRINGS, FLORIDA, A MUNICIPAL CORPORATION EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA, (hereinafter "VILLAGE").

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

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

WHEREAS, the VILLAGE 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 guaranty, (Letter of Credit or cash) to insure the proper repair of the open cut.

Section 3. **Work performed by the VILLAGE:** The VILLAGE (any reference to VILLAGE shall include work performed not only by the Village 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 VILLAGE shall not be required to obtain a guarantee (Letter of Credit or cash) for such work and instead shall be bound by the following terms and conditions:

a) The VILLAGE 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 VILLAGE fails to make such repairs within the time frame allowed, or such repairs are inadequate in the judgment of the COUNTY, the COUNTY may make such repairs as it deems necessary and invoice the VILLAGE for the cost of such work. Upon receiving such invoice the VILLAGE shall, within 45 days, make payment to the COUNTY for the full amount of the invoice.

d) Work performed for the VILLAGE 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 VILLAGE, on COUNTY thoroughfare and non-thoroughfare roads located in the VILLAGE'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 VILLAGE, 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.

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, however that this clause pertains only to the parties of 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 VILLAGE:

Village of Palm Springs
Public Service Department
William Davis, Director
226 Cypress Lane
Palm Springs, FL 33461

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

Section 16. **Effective Date:** This Agreement shall take effect upon execution.

Section 17. **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.

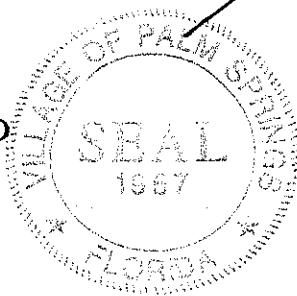
ATTEST:

VILLAGE OF PALM SPRINGS, FLORIDA

By: Virginia M. Walton
Village Clerk

By: John M. Davis
Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY



By: C. M. Lee
Village Attorney

ATTEST:

Sharon R. Bock, Clerk
& Comptroller

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

By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

APPROVE AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____

By: _____

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY
AND THE VILLAGE OF PALM SPRINGS
REGARDING OPEN CUTS UNDER COUNTY ROADS**

THIS AGREEMENT, made and entered into this _____ day of _____, 200 __, 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 VILLAGE OF PALM SPRINGS, FLORIDA, A MUNICIPAL CORPORATION EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA, (hereinafter "VILLAGE").

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

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

WHEREAS, the VILLAGE 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 guaranty, (Letter of Credit or cash) to insure the proper repair of the open cut.

Section 3. **Work performed by the VILLAGE:** The VILLAGE (any reference to VILLAGE shall include work performed not only by the Village 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 VILLAGE shall not be required to obtain a guarantee (Letter of Credit or cash) for such work and instead shall be bound by the following terms and conditions:

a) The VILLAGE 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 VILLAGE fails to make such repairs within the time frame allowed, or such repairs are inadequate in the judgment of the COUNTY, the COUNTY may make such repairs as it deems necessary and invoice the VILLAGE for the cost of such work. Upon receiving such invoice the VILLAGE shall, within 45 days, make payment to the COUNTY for the full amount of the invoice.

d) Work performed for the VILLAGE 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 VILLAGE, on COUNTY thoroughfare and non-thoroughfare roads located in the VILLAGE'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 VILLAGE, 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.

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, however that this clause pertains only to the parties of 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 VILLAGE:

Village of Palm Springs
Public Service Department
William Davis, Director
226 Cypress Lane
Palm Springs, FL 33461

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

Section 16. **Effective Date:** This Agreement shall take effect upon execution.

Section 17. **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:

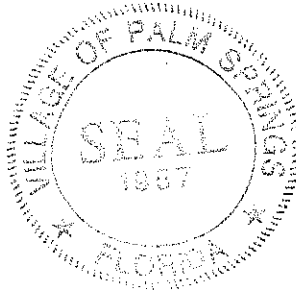
VILLAGE OF PALM SPRINGS, FLORIDA

By: Virginia M. Walton
Village Clerk

By: John M. Davis
Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: CDH for
Village Attorney



ATTEST:

Sharon R. Bock, Clerk
& Comptroller

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

By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

APPROVE AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____

By: _____