

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

Meeting Date: September 14, 2010

☒ Consent

☐ Regular

☐ Workshop

☐ 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 Loxahatchee River Environmental Control District (District) regarding open cuts in Palm Beach County (County) maintained rights-of-way.

SUMMARY: The District has agreed to follow the policies and procedures set forth by the County regarding open cuts in County roads; however, the District is requesting that it not be required to provide surety for the open cuts, as required by County Policy, but instead will be bound by the terms and conditions of this Interlocal Agreement. This is similar to the agreement entered into between the County and the Village of Palm Springs last year. District 1 (MRE)

Background and Justification: The County has a policy that requires a guarantee to be posted for any construction in County rights-of-way that result in the open cutting of the pavement. The District has requested that the County instead enter into an Interlocal Agreement which would relieve the District from posting surety but require them to make any required repairs upon request by the County. The District 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 an additional five year term.

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: _____

Division Interim Director

Date

Approved by: _____

County Engineer

8/25/10
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
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 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: Shullwhite

III. REVIEW COMMENTS

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

Jim Grah
 OFMB MYC 8-27-10 8/27/10

Don J. Javelent 8/27/10
 Contract Dev. and Control

B. Legal Sufficiency:

This Contract complies with our
 contract review requirements.

Mark R. Pitt 9/9/10
 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 LOXAHATCHEE RIVER ENVIRONMENTAL
CONTROL DISTRICT REGARDING OPEN CUTS UNDER
COUNTY THOROUGHFARE ROADS**

THIS AGREEMENT, made and entered into this ____ day of _____, 2010, 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 **LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL DISTRICT, A SPECIAL DISTRICT EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA**, (hereinafter "**DISTRICT**").

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

WHEREAS, the **DISTRICT** has agreed to follow the policies and procedures set forth by the **COUNTY** regarding open cuts on **COUNTY** roads; however, the **DISTRICT** 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 **DISTRICT** 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, construction, and 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 DISTRICT: The DISTRICT (any reference to DISTRICT shall include work performed not only by the DISTRICT 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 DISTRICT 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 DISTRICT 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 DISTRICT shall make such repairs or restoration within 30 days of receiving written notice from the COUNTY.
- c) In the event the DISTRICT fails to make such repairs within the time frame allowed, or such repairs are inadequate, after the thirty (30) day notice and opportunity to cure required by Section 8, the COUNTY may make such repairs as it deems necessary and invoice the DISTRICT for the cost of such work. Upon receiving such invoice the DISTRICT shall, within 45 days, make payment to the COUNTY.
- d) Work involving open cuts on COUNTY thoroughfare and non-thoroughfare roads, performed for the DISTRICT 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.
- e) The DISTRICT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverage and limits (including endorsements), as described herein. District shall agree to provide the COUNTY with at least ten days (10) prior notice of any cancellation, non-renewal or material change to the insurance coverage. The requirements contained herein, as well as

COUNTY's review and acceptance of insurance maintained by District are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by District under this agreement. The DISTRICT will require each contractor engaged by the DISTRICT for work associated with this agreement to maintain:

- 1) At its sole expense, agree to maintain in full force and effect at all times during the life of the permit associated with the open cut construction Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability. The COUNTY shall be included in coverage as an additional insured. The Additional Insured endorsement shall read "Palm Beach County board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents."
- 2) At its sole expense, agree to maintain in full force and effect at all times during the life the permit associated with the open cut construction Workers Compensation Insurance & Employer's Liability in accordance with Florida Statute Chapter 440. The District shall provide this coverage on a primary basis.
- 3) Additional Insured: The County shall be endorsed as an Additional Insured with a CG 2026 Additional Insured – Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents."

Section 4. Area Subject to Agreement: The terms of this Agreement shall apply to all open cuts performed by the DISTRICT, on COUNTY thoroughfare and non-thoroughfare roads

located in the DISTRICT'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 terms.

Section 6. **Indemnification:** In the event a claim or lawsuit is brought against the COUNTY, its officers, employees, servants or agents, the DISTRICT, to the extent set forth in Florida Statute 768.28 (\$100,000 per person/\$200,000 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 DISTRICT'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. This indemnification is also mutual from COUNTY to DISTRICT.

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
Joanne M. Koerner, P.E., Interim Director
2300 North Jog Road
West Palm Beach, Florida 33411-2745
As to the DISTRICT:

Loxahatchee River District
Attention: Executive Director
2500 Jupiter Park Drive
Jupiter, Florida 33458

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: _____
Burt Aaronson, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

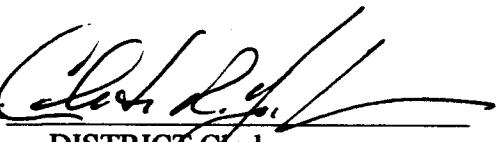
APPROVED AS TO TERMS AND CONDITIONS

By: _____
Assistant County Attorney

By: _____
County Engineer

ATTEST:

LOXAHATCHEE RIVER DISTRICT

By: 
DISTRICT Clerk

By: 
Executive Director

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 
DISTRICT Attorney

INSURANCE BY Loxahatchee River District:

Without waiving the right to sovereign immunity as provided by *s. 768.28 f.s.*,
n/a acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

In the event Loxahatchee River District maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under *s. 768.28 f.s.*, Loxahatchee River District shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage

Loxahatchee River District agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute 440.

When requested, Loxahatchee River District shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which COUNTY agrees to recognize as acceptable for the above mentioned coverages.

Compliance with the foregoing requirements shall not relieve Loxahatchee River District of its liability and obligations under this Agreement.