



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<b>*</b>	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

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:** Atwill/ite

**III. REVIEW COMMENTS**

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

[Signature] 2/3/11  
 OFMB  
 2/1/11  
 2/1/11

[Signature] 2/7/11  
 Contract Dev. and Control  
 Jones 2/7/11

**B. Legal Sufficiency:**

[Signature] 2/10/11  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Interim Division Director

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

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY  
AND THE TOWN OF JUPITER REGARDING OPEN CUTS  
UNDER COUNTY THOROUGHFARE ROADS**

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, 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 **TOWN OF JUPITER, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA**, (hereinafter "**TOWN**").

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

**WHEREAS**, the **TOWN** has agreed to follow the **COUNTY**'s policies and procedures regarding open cuts on **COUNTY** roads; however, the **TOWN** 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 **TOWN** agrees to be responsible for repairing open cuts, in accordance with **COUNTY** policies and procedures, and for the **TOWN**'s 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 and procedures 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 TOWN:** The TOWN (any reference to TOWN shall include work performed not only by the TOWN but by its contractors or sub-contractors) shall follow the COUNTY's policies and procedures as modified below regarding open cuts. Provided however, the TOWN shall obtain a surety bond for work which exceeds \$200,000:

- a) The TOWN shall repair open cuts for a 6 month period after the final restoration of the open cut.
- b) During the 6 month period the COUNTY may make a written request for certain repairs or further restoration be made to the open cut, in which case, the TOWN shall make such repairs or restoration within 30 days of receiving written notice from the COUNTY.
- c) In the event the TOWN fails to make such repairs within the time frame allowed, or such repairs are inadequate, the COUNTY shall provide the TOWN with a written notice that it has 30 days to cure the repairs. If the TOWN fails to cure within the 30 days, then the COUNTY may make such repairs as it deems necessary and invoice the TOWN for the cost of such work. Upon receiving such invoice the TOWN shall, within 45 days, make payment to the COUNTY.
- d) Work involving open cuts on COUNTY thoroughfare and non-thoroughfare roads, performed for the TOWN 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 TOWN shall, at its sole expense, maintain in full force and effect at all times during the term of this Agreement, insurance coverage and limits (including endorsements), as described herein. TOWN shall provide the COUNTY with at least 10 days prior written 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 TOWN are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by

TOWN under this agreement. The TOWN shall require each contractor engaged by the TOWN for work associated with this agreement to maintain:

- 1) 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) Workers Compensation Insurance & Employer's Liability in accordance with Florida Statute Chapter 440. The TOWN 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 TOWN, on COUNTY thoroughfare and non-thoroughfare roads located in the TOWN'S utility service area.

**Section 5. Term and Termination:** This Agreement shall have an initial term of five (5) years and may be renewed, upon mutual consent of both parties, for additional 5 year renewal terms. This Agreement may be terminated upon thirty (30) days notice by either party. The agreement may be renewed for another term upon mutual consent of both parties.

**Section 6. Indemnification:** In the event a claim or lawsuit is brought against the COUNTY, its officers, employees, servants or agents, the TOWN, 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 TOWN'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 TOWN.

**Section 7. Notice of Complaints or Suits:** Each party agrees to 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 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 TOWN:

Town of Jupiter Utilities Department  
David L. Brown, Director  
210 Military Trail  
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. Venue for 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:** Except for situations where one of the parties is required to cure, this Agreement may be terminated by either party, with or without cause, upon 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

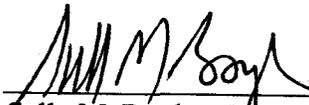
By: \_\_\_\_\_  
Karen T. Marcus, Chair

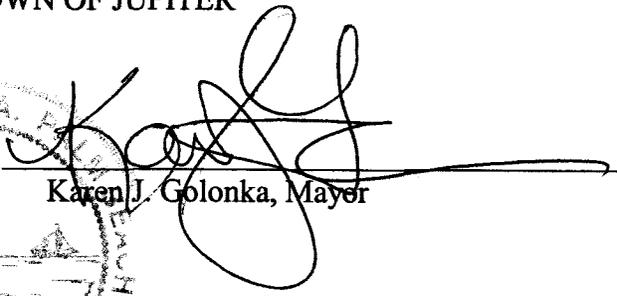
APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Assistant County Attorney

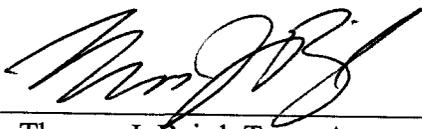
ATTEST:

TOWN OF JUPITER

By:   
Sally M. Boylan, Town Clerk, MMC

By:   
Karen J. Golonka, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By:   
Thomas J. Baird, Town Attorney

