

**AGREEMENT BETWEEN PALM BEACH COUNTY, FLORIDA
AND
AT & T Florida
FOR JOINT PARTICIPATION AND PROJECT FUNDING
IN CONSTRUCTION OF
Old Dixie Hwy and Hidden Valley Blvd
PALM BEACH COUNTY PROJECT NO. 2003105**

THIS Agreement is made as of the 28 day of October 2011, by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter "COUNTY") and AT&T Florida, a corporation existing under the laws of Florida, (hereinafter "AT&T").

WHEREAS, the COUNTY intends to improve Old Dixie Hwy and Hidden Valley Blvd (hereinafter the "Project"); and

WHEREAS, the COUNTY and AT&T desire to jointly participate in the construction of utility adjustments to AT&T's facilities and other improvements within the Project area, hereinafter referred to as the "Work"; and

WHEREAS, both COUNTY and AT&T declare that it is in the public interest that the Work be constructed with the aforementioned Project; and

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

Section 1. Recitals.

The above recitals are true and correct and are incorporated herein.

Section 2. Project and Work to be Completed by the COUNTY:

COUNTY shall provide construction and administrative services to the Project as more specifically described in the Bid Documents for Palm Beach County Project No. 3003105. Said Bid Documents include the Work as shown in AT&T's prepared Utility Matrix, Applicable Technical Specifications, Standard Construction Details, and/or Approved Product List. The Project, as set forth in this Agreement, shall be performed on Old Dixie Hwy and Hidden Valley Blvd.

Section 3. Responsibilities and Duties:

A. AT&T shall reimburse COUNTY a total estimated cost of **Twenty Seven Thousand Eighty Seven Dollars and fifty Cents (\$27,087.50)**, provided COUNTY performs pursuant to the terms and conditions of this Agreement for all Work in accordance with the Bid Tabulation (Exhibit "A") and summary (Exhibit "B"). Any cost exceeding this amount attributable to AT&T Utility Items shall be paid by AT&T.

B. Costs shall be based upon actual contract costs using contract unit prices and actual constructed quantities, said quantities being measured by the COUNTY with concurrence by AT&T.

C. COUNTY shall obtain written approval from AT&T in advance of any change orders, which increase the cost attributable to the Work to an amount greater than the contract amount as stated in Paragraph A of this Agreement. Approval shall not be unreasonably withheld. AT&T's responsibility for change order costs includes any costs associated with AT&T's failure to approve change orders in a timely manner.

D. COUNTY shall secure all necessary easements and permits required to perform the Project.

E. COUNTY shall publicly bid, administer, construct and inspect the Project and Work in accordance with the Bid Documents and Exhibit "A".

F. COUNTY shall require the contractor to provide a Public Construction Bond in an amount equal to the contractor's bid for the Project and the Work.

G. Upon completion of the Project and the Work, AT&T shall repair and maintain the Work, at AT&T's expense.

Section 4. Payments/Invoicing and Reimbursement:

The COUNTY will invoice AT&T on a periodic basis during construction of the Project and the Work. AT&T agrees to provide to COUNTY reimbursement funding for documented costs for the Work in the amount established in Section 3.A. Upon COUNTY'S submission of acceptable documents needed to substantiate their costs for the Work, AT&T will use its best efforts to provide said funds to COUNTY on a reimbursement basis within thirty (30) days of receipt of all required documents. COUNTY shall submit all invoices to AT&T identifying the Work, including COUNTY'S total expenditure for the Project. COUNTY shall supply any further documentation such as copies of paid receipts, canceled checks, invoices and other documents deemed necessary by AT&T within seven (7) calendar days of request by AT&T. Invoices received from COUNTY will be reviewed and approved by AT&T to insure that expenditures have been made in conformity with this Agreement. Invoices will normally be paid within thirty (30) days following approval.

The Project and the Work will be administered by the COUNTY. Only those costs incurred by the COUNTY relating to the Work are eligible for reimbursement by AT&T pursuant to the terms and conditions hereof. In the event the COUNTY ceases or suspends the Project or the Work for any reason, AT&T will reimburse the COUNTY for the Work completed as of the date the COUNTY uses to suspend the Work. Any remaining unpaid portion of this Agreement shall be retained by AT&T, and AT&T shall have no further obligation to honor reimbursement requests submitted by the COUNTY.

Section 5. Repayment

COUNTY shall repay AT&T for all unauthorized, illegal or unlawful expenditures of revenues, including those discovered after the expiration or termination of this Agreement.

Section 6. Access and Audits:

COUNTY and AT&T shall maintain books, records, and documents to justify all charges, expenses and costs incurred under this Agreement and in performing the Project, in accordance with Generally Accepted Accounting Principles (GAAP). The COUNTY and AT&T shall have access to all books, records, and documents as required in this Agreement, and for at least three (3) years after completion of the Project. In the event any work is subcontracted by COUNTY, COUNTY shall similarly require each Contractor and subcontractor to maintain and allow access to such records for audit purposes.

Section 7. Independent Contractor:

COUNTY and AT&T are and shall be, in the performance of all work, services and activities under this Agreement Independent Contractors and not employees, agents or servants of the other party. All COUNTY employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to COUNTY'S sole direction, supervision, and control. All AT&T employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to AT&T's sole direction, supervision, and control. The Parties shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the parties relationship and the relationship of its employees to the other party shall be that of an Independent Contractor and not as employees or agents of the other.

COUNTY does not have the power or authority to bind AT&T in any promise, agreement or representation.

Section 8. Personnel:

COUNTY represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with AT&T.

All of the services required herein under shall be performed by COUNTY or its contractor, and personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

All of COUNTY'S personnel, Contractors and all subcontractors while on COUNTY premises will conduct themselves in an acceptable manner and follow acceptable safety and security procedures.

Section 9. Indemnification:

The COUNTY shall require each contractor engaged by the COUNTY for the Work to:

- A. Indemnify, defend, save and hold harmless AT&T and its officers, agents or employees from all suits, actions, claims, demands, liability arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor, its officers, agents, or employees in the performance of the Work;
- B. Maintain Commercial General Liability coverage, including vehicle coverage, in combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000.00); and
- C. Acknowledge that AT&T is a limited third party beneficiary with the right to seek damages from the contractor for its failure to perform or to enforce the contractor's performance of its duties and obligations regarding the Work.

Notwithstanding the above, AT&T does not have the right to compel the COUNTY to perform its duties and obligations under this Contract or to seek damages from the COUNTY for its failure to perform or to compel the contractor to perform. Nothing herein shall create or vest in AT&T the right to compel the COUNTY to act for or on AT&T's behalf or for its benefit, nor shall it have a cause of action of any type or nature against the COUNTY.

Section 10. Annual Appropriation:

All provisions of this Agreement calling for the expenditure of ad valorem tax money by the COUNTY are subject to annual budgetary funding and should the COUNTY involuntarily fail to fund any of their obligations pursuant to the Agreement, this Agreement may be terminated. However, once the Project has been awarded to the COUNTY contractor, it shall be prosecuted to completion and this Agreement shall be binding upon the parties and the COUNTY shall not have the right to terminate the subject Agreement for the reason that the sufficient funds are not available for the construction of the Project.

Section 11. 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, each party shall have thirty (30) days written notice before exercising any of its rights.

Section 12. 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.

Section 13. 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:

All notice to AT&T shall be sent to:

Mr. Robert C. Lowen, R/W Manager - OSP Engineering
AT & T Florida Telecommunications Company
Engineering Department
2021 South Military Trail
West Palm Beach, FL 33415-6440

All notice to the COUNTY shall be sent to:

Omelio A. Fernandez, P.E., Director
Roadway Production Division
P.O. Box 21229
West Palm Beach, FL 33416-1229
ATTN: ROADWAY PRODUCTION

Section 14. 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 15. Remedies:

This Agreement shall be governed by and in accordance with the laws of the State of Florida. Any 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 shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity 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 16. No Waiver:

Any waiver by either Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter. The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.

Section 17. 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 18. Equal Opportunity:

COUNTY and AT&T agree that no person shall, on the grounds of age, race, color, sex, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, and gender identity and expression, be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement. COUNTY will ensure that all contracts let for the Project pursuant to the terms of this Agreement will contain a similar non-discrimination and equal opportunity clause.

Section 19. 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 20. Filing:

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

Section 21. Termination:

This Agreement may be terminated by either party to this Agreement upon sixty (60) days written notice to the other party, except as otherwise addressed in this agreement. However, once the Project has commenced, it shall be prosecuted to completion and this agreement shall be binding upon the parties and neither party shall have the right to terminate the subject Agreement.

Section 22. Compliance with Codes and Laws:

COUNTY and AT&T shall abide by all applicable federal, state and local laws, orders, rules and regulations when performing under this Agreement. COUNTY and AT&T further agrees to include this provision in all subcontracts issued as a result of this Agreement.

Section 23. Office of the Inspector General:

Palm Beach County has established the Office of the Inspector General, Ordinance R2009-049, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All contractors and parties doing

business with the County and receiving County funds shall fully cooperate with the Inspector General including receiving access to records relating to Bid or any resulting contract.

Section 24. Public Entity Crime Certification:

As provided in F.S. 287.132-133, as may be amended from time to time, by entering into this Agreement or performing any work in furtherance hereof, COUNTY shall have its contractors certify that their affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3) (a).

Section 25. Severability:

If any section, paragraph, sentence, clause or provision of this Agreement is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remaining portions of this Agreement.

Section 26. Entirety of Agreement:

COUNTY and AT&T agree that this Agreement sets forth the entire Agreement between the parties, and there are no promises or understandings other than those stated herein.

Section 27. Survival:

The obligations, rights, and remedies of the Parties hereunder, which by their nature survive the termination of this agreement or the completion of the Project, shall survive such termination or Project completion and inure to the benefit of the Parties.

Section 28. Term:

The term of this Agreement shall be effective on the date of execution of this Agreement by both parties.

IN WITNESS WHEREOF, the undersigned parties have executed this Interlocal Agreement on the day and year first written above.

AT&T Florida

PALM BEACH COUNTY, FLORIDA

BY: Brenda Hobby
(Print Name)

BY: Tanya N. McConnell, P.E.,
Deputy County Engineer

Brenda Hobby
(Signature)

Tanya N. McConnell
(Signature)

ATTEST WITNESS:

APPROVED AS TO TERMS
AND CONDITIONS:

BY: Robert Lowen
(Print Name)

By: Omelio A. Fernandez, P.E., Director
Roadway Production Division

Robert Lowen
(Signature)

Omelio A. Fernandez
(Signature)

BY: DONNA REGULA
(Print Name)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Donna Regula
(Signature)

BY: Marilyn R. [Signature]
Assistant County Attorney

EXHIBIT "B"

AT&T Florida

PROJECT NAME: Old Dixie Hwy. and Hidden Valley Blvd.

PROJECT NUMBER: 2003105

CONTRACTOR: Rosso Paving & Drainage Inc.

<u>ITEM</u>	<u>QUANTITY /UNITS</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>	
AT&T Utility Contingency Items				
44	SUPPORT & PROTECT BURIED TELECOMMUNICATIONS CABLE	10 LF	\$23.65	\$236.50
45	SUPPORT & PROTECT TELECOMMUNICATIONS DUCT	100 LF	\$23.65	\$2,365.00
49	ADJUST AT&T MANHOLE	7 EA	\$840.00	\$5,880.00
52	MANHOLE TYPE P-7 (PARTIAL)	1 EA	\$2,100.00	\$2,100.00
53	CONFLICT STRUCTURE (AT&T)	4 EA	\$4,126.50	\$16,506.00
TOTAL AT&T ITEMS				<u>\$27,087.50</u>

**AGREEMENT BETWEEN PALM BEACH COUNTY, FLORIDA
AND
FLORIDA POWER AND LIGHT
FOR JOINT PARTICIPATION AND PROJECT FUNDING
IN CONSTRUCTION OF
Hatton Hwy. over H.W.C.D. E-2 Canal
PALM BEACH COUNTY PROJECT NO. 2004509**

THIS Agreement is made as of the 19 day of December, 2011 by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter "COUNTY") and Florida Power and Light company, a corporation existing under the laws of Florida, (hereinafter "FPL").

WHEREAS, the COUNTY intends to replace Hatton Hwy. Bridge over H.W. C. D. E-2 Canal (hereinafter the "Project"); and

WHEREAS, the COUNTY and FPL desire to jointly participate in the construction of utility adjustments to FPL's facilities and other improvements within the Project area, hereinafter referred to as the "Work"; and

WHEREAS, both COUNTY and FPL declare that it is in the public interest that the Work be constructed with the aforementioned Project; and

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

Section 1. Recitals.

The above recitals are true and correct and are incorporated herein.

Section 2. Project and Work to be Completed by the COUNTY:

COUNTY shall provide construction and administrative services to the Project as more specifically described in the Bid Documents for Palm Beach County Project No. 2004509. Said Bid Documents include the Work as shown in FPL's prepared Utility Matrix, Applicable Technical Specifications, Standard Construction Details, and/or Approved Product List. The Project, as set forth in this Agreement, shall be performed on Project.

Section 3. Responsibilities and Duties:

A. FPL shall reimburse COUNTY a total estimated cost of **One Thousand Five Hundred Eighty Six Dollars and Eighty Cents (\$1,586.80)**, provided COUNTY performs pursuant to the terms and conditions of this Agreement for all Work in accordance with the Bid Tabulation (Attachment "A") and summary (Attachment "B"). Any cost exceeding this amount attributable to FPL Items shall be paid by FPL.

B. Costs shall be based upon actual contract costs using contract unit prices and actual constructed quantities, said quantities being measured by the COUNTY with concurrence by FPL.

C. COUNTY shall obtain written approval from FPL in advance of any change orders, which increase the cost attributable to the Work to an amount greater than the contract amount as stated in Paragraph A of this Agreement. Approval shall not be unreasonably withheld. FPL's responsibility for change order costs includes any costs associated with FPL's failure to approve change orders in a timely manner.

D. COUNTY shall secure all necessary easements and permits required to perform the Project.

E. COUNTY shall publicly bid, administer, construct and inspect the Project and Work in accordance with the Bid Documents and Exhibit "A".

F. COUNTY shall require the contractor to provide a Public Construction Bond in an amount equal to the contractor's bid for the Project and the Work.

G. Upon completion of the Project and the Work, FPL shall repair and maintain the Work, at FPL's expense.

Section 4. Payments/Invoicing and Reimbursement:

The COUNTY will invoice FPL on a periodic basis during construction of the Project and the Work. FPL agrees to provide to COUNTY reimbursement funding for documented costs for the Work in the amount established in Section 3.A. Upon COUNTY'S submission of acceptable documents needed to substantiate their costs for the Work, FPL will use its best efforts to provide said funds to COUNTY on a reimbursement basis within thirty (30) days of receipt of all required documents. COUNTY shall submit all invoices to FPL identifying the Work, including COUNTY'S total expenditure for the Project. COUNTY shall supply any further documentation such as copies of paid receipts, canceled checks, invoices and other documents deemed necessary by FPL within seven (7) calendar days of request by FPL. Invoices received from COUNTY will be reviewed and approved by FPL to insure that expenditures have been made in conformity with this Agreement. Invoices will normally be paid within thirty (30) days following approval.

The Project and the Work will be administered by the COUNTY. Only those costs incurred by the COUNTY relating to the Work are eligible for reimbursement by FPL pursuant to the terms and conditions hereof. In the event the COUNTY ceases or suspends the Project or the Work for any reason, FPL will reimburse the COUNTY for the Work completed as of the date the COUNTY uses to suspend the Work. Any remaining unpaid portion of this Agreement shall be retained by FPL, and FPL shall have no further obligation to honor reimbursement requests submitted by the COUNTY.

Section 5. Repayment

COUNTY shall repay FPL for all unauthorized, illegal or unlawful expenditures of revenues, including those discovered after the expiration or termination of this Agreement.

Section 6. Access and Audits:

COUNTY and FPL shall maintain books, records, and documents to justify all charges, expenses and costs incurred under this Agreement and in performing the Project, in accordance with Generally Accepted Accounting Principles (GAAP). The COUNTY and FPL shall have access to all books, records, and documents as required in this Agreement, and for at least three (3) years after completion of the Project. In the event any work is subcontracted by COUNTY, COUNTY shall similarly require each Contractor and subcontractor to maintain and allow access to such records for audit purposes.

Section 7. Independent Contractor:

COUNTY and FPL are and shall be, in the performance of all work, services and activities under this Agreement Independent Contractors and not employees, agents or servants of the other party. All COUNTY employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to COUNTY'S sole direction, supervision, and control. All FPL employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to FPL's sole direction, supervision, and control. The Parties shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the parties relationship and the relationship of its employees to the other party shall be that of an Independent Contractor and not as employees or agents of the other.

COUNTY does not have the power or authority to bind FPL in any promise, Agreement or representation.

Section 8. Personnel:

COUNTY represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with FPL.

All of the services required herein under shall be performed by COUNTY or its contractor, and personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

All of COUNTY'S personnel, Contractors and all subcontractors while on COUNTY premises will conduct themselves in an acceptable manner and follow acceptable safety and security procedures.

Section 9. Indemnification:

The COUNTY shall require each contractor engaged by the COUNTY for the Work to:

- A. Indemnify, defend, save and hold harmless FPL and its officers, agents or employees from all suits, actions, claims, demands, liability arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor, its officers, agents, or employees in the performance of the Work;
- B. Maintain Commercial General Liability coverage, including vehicle coverage, in combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000.00); and
- C. Acknowledge that FPL is a limited third party beneficiary with the right to seek damages from the contractor for its failure to perform or to enforce the contractor's performance of its duties and obligations regarding the Work.

Notwithstanding the above, FPL does not have the right to compel the COUNTY to perform its duties and obligations under this Contract or to seek damages from the COUNTY for its failure to perform or to compel the contractor to perform. Nothing herein shall create or vest in FPL the right to compel the COUNTY to act for or on FPL behalf or for its benefit, nor shall it have a cause of action of any type or nature against the COUNTY.

Section 10. Annual Appropriation:

All provisions of this Agreement calling for the expenditure of ad valorem tax money by the COUNTY are subject to annual budgetary funding and should the COUNTY involuntarily fail to fund any of their obligations pursuant to the Agreement, this Agreement may be terminated. However, once the Project has been awarded to the COUNTY contractor, it shall be prosecuted to completion and this Agreement shall be binding upon the parties and the COUNTY shall not have the right to terminate the subject Agreement for the reason that the sufficient funds are not available for the construction of the Project.

Section 11. 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, each party shall have thirty (30) days written notice before exercising any of its rights.

Section 12. 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.

Section 13. 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:

All notice to FPL shall be sent to:

Dan Agustin, Relocation Coordinator
FPL
9329 S Military Trail
Boynton Beach, FL 33436

All notice to the COUNTY shall be sent to:

Omelio A. Fernandez, P.E., Director
Palm Beach County Engineering and Public Works
Roadway Production Division
P.O. Box 21229
West Palm Beach, FL 33416-1229

Section 14. 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 15. Remedies:

This Agreement shall be governed by and in accordance with the laws of the State of Florida. Any 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 shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity 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 16. No Waiver:

Any waiver by either Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter. The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.

Section 17. 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 18. Equal Opportunity:

COUNTY and FPL agree that no person shall, on the grounds of age, race, color, sex, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, and gender identity and expression, be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement. COUNTY will ensure that all contracts let for the Project pursuant to the terms of this Agreement will contain a similar non-discrimination and equal opportunity clause.

Section 19. 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 20. Filing:

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

Section 21. Termination:

This Agreement may be terminated by either party to this Agreement upon sixty (60) days written notice to the other party, except as otherwise addressed in this agreement. However, once the Project has commenced, it shall be prosecuted to completion and this agreement shall be binding upon the parties and neither party shall have the right to terminate the subject Agreement.

Section 22. Compliance with Codes and Laws:

COUNTY and FPL shall abide by all applicable federal, state and local laws, orders, rules and regulations when performing under this Agreement. COUNTY and FPL further agrees to include this provision in all subcontracts issued as a result of this Agreement.

Section 23. Office of the Inspector General:

Palm Beach County has established the Office of the Inspector General, Ordinance R2009-049, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All contractors and parties doing business with the County and receiving County funds shall fully cooperate with the Inspector

General including receiving access to records relating to Bid or any resulting contract.

Section 24. Public Entity Crime Certification:

As provided in F.S. 287.132-133, as may be amended from time to time, by entering into this Agreement or performing any work in furtherance hereof, COUNTY shall have its contractors certify that their affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3) (a).

Section 25. Severability:

If any section, paragraph, sentence, clause or provision of this Agreement is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remaining portions of this Agreement.

Section 26. Entirety of Agreement:

COUNTY and FPL agree that this Agreement sets forth the entire Agreement between the parties, and there are no promises or understandings other than those stated herein.

Section 27. Survival:

The obligations, rights, and remedies of the Parties hereunder, which by their nature survive the termination of this agreement or the completion of the Project, shall survive such termination or Project completion and inure to the benefit of the Parties.

Section 28. Term:

The term of this Agreement shall be effective on the date of execution of this Agreement by both parties.

IN WITNESS WHEREOF, the undersigned parties have executed this Interlocal Agreement on the day and year first written above.

FLORIDA POWER AND LIGHT

PALM BEACH COUNTY, FLORIDA

BY: Daniel Agustin
(Print Name)

BY: Tanya N. McConnell, P.E.,
Deputy County Engineer

[Signature]
(Signature)

[Signature]
(Signature)

ATTEST WITNESS:

APPROVED AS TO TERMS
AND CONDITIONS:

BY: John R. Van UEST
(Print Name)

By: Omelio A. Fernandez, P.E., Director
Roadway Production Division

[Signature]
(Signature)

[Signature]
(Signature)

BY: Charles Orr
(Print Name)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

[Signature]
(Signature)

BY: [Signature]
Assistant County Attorney

ATTACHMENT "B"

FPL

PROJECT NAME: Hatton Hwy. over H.G.W.C.D. E-2 Canal
PROJECT NUMBER: 2004509
CONTRACTOR: H & R of Belle Glades, Inc.

<u>ITEM</u>	<u>QUANTITY/UNITS</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
Regular Items			
8	MISCELLANEOUS ASPHALT PAVEMENT 3 TN	\$190.00	\$570.00
12	GUARDRAIL (ROADWAY) 62 LF	\$16.40	\$1,016.80
TOTAL ITEMS			\$1,586.80

**AGREEMENT BETWEEN PALM BEACH COUNTY, FLORIDA
AND
AT & T Florida
FOR JOINT PARTICIPATION AND PROJECT FUNDING
IN CONSTRUCTION OF
EAST OCEAN AVENUE (LANTANA) BRIDGE OVER INTRACOASTAL WATERWAY
PALM BEACH COUNTY PROJECT NO. 2003205**

THIS Agreement is made as of the 28 day of October, 2011, by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter "COUNTY") and AT&T Florida, a corporation existing under the laws of Florida, (hereinafter "AT&T").

WHEREAS, the COUNTY intends to improve East Ocean Ave. Bridge in Lantana over Intracoastal Waterway (hereinafter the "Project"); and

WHEREAS, the COUNTY and AT&T desire to jointly participate in the construction of utility adjustments to AT&T's facilities and other improvements within the Project area, hereinafter referred to as the "Work"; and

WHEREAS, both COUNTY and AT&T declare that it is in the public interest that the Work be constructed with the aforementioned Project; and

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

Section 1. Recitals.

The above recitals are true and correct and are incorporated herein.

Section 2. Project and Work to be Completed by the COUNTY:

COUNTY shall provide construction and administrative services to the Project as more specifically described in the Bid Documents for Palm Beach County Project No. 3003205. Said Bid Documents include the Work as shown in AT&T's prepared Utility Matrix, Applicable Technical Specifications, Standard Construction Details, and/or Approved Product List. The Project, as set forth in this Agreement, shall be performed on East Ocean Ave. Bridge in Lantana over Intracoastal Waterway

Section 3. Responsibilities and Duties:

A. AT&T shall reimburse COUNTY a total estimated cost of **Six Thousand Two Hundred Dollars (\$6,200.00)**, provided COUNTY performs pursuant to the terms and conditions of this Agreement for all Work in accordance with the Bid Tabulation (Exhibit "A") and summary (Exhibit "B"). Any cost exceeding this amount attributable to AT&T Utility Items shall be paid by AT&T.

B. Costs shall be based upon actual contract costs using contract unit prices and actual constructed quantities, said quantities being measured by the COUNTY with concurrence by AT&T.

C. COUNTY shall obtain written approval from AT&T in advance of any change orders, which increase the cost attributable to the Work to an amount greater than the contract amount as stated in Paragraph A of this Agreement. Approval shall not be unreasonably withheld. AT&T's responsibility for change order costs includes any costs associated with AT&T's failure to approve change orders in a timely manner.

D. COUNTY shall secure all necessary easements and permits required to perform the Project.

E. COUNTY shall publicly bid, administer, construct and inspect the Project and Work in accordance with the Bid Documents and Exhibit "A".

F. COUNTY shall require the contractor to provide a Public Construction Bond in an amount equal to the contractor's bid for the Project and the Work.

G. Upon completion of the Project and the Work, AT&T shall repair and maintain the Work, at AT&T's expense.

Section 4. Payments/Invoicing and Reimbursement:

The COUNTY will invoice AT&T on a periodic basis during construction of the Project and the Work. AT&T agrees to provide to COUNTY reimbursement funding for documented costs for the Work in the amount established in Section 3.A. Upon COUNTY'S submission of acceptable documents needed to substantiate their costs for the Work, AT&T will use its best efforts to provide said funds to COUNTY on a reimbursement basis within thirty (30) days of receipt of all required documents. COUNTY shall submit all invoices to AT&T identifying the Work, including COUNTY'S total expenditure for the Project. COUNTY shall supply any further documentation such as copies of paid receipts, canceled checks, invoices and other documents deemed necessary by AT&T within seven (7) calendar days of request by AT&T. Invoices received from COUNTY will be reviewed and approved by AT&T to insure that expenditures have been made in conformity with this Agreement. Invoices will normally be paid within thirty (30) days following approval.

The Project and the Work will be administered by the COUNTY. Only those costs incurred by the COUNTY relating to the Work are eligible for reimbursement by AT&T pursuant to the terms and conditions hereof. In the event the COUNTY ceases or suspends the Project or the Work for any reason, AT&T will reimburse the COUNTY for the Work completed as of the date the COUNTY uses to suspend the Work. Any remaining unpaid portion of this Agreement shall be retained by AT&T, and AT&T shall have no further obligation to honor reimbursement requests submitted by the COUNTY.

Section 5. Repayment

COUNTY shall repay AT&T for all unauthorized, illegal or unlawful expenditures of revenues, including those discovered after the expiration or termination of this Agreement.

Section 6. Access and Audits:

COUNTY and AT&T shall maintain books, records, and documents to justify all charges, expenses and costs incurred under this Agreement and in performing the Project, in accordance with Generally Accepted Accounting Principles (GAAP). The COUNTY and AT&T shall have access to all books, records, and documents as required in this Agreement, and for at least three (3) years after completion of the Project. In the event any work is subcontracted by COUNTY, COUNTY shall similarly require each Contractor and subcontractor to maintain and allow access to such records for audit purposes.

Section 7. Independent Contractor:

COUNTY and AT&T are and shall be, in the performance of all work, services and activities under this Agreement Independent Contractors and not employees, agents or servants of the other party. All COUNTY employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to COUNTY'S sole direction, supervision, and control. All AT&T employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to AT&T's sole direction, supervision, and control. The Parties shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the parties relationship and the relationship of its employees to the other party shall be that of an Independent Contractor and not as employees or agents of the other.

COUNTY does not have the power or authority to bind AT&T in any promise, agreement or representation.

Section 8. Personnel:

COUNTY represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with AT&T.

All of the services required herein under shall be performed by COUNTY or its contractor, and personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

All of COUNTY'S personnel, Contractors and all subcontractors while on COUNTY premises will conduct themselves in an acceptable manner and follow acceptable safety and security procedures.

Section 9. Indemnification:

The COUNTY shall require each contractor engaged by the COUNTY for the Work to:

- A. Indemnify, defend, save and hold harmless AT&T and its officers, agents or employees from all suits, actions, claims, demands, liability arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor, its officers, agents, or employees in the performance of the Work;
- B. Maintain Commercial General Liability coverage, including vehicle coverage, in combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000.00); and
- C. Acknowledge that AT&T is a limited third party beneficiary with the right to seek damages from the contractor for its failure to perform or to enforce the contractor's performance of its duties and obligations regarding the Work.

Notwithstanding the above, AT&T does not have the right to compel the COUNTY to perform its duties and obligations under this Contract or to seek damages from the COUNTY for its failure to perform or to compel the contractor to perform. Nothing herein shall create or vest in AT&T the right to compel the COUNTY to act for or on AT&T's behalf or for its benefit, nor shall it have a cause of action of any type or nature against the COUNTY.

Section 10. Annual Appropriation:

All provisions of this Agreement calling for the expenditure of ad valorem tax money by the COUNTY are subject to annual budgetary funding and should the COUNTY involuntarily fail to fund any of their obligations pursuant to the Agreement, this Agreement may be terminated. However, once the Project has been awarded to the COUNTY contractor, it shall be prosecuted to completion and this Agreement shall be binding upon the parties and the COUNTY shall not have the right to terminate the subject Agreement for the reason that the sufficient funds are not available for the construction of the Project.

Section 11. 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, each party shall have thirty (30) days written notice before exercising any of its rights.

Section 12. 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.

Section 13. 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:

All notice to AT&T shall be sent to:

Mr. Robert C. Lowen, R/W Manager - OSP Engineering
AT & T Florida Telecommunications Company
Engineering Department
2021 South Military Trail
West Palm Beach, FL 33415-6440

All notice to the COUNTY shall be sent to:

Omelio A. Fernandez, P.E., Director
Roadway Production Division
P.O. Box 21229
West Palm Beach, FL 33416-1229
ATTN: ROADWAY PRODUCTION

Section 14. 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 15. Remedies:

This Agreement shall be governed by and in accordance with the laws of the State of Florida. Any 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 shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity 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 16. No Waiver:

Any waiver by either Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter. The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.

Section 17. 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 18. Equal Opportunity:

COUNTY and AT&T agree that no person shall, on the grounds of age, race, color, sex, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, and gender identity and expression, be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement. COUNTY will ensure that all contracts let for the Project pursuant to the terms of this Agreement will contain a similar non-discrimination and equal opportunity clause.

Section 19. 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 20. Filing:

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

Section 21. Termination:

This Agreement may be terminated by either party to this Agreement upon sixty (60) days written notice to the other party, except as otherwise addressed in this agreement. However, once the Project has commenced, it shall be prosecuted to completion and this agreement shall be binding upon the parties and neither party shall have the right to terminate the subject Agreement.

Section 22. Compliance with Codes and Laws:

COUNTY and AT&T shall abide by all applicable federal, state and local laws, orders, rules and regulations when performing under this Agreement. COUNTY and AT&T further agrees to include this provision in all subcontracts issued as a result of this Agreement.

Section 23. Office of the Inspector General:

Palm Beach County has established the Office of the Inspector General, Ordinance R2009-049, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All contractors and parties doing business with the County and receiving County funds shall fully cooperate with the Inspector

General including receiving access to records relating to Bid or any resulting contract.

Section 24. Public Entity Crime Certification:

As provided in F.S. 287.132-133, as may be amended from time to time, by entering into this Agreement or performing any work in furtherance hereof, COUNTY shall have its contractors certify that their affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3) (a).

Section 25. Severability:

If any section, paragraph, sentence, clause or provision of this Agreement is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remaining portions of this Agreement.

Section 26. Entirety of Agreement:

COUNTY and AT&T agree that this Agreement sets forth the entire Agreement between the parties, and there are no promises or understandings other than those stated herein.

Section 27. Survival:

The obligations, rights, and remedies of the Parties hereunder, which by their nature survive the termination of this agreement or the completion of the Project, shall survive such termination or Project completion and inure to the benefit of the Parties.

Section 28. Term:

The term of this Agreement shall be effective on the date of execution of this Agreement by both parties.

IN WITNESS WHEREOF, the undersigned parties have executed this Interlocal Agreement on the day and year first written above.

AT&T Florida

PALM BEACH COUNTY, FLORIDA

BY: Brenda Hobby
(Print Name)

BY: Tanya N. McConnell, P.E.,
Deputy County Engineer

Brenda Hobby
(Signature)

Tanya N. McConnell
(Signature)

ATTEST WITNESS:

APPROVED AS TO TERMS
AND CONDITIONS:

BY: Robert Louen
(Print Name)

By: Omelio A. Fernandez, P.E., Director
Roadway Production Division

Robert Louen
(Signature)

Omilio A. Fernandez
(Signature)

BY: DOUVA REGULA
(Print Name)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Douva Regula
(Signature)

BY: Mark R. [Signature]
Assistant County Attorney

EXHABIT "B"

AT&T

**PROJECT NAME: East Ocean Ave. (Lantana) Bridge over Intracoastal
Waterway**

PROJECT NUMBER: 2003502

CONTRACTOR: GLF Construction Corp.

<u>ITEM</u>	<u>QUANTITY /UNITS</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
AT&T Regular Item			
22	PREMIUM FOR CONFLICT CONDITION 2 EA	\$2,650.00	\$5,300.00
AT&T Contingency Items			
46	SUPPORT AND PROTECT BURIED CABLE 50 LF	\$9.00	\$450.00
47	SUPPORT AND PROTECT FIBER OPTIC CABLE 50 LF	\$9.00	\$450.00
TOTAL			\$6,200.00