

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

Meeting Date: August 14, 2012	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
Department:	<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing
Submitted By: Engineering & Public Works		
Submitted For: Streetscape Section		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: Approve the First Amendment (Amendment) to the Interlocal Agreement R2011-1981 (Agreement) with the City of West Palm Beach (City) under which the City agrees to accept maintenance responsibility for permitted unirrigated palms (Palms) that were added by Palm Beach County (County) as components of the Okeechobee Boulevard median beautification project between State Road 7 and Florida's Turnpike (Improvements).

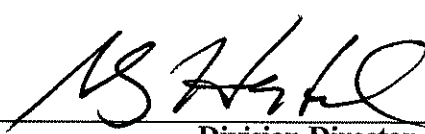
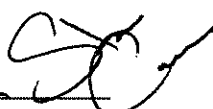
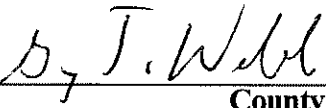
SUMMARY: Approval of the Amendment will formalize the City's maintenance responsibility for the Palms as elements of the Improvements. In accordance with the terms of the Agreement, the City is required to maintain the Improvements that were installed by the County. Residual funding was available from the budget to pay for the installation of Palms in medians that would not have otherwise received any landscaping.

Districts 2 & 6 (MRE)

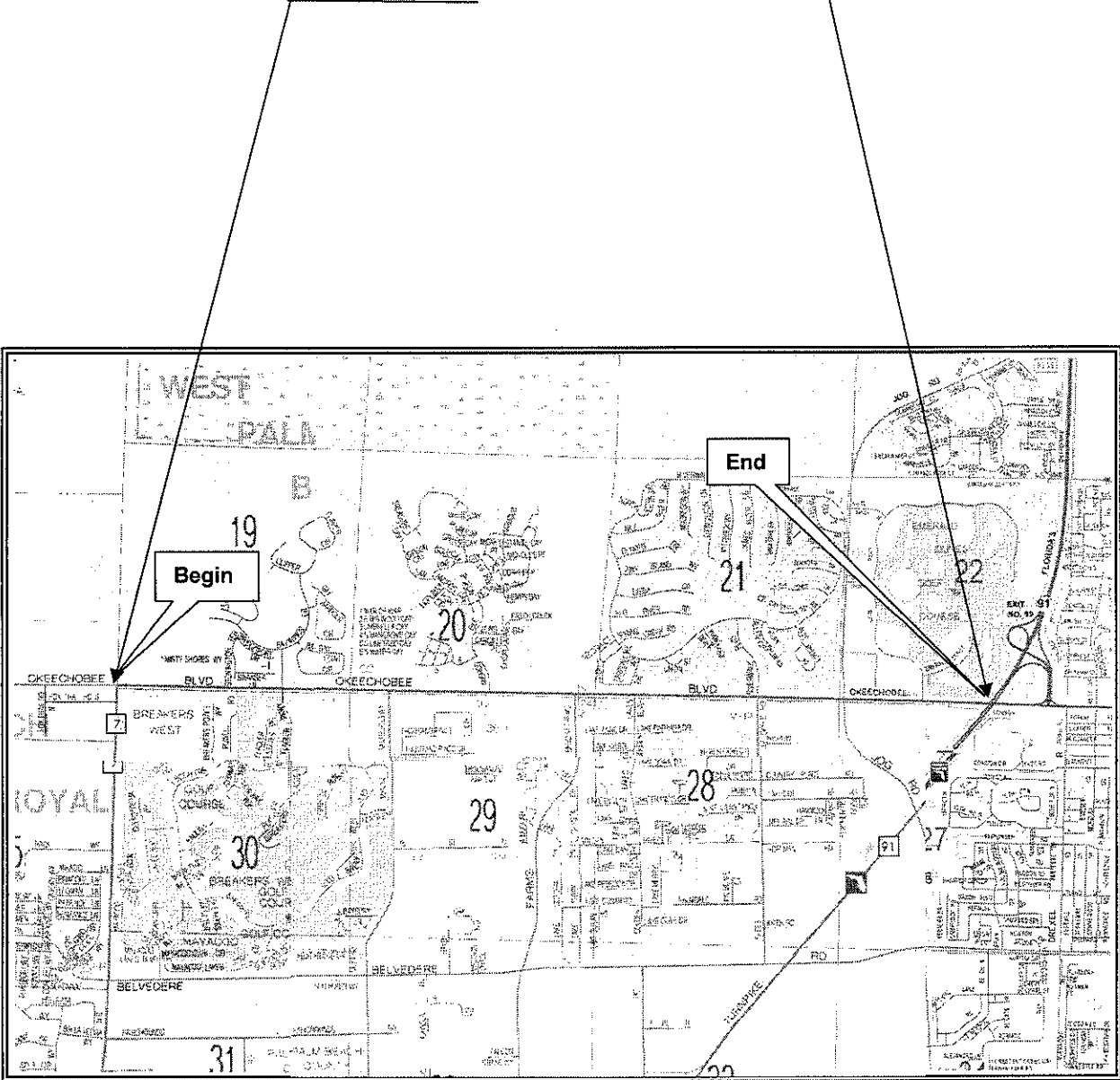
Background and Justification: On December 20, 2011, the Board of County Commissioners approved an Agreement with the City for the County's installation of Improvements on Okeechobee Boulevard and for the City's maintenance of the Improvements. The City has agreed to include the Palms as elements of the Improvements that they are required to maintain under the Agreement

Attachments:

1. Location Sketch
2. Interlocal Agreement with City (R2011-1981)
3. First Amendment to Interlocal Agreement (3 originals)

Recommended by: 	Date: 7/3/2012 
Approved By: 	Date: 7/24/12

**LOCATION MAP
SR 704/ OKEECHOBEE BOULEVARD
SR 7 TO FLORIDA'S TURNPIKE**



1 STATE ROAD 704 (OKEECHOBEE BOULEVARD) STATE HIGHWAY INTERLOCAL
2 AGREEMENT BETWEEN THE CITY OF WEST PALM BEACH AND PALM BEACH
3 COUNTY.

R 2011-1981

DEC 20 2011

4 THIS INTERLOCAL AGREEMENT made and entered into this _____ day of
5 _____, 2011, by and between the City of West Palm Beach, (hereinafter
6 "CITY"), and Palm Beach County, (hereinafter "COUNTY"), political subdivisions of the
7 state of Florida, existing under the Laws of Florida.

8 WITNESSETH

9 WHEREAS, the COUNTY plans to undertake the construction of landscaping
10 and irrigation improvements in accordance with plans that were developed with input
11 from the CITY and representatives of adjacent communities (hereinafter
12 "IMPROVEMENTS") as components of its project to eight-lane the Florida Department of
13 Transportation's (hereinafter "DEPARTMENT") State Road 704 from State Road 7 to
14 Florida's Turnpike; and

15 WHEREAS, the COUNTY will provide 34.6% partial funding, not to exceed TWO
16 HUNDRED TWENTY-FIVE THOUSAND and 00/100 DOLLARS (\$225,000.00) for its
17 construction of the IMPROVEMENTS; and

18 WHEREAS, the CITY will provide 15.4% partial funding, not to exceed ONE
19 HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00); and

20 WHEREAS, the COUNTY will utilize DEPARTMENT's 50% matching funding,
21 not to exceed THREE HUNDRED TWENTY-FIVE THOUSAND and 00/100 DOLLARS
22 (\$325,000.00) to assist with funding its construction of the IMPROVEMENTS; and

23 WHEREAS, COUNTY will construct the IMPROVEMENTS for a total cost
24 (combined DEPARTMENT, COUNTY and CITY costs) not to exceed SIX HUNDRED
25 FIFTY THOUSAND and 00/100 DOLLARS (\$650,000.00); and

26 WHEREAS, the DEPARTMENT requires a Maintenance Memorandum of
27 Agreement (hereinafter "MMOA"), for maintenance of such IMPROVEMENTS when
28 DEPARTMENT funds are utilized for their construction; and

29 WHEREAS, the DEPARTMENT and the COUNTY are of the opinion that said
30 IMPROVEMENTS shall require substantial trimming, cutting, mowing, fertilizing, litter
31 pick-up, necessary replanting and repairs, hereinafter "MAINTENANCE"; and

32 WHEREAS, the DEPARTMENT requires that the MMOA must be between the
33 DEPARTMENT and the local government receiving their funding, in this case the
34 COUNTY; and

1 **WHEREAS, COUNTY** will not maintain the **IMPROVEMENTS** because they will
2 be located within the municipal limits of the **CITY**, and such maintenance would be
3 against **COUNTY** policy; and
4 **WHEREAS**, in order to facilitate the implementation of the **IMPROVEMENTS**, the
5 **CITY** agrees to be responsible for **MAINTENANCE** of the **IMPROVEMENTS** in
6 conformance with the **DEPARTMENT's** requirements as detailed in the **MMOA**,
7 attached hereto and incorporated herein as Attachment "1"; and
8 **WHEREAS**, the **CITY** is willing and able to meet all obligations which the
9 **COUNTY** would assume under the **DEPARTMENT's MMOA**; and
10 **WHEREAS**, following the **COUNTY's** completion of the **IMPROVEMENTS**, the
11 **COUNTY** will transfer the Florida Power and Light Co. utility accounts that were
12 established in the name of the **COUNTY** to power certain components of the
13 **IMPROVEMENTS**, such as irrigation systems, to the **CITY**; and
14 **WHEREAS**, the **CITY** is willing and able to accept the transfer of, and assume
15 responsibility for Florida Power and Light Co. utility accounts and charges for providing
16 ongoing electricity needed to power certain components of the **IMPROVEMENTS**, such
17 as irrigation systems; and
18 **WHEREAS**, it is the general intent of this Agreement to establish that the **CITY**
19 commits to such obligations prior to the **COUNTY** installing the **IMPROVEMENTS**; and
20 **WHEREAS**, the parties hereto mutually recognize the need for entering into an
21 Agreement designating and setting forth the responsibilities of each party.
22 **NOW THEREFORE**, for and in consideration of the mutual benefits to flow each
23 to the other, the parties covenant and agree as follows:
24 1. The above recitations are true and correct incorporated in this Agreement.
25 2. The **COUNTY** agrees to construct the **IMPROVEMENTS** utilizing
26 **DEPARTMENT, COUNTY** and **CITY** funding for a total cost not to exceed SIX
27 HUNDRED FIFTY THOUSAND and 00/100 DOLLARS (\$650,000.00).
28 3. The **CITY** shall provide a one time payment of ONE HUNDRED THOUSAND
29 AND 00/100 DOLLARS (\$100,000) to the **COUNTY** as their contribution to the
30 construction of the **IMPROVEMENTS**. Payment shall be due forty-five (45) days
31 after the execution of this Agreement.
32 4. The **CITY** agrees to provide **MAINTENANCE** of the **IMPROVEMENTS** and all
33 right of way within the medians and all areas outside the travelway (**GRASSY**
34 **AREAS**) as detailed in the **MMOA** (see Attachment "1"). **MAINTENANCE**

1 functions to be performed by the **CITY** shall be subject to periodic inspections by
2 the **DEPARTMENT** and/or the **COUNTY** at the discretion of the **DEPARTMENT**
3 and/or the **COUNTY**. Such inspection findings will be shared with the **CITY** and
4 shall be the basis of all decisions regarding reworking of improvements or
5 Agreement termination. The **CITY** shall not change or deviate from the
6 requirements of Attachment "1" without written approval of the **DEPARTMENT**
7 and the **COUNTY**.

8 5. If at any time after the **CITY** has assumed the **MAINTENANCE** responsibility
9 above-mentioned, it shall come to the attention of the **DEPARTMENT's** District
10 Secretary or the **COUNTY** that the **IMPROVEMENTS** and/or **GRASSY AREAS**,
11 or a part thereof, are not properly maintained pursuant to the terms of this
12 Agreement, said District Secretary or the **COUNTY** may at the option of either
13 issue a written notice that a deficiency or deficiencies exist (s), by sending a
14 certified letter to the **CITY** to place the **CITY** on notice thereof. Thereafter the
15 **CITY** shall have a period of thirty (30) calendar days within which to correct the
16 cited deficiencies. If said deficiencies are not corrected within this time period,
17 the **DEPARTMENT** and/or **COUNTY** may, at their option proceed as follows:

18 (a) Maintain the **IMPROVEMENTS** and/or **GRASSY AREAS**, or a part
19 thereof, with **DEPARTMENT**, **COUNTY**, or a private contractor's
20 personnel and invoice the **CITY** for expenses incurred, or

21 (b) Terminate the Agreement in accordance with Paragraphs 6, 7 and 8
22 of this Agreement and remove, by **DEPARTMENT**, **COUNTY**, or
23 private contractor's personnel, all or part of the **IMPROVEMENTS**
24 maintained under this Agreement or any preceding agreements and
25 charge the **CITY** the reasonable costs for such removal.

26 The **CITY** agrees to reimburse the **COUNTY** all monies expended by the
27 **COUNTY** to maintain the deficiencies or remove the deficient **IMPROVEMENTS**
28 as noted above.

29 6. It is understood between the parties hereto that the **IMPROVEMENTS** covered
30 by this Agreement may be removed, relocated or adjusted at any time in the
31 future as determined to be necessary by the **DEPARTMENT** and/or the
32 **COUNTY** in order that this State Road be widened, altered or otherwise changed
33 to meet with future criteria or planning of the **DEPARTMENT** and/or the
34 **COUNTY**. The **CITY** shall be given sixty (60) calendar days notice to remove

- 1 said landscaping/hardscape after which time the **DEPARTMENT** or **COUNTY**
2 may remove the same. The **CITY** agrees to reimburse the **COUNTY** for all
3 monies expended by the **COUNTY** for removing, relocating, or adjusting the
4 **IMPROVEMENTS** as noted above.
- 5 7. The **COUNTY** is entering into an **MMOA** with the **DEPARTMENT** for
6 **MAINTENANCE** of the **IMPROVEMENTS**, which includes a non-performance
7 clause that obligates the **COUNTY** to reimburse the **DEPARTMENT** their original
8 funding amount not to exceed \$325,000.00 as defined in the **MMOA** (see
9 Attachment "1"). The **CITY** agrees to reimburse the **COUNTY** all monies
10 expended for the **DEPARTMENT**'s funding of the **IMPROVEMENTS** should the
11 **CITY** fail to maintain the **IMPROVEMENTS** in accordance with the terms and
12 conditions of this Agreement, to the extent that this failure triggers the
13 **DEPARTMENT** demanding reimbursement from the **COUNTY** under similar
14 provisions in the **MMOA**.
- 15 8. The **CITY** agrees to reimburse the **COUNTY** all monies expended for the
16 **COUNTY**'s funding (\$225,000) of the **IMPROVEMENTS** should the **CITY** fail to
17 maintain the **IMPROVEMENTS** as defined in the **MMOA** in accordance with the
18 terms and conditions of this Agreement.
- 19 9. This Agreement may be terminated under any one of the following conditions:
- 20 (a) By the **COUNTY**, if the **CITY** fails to perform its duties under
21 Paragraphs 3 and 4, following ten (10) days written notice.
- 22 (b) By the **COUNTY**, for refusal by the **CITY** to allow public access to all
23 documents, papers, letters, or other material subject to the provisions
24 of Chapter 119, Florida Statutes and made or received by the **CITY** in
25 conjunction with this Agreement.
- 26 (c) In the event of termination, the **CITY** shall not be relieved of liability to
27 the **DEPARTMENT** and **COUNTY** for damages sustained by the
28 **DEPARTMENT** and/or **COUNTY** by virtue of any breach of the
29 contract by the **CITY**.
- 30 10. Within 30 days of the execution of this Agreement, the **COUNTY** will transfer the
31 Florida Power and Light Co. utility accounts that were established in the name of
32 the **COUNTY** to power certain components of the **IMPROVEMENTS**, such as
33 irrigation systems, to the **CITY**.

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11. The **CITY** will accept the transfer of, and assume responsibility for Florida Power and Light Co. utility accounts and charges for providing ongoing electricity needed to power certain components of the **IMPROVEMENTS**, such as irrigation systems.
12. This Agreement will become effective upon filing a copy of the signed Agreement with the Palm Beach County Clerk and Comptroller's Office. The **CITY** shall have no obligation to begin maintenance of the **IMPROVEMENTS** or **GRASSY AREAS** as detailed in the **MMOA** until installation of the **IMPROVEMENTS** has been completed and written notification has been provided to the **CITY** to commence required maintenance. The term of this Agreement shall remain in effect for twenty-five (25) years.
13. **CITY** shall, at all times during the term of this Agreement, maintain in force its status as a self-insured entity.
14. **CITY** recognizes that it is an independent contractor, and not an agent or servant of **COUNTY** or its Board of County Commissioners. In the event a claim or lawsuit is brought against **COUNTY**, its officers, employees, servants or agents, relating to the **IMPROVEMENTS** or any item addressed in this Agreement which is the responsibility of **CITY**, **CITY** hereby agrees, to the extent permitted by law, to indemnify, save and hold harmless **COUNTY**, its officers, employees, servants or agents, and to defend said persons from any such claims, liabilities, causes of action and judgments of any type whatsoever arising out of or relating to the negligent or wrongful acts or omissions of **CITY** relating to the obligations of **CITY** under this Agreement. **CITY**, to the extent permitted by law, agrees to pay all costs and expenses incurred by **COUNTY**, its officers, employees, servants or agents in connection with such claims, liabilities or suits except as may be incurred due to the negligence of **COUNTY**. Such liability is subject to the provisions of law, including the limits included in Section 768.28, Florida Statutes, which sets forth the partial waiver of sovereign immunity to which governmental entities are subject. It is expressly understood that this provision shall not be construed as a waiver of any right or defense that the **CITY** has under Section 768.28 or any other statute.
15. **CITY** shall promptly notify **COUNTY** of any lawsuit-related complaint, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement.

- 1 16. The **CITY** may construct additional landscaping within the limits of the rights-of-
2 way identified as a result of this document, subject to the following conditions:
- 3 (a) Plans for any new landscaping shall be subject to approval by the
4 **COUNTY** and the **DEPARTMENT**. The **CITY** shall not change or
5 deviate from said plans without written approval by the **COUNTY** and
6 the **DEPARTMENT**.
- 7 (b) All landscaping shall be developed and implemented in accordance
8 with appropriate safety and road design standards;
- 9 (c) The **CITY** agrees to comply with the requirements of this agreement
10 with regard to any additional landscaping installed.
- 11 17. The **CITY** shall require each contractor engaged by the **CITY** for work associated
12 with this Agreement to maintain:
- 13 (a) Workers' Compensation coverage in accordance with
14 Florida Statutes, and;
- 15 (b) Commercial General Liability coverage, including vehicle coverage, in
16 combined single limits of not less than ONE MILLION AND 00/100
17 DOLLARS (\$1,000,000.00). **COUNTY** and **DEPARTMENT** shall be
18 included in the coverage as an additional insured.
- 19 18. The **CITY** shall utilize the U.S. Department of Homeland Security's E-Verify
20 system to verify the employment eligibility of all new employees hired by the
21 **CITY** during the term of this Agreement. The **CITY** shall expressly require any
22 contractors or **CITY** subcontractors performing work or providing services
23 pursuant to this Agreement to likewise utilize the U.S. Department of Homeland
24 Security's E-Verify system to verify the employment eligibility of all new
25 employees hired by the contractor or **CITY** subcontractor during the term of this
26 Agreement.
- 27 19. The **CITY** shall maintain adequate records to justify all charges, expenses and
28 costs incurred in performing the work for at least three (3) years after completion
29 or termination of this contract. The **COUNTY** shall have access to such books,
30 records, and documents as required in this section for the purpose of inspection
31 or audit during normal business hours, at the **CITY**'s offices.
- 32 20. Palm Beach County has established the Office of Inspector General in Palm
33 Beach County Code, Section 2-421 – 2-440, as may be amended. The Inspector
34 General's Authority includes but is not limited to the power to review past,

- 1 present and proposed **COUNTY** contracts, transactions, accounts and records,
2 to require the production of records, and to audit, investigate, monitor, and
3 inspect the activities of the **CITY**, its officers, agents, employees and lobbyists in
4 order to ensure compliance with contract requirements and detect corruption and
5 fraud. Failure to cooperate with the Inspector General or interfering with or
6 impeding any investigation shall be a violation of Palm Beach County Code,
7 Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida
8 Statutes, in the same manner as a second degree misdemeanor.
- 9 21. This writing embodies the entire Agreement (including the attached **MMOA**) and
10 understanding between the parties hereto and there are no other agreements
11 and understanding, oral or written, with reference to the subject matter hereof
12 that are not merged herein and superseded hereby.
- 13 22. This Agreement may not be assigned or transferred by the **CITY** in whole or part
14 without the consent of the **COUNTY**.
- 15 23. This Agreement shall be governed by and construed in accordance with the laws
16 of the State of Florida. Any and all legal action necessary to enforce the
17 Agreement will be held in Palm Beach County. No remedy herein conferred upon
18 any party is intended to be exclusive of any other remedy, and each and every
19 such remedy shall be cumulative and shall be in addition to every other remedy
20 given hereunder or now or hereafter existing at law or in equity or by statute or
21 otherwise. No single or partial exercise precludes any other or further exercise
22 thereof. Any cost or expenses, including attorney fees associated with the
23 enforcement of the terms and conditions of this Agreement, shall be borne by the
24 respective parties provided, however, that this clause pertains only to the parties.
- 25 24. The **CITY** shall be, in the performance at all work services and activities under
26 this agreement, an Independent Contractor, and not an employee, agent, or
27 servant of the **COUNTY** or the **DEPARTMENT**. All persons engaged in any of
28 the work or services performed pursuant to this agreement shall be at all times,
29 and in all places, subject to the **CITY's** relationship and the relationship of its
30 employees to the **COUNTY** or the **DEPARTMENT** which shall be that of an
31 Independent Contractor and not as employees or agents of the **COUNTY** or the
32 **DEPARTMENT**.
- 33 25. The **CITY** and **COUNTY** agree that no person shall on the grounds of race, color,
34 religion, disability, sex, age, national origin, ancestry, ethnicity, marital status,

1 familial status, sexual orientation, genetic information, gender, gender identity
2 and expression be excluded from the benefits of, or be subjected to any form of
3 discrimination under any activity carried out by the performance of this
4 Agreement. The CITY will ensure that all contracts let for the projects pursuant
5 to the terms of this Agreement will contain similar non-discrimination and equal
6 opportunity clauses.

7 26. As provided in F.S. 287.132-133, by entering into this contract or performing any
8 work in furtherance hereof, the CITY certifies that it, its affiliates, suppliers,
9 subcontractors, and consultants who will perform hereunder, have not been
10 placed on the convicted vendor list maintained by the State of Florida,
11 Department of Management Services within the 36 months immediately
12 preceding the date hereof. This notice is required by F.S. 287.133 (3) (a).

13 27. All notices required to be given under this Agreement shall be addressed to:

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AS TO THE COUNTY

Palm Beach County Department of
Engineering and Public Works
Streetscape Section Manager
Post Office Box 21229
West Palm Beach, Florida 33416-1229

AS TO THE CITY

City Administrator
City of West Palm Beach
401 Clematis Street
West Palm Beach, FL 33402

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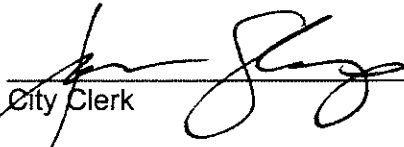
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IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first above written.

CITY

CITY OF WEST PALM BEACH, FLORIDA
BY ITS CITY COMMISSION


Attest:



City Clerk

By: 

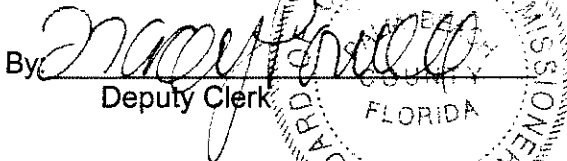
Presiding Officer

Office of the City Attorney
Approved as to form and legal sufficiency
By: 

COUNTY

ATTEST:
SHARON R. BOCK, CLERK
AND COMPTROLLER

R 2011-1981 DEC 20 2011
PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: 

Deputy Clerk

By: 

Shelley Vana Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: 

County Attorney

By: 

ATTACHMENT 3

1 **FIRST AMENDMENT TO STATE ROAD 704 (OKEECHOBEE BOULEVARD) STATE**
2 **HIGHWAY INTERLOCAL AGREEMENT BETWEEN**
3 **THE CITY OF WEST PALM BEACH AND PALM BEACH COUNTY**
4

5 **THIS FIRST AMENDMENT**, hereinafter "**AMENDMENT**", is made to the Interlocal
6 Agreement (R2011-1981) dated December 20, 2011, hereinafter "**AGREEMENT**", by and
7 between The City of West Palm Beach, a municipal corporation of the State of Florida,
8 hereinafter "**CITY**", and Palm Beach County, a political subdivision of the State of Florida,
9 hereinafter "**COUNTY**".
10

11 WITNESSETH:

12 **WHEREAS**, on December 20, 2011, **CITY** and **COUNTY** entered into the
13 **AGREEMENT** providing for construction and maintenance of landscaping and irrigation
14 improvements in accordance with the plans (hereinafter "**IMPROVEMENTS**") to be
15 installed by **COUNTY** as components of its project to eight-lane the Florida Department of
16 Transportation's (hereinafter "**DEPARTMENT**") State Road 704 from State Road 7 to
17 Florida's Turnpike; and

18 **WHEREAS**, **CITY** and **COUNTY** wish to install **DEPARTMENT**-permitted unirrigated
19 Solitaire Palms and Pygmy Date Palms (hereinafter "**PALMS**") in the unimproved medians
20 (Sta. 95 [Baywinds Dr.] to Sta. 118 [Grande Blvd.] and Sta. 199 [Riverwalk Blvd.] to Sta.
21 237 [Vista Parkway]) of State Road 704 that did not receive any landscaping or irrigation
22 (hereinafter "**MEDIANS**") as components of the **IMPROVEMENTS**; and

23 **WHEREAS**, following **COUNTY**'s installation of the **PALMS**, **CITY** will be
24 responsible for the perpetual maintenance of the **PALMS** which shall be considered part of
25 the **IMPROVEMENTS** and maintained in accordance with the terms of the **AGREEMENT**.

26 **NOW, THEREFORE**, in consideration of the mutual covenants, promises, and
27 agreements herein contained, the parties agree as follows:

- 28 1. The above recitations are true and correct and are incorporated herein.
29 2. The **AGREEMENT** is hereby amended as follows:
30 3. **COUNTY** agrees to install up to 76 (seventy-six) **PALMS** in the **MEDIANS**.
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- 4. **CITY** agrees that following **COUNTY**'s installation of the **PALMS**, **CITY** will be responsible for the perpetual maintenance of the **PALMS. IMPROVEMENTS** shall hereafter be defined to include the **PALMS** and will be maintained in accordance with the terms of the **AGREEMENT**.
- 5. It is the intent of the parties hereto that this **AMENDMENT** shall not become binding until the date executed by the Board of County Commissioners of Palm Beach County.
- 6. All other provisions of the **AGREEMENT** not hereby specifically amended shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties have executed this Agreement and it is effective on the date first above written.

CITY

(CITY SEAL)

CITY OF WEST PALM BEACH, FLORIDA
BY ITS CITY COMMISSION

ATTEST:

By: _____
City Clerk

By: _____
Presiding Officer

Office of City Attorney
Approved as to form and legal sufficiency

By: _____

COUNTY

(COUNTY SEAL)

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

ATTEST:

SHARON R. BOCK, CLERK
AND COMPTROLLER

By: _____
DEPUTY CLERK

By: _____
Shelley Vana, Chair

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
ASSISTANT COUNTY ATTORNEY

APPROVED AS TO TERMS AND CONDITIONS

BY: 