

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: August 13, 2013 [ ] Consent [X] Regular [ ] Workshop [ ] Public Hearing

Department: Planning, Zoning and Building Department

Submitted By: Contractors Certification Division

Submitted For: Planning, Zoning and Building Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: A Resolution establishing a Contractor Enrollment Agreement and authorizing the County Administrator or his designee to execute the Agreement.

Summary: This Agreement creates a contractor enrollment program whereby participating municipalities within the County can utilize the construction contractor information obtained by the County rather than having a separate enrollment program and sets forth the terms and conditions of the program. The program will benefit local construction contractors by allowing them to do business with all participating jurisdictions after enrolling with the County. Countywide (SF)

Background and Policy Issues: Currently, construction contractors who seek to do business within incorporated and unincorporated Palm Beach County must enroll in the County and each municipality where they seek to do business. This Agreement establishes a contractor enrollment program that will allow construction contractors to do business with all participating jurisdictions after enrolling with the County. Under the Agreement, participating municipalities can choose to access pertinent contractor information online at the county's website or can implement an automated process to obtain the information. The County will send email notices to the municipalities of a contractor's unanticipated change in status.

It is anticipated that twelve municipalities will execute the Agreement once adopted and that additional municipalities will join the program once it is underway.

Attachments:

- 1. Resolution Establishing a Contractor Enrollment Agreement
2. Contractor Enrollment Agreement

Recommended by: Rebecca Caldwell Executive Director Date 7/3/13

Approved By: [Signature] Deputy County Administrator Date 8/7/13

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	<u>20 13</u>	<u>20 14</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<b>=====</b>	<b>=====</b>	<b>=====</b>	<b>=====</b>	<b>=====</b>
No. ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included In Current Budget?	Yes _____	No _____			
Budget Account No.:	Fund _____	Department _____	Unit _____		
	Object _____	Reporting Category _____			

**B. Recommended Sources of Funds/Summary of Fiscal Impact:** No fiscal impact associated with this Agenda.

**C. Departmental Fiscal Review:** *Rats D'Agulino*

**III. REVIEW COMMENTS**

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

<u><i>J. H. [Signature]</i></u> OFMB 7/8/13 AK 7/8/13 MM 7-8-13	<u><i>Dr. J. Jacoboff</i></u> Contract Dev. and Control 7-9-13 [Signature]
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**B. Legal Sufficiency:**

*[Signature]*  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**RESOLUTION NO. R-2013-**

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ESTABLISHING A CONTRACTOR ENROLLMENT AGREEMENT; AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE THE CONTRACTOR ENROLLMENT AGREEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Board of County Commissioners ("BCC"), through its Contractors Certification Division, maintains appropriate records of state and county construction contractors who wish to do business in unincorporated Palm Beach County; and

**WHEREAS**, generally, each state and county licensed contractor who wishes to work in the incorporated area of Palm Beach County must also enroll or obtain certification in each municipality where the contractor seeks to do business; and

**WHEREAS**, the County wishes to create a contractor enrollment program whereby the information obtained by the County pertaining to state and county licensed construction contractors is made available to municipalities that wish to utilize such information in lieu of having a separate municipal enrollment program; and

**WHEREAS**, the contractor enrollment program will streamline the enrollment process for state and county licensed construction contractors who want to work in incorporated and unincorporated areas of the county; and

**WHEREAS**, the BCC wishes to adopt a contractor enrollment agreement ;

and

**WHEREAS**, the BCC wishes to delegate authority to execute the contractor enrollment agreement to the County Administrator or his designee to eliminate delays caused by requiring such items to be brought before the BCC for approval and to streamline the agenda process.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA**, that:

1. The foregoing recitals are true and correct and are incorporated herein.
2. The BCC hereby approves the contractor enrollment agreement attached hereto and incorporated herein as Attachment "A" as a standard form.
3. The County Administrator or his designee is authorized to make non-material changes to the contractor enrollment agreement. The term "non-material changes" means changes that do not modify the substantive obligations in the standard form contractor enrollment agreement. For the purpose of this Resolution, the Executive Director of the Planning, Zoning and Building Department shall be considered to be the designee of the County Administrator.
4. If any section, sentence, clause, phrase or word of this resolution is held invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the remaining portions of this resolution.
5. This resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner , and upon being put to a vote, the vote was as follows:

Commissioner Steven L. Abrams, Mayor	-
Commissioner Priscilla A. Taylor, Vice Mayor	-
Commissioner Hal R. Valeche	-
Commissioner Paulette Burdick	-
Commissioner Shelley Vana	-

Commissioner Mary Lou Berger -

Commissioner Jess R. Santamaria -

The Mayor thereupon declared the Resolution duly passed and adopted this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

SHARON R. BOCK, CLERK & COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By:   
County Attorney

**INTERLOCAL AGREEMENT  
BETWEEN**

---

**AND  
PALM BEACH COUNTY**

THIS INTERLOCAL AGREEMENT (this "Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, a Florida municipal corporation (the "Municipality") and **PALM BEACH COUNTY**, a political subdivision of the State of Florida (the "County"), each one constituting a public agency as defined in Part 1 of Chapter 162, Florida Statutes (hereinafter referred to collectively as the "Parties").

**WITNESSETH:**

WHEREAS, the County currently enrolls state licensed construction contractors and certifies county construction contractors who wish to do business in unincorporated Palm Beach County; and

WHEREAS, the County maintains records pertaining to state enrolled and county certified construction contractors (hereinafter the "Contractor") including but not limited to the Contractor's certificate of insurance, worker's compensation policy and/or exemption, and business tax receipt; and

WHEREAS, the Municipality wishes to utilize the Contractor information obtained by the County in lieu of requiring Contractors to separately enroll with or obtain certification from the Municipality to work within the municipal limits; and

WHEREAS, the Parties agree that this Agreement, which creates a contractor enrollment program, will save Contractors the time and expense of multiple local enrollments or certifications; and

WHEREAS, the Parties wish to enter into this Agreement to set forth their obligations under the contractor enrollment program.

**NOW, THEREFORE**, for and in consideration of the mutual covenants, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Section 1 – Recitals; Authority to Enter into Agreement.**

**1.1 Recitals.** The Parties hereto acknowledge and agree that the Recitals set forth above are true and correct and are incorporated in this Agreement as if fully set forth herein.

**1.2 Authority.** The Parties are authorized to enter into this Agreement pursuant to Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperative Act of 1969".

## **Section 2 – Intent.**

It is the intent of the Parties that the County will enroll state and certify county Contractors who wish to do business within the incorporated and/or unincorporated areas in Palm Beach County and will publish Contractor information online and input such information into its Contractor Certification Automation Program. In lieu of maintaining a separate contractor enrollment program, the Municipality will obtain such information from the County's public website or contact the County's Information System Services (ISS) Department to discuss and implement an automated process.

## **Section 3. – Statement of Agreement**

**3.1** For all Contractors enrolled or certified with the County, the County will maintain a database of information including but not limited to the Contractor's certificate of insurance, workers compensation policy and/or exemption and business tax receipt. The County will input such information into its Contractor's Certification Automation Program for contractor verification and will update such information within a reasonable time after new information becomes available. Such information will also be available on the County's website.

**3.2** The Municipality is responsible for accessing the County's Contractors Certification database for contractor verification. Options for access are: 1) Manually checking the County's PZ&B Contractors Information and Status website; 2) Contacting the County's ISS Department to discuss and implement an automated process.

**3.3** The Municipality shall not require Contractors to separately enroll or obtain certification within the Municipality and shall not charge Contractors a separate or additional fee to do business within the municipal limits of the Municipality. Notwithstanding the foregoing, the Municipality may accept enrollment from a state contractor who does not wish to participate in the County's contractor enrollment program.

**3.4** If the Municipality desires to receive notices concerning updated Contractor information from the County, it shall provide an email address(es) to the County's Project Manager for such purpose. The County will send email notices to the Municipality regarding a Contractor's unanticipated change in status, such as required insurance policy cancelation, within a reasonable time after receipt of such information.

**3.5** The Municipality shall be responsible for independently verifying the current state Contractor's certification status with the Florida Department of Business and Professional Regulation.

**3.6** The Municipality shall notify the County within a reasonable time if the Municipality takes disciplinary action against a state licensed contractor through its local construction regulation board and wishes to share such information with the County.

**Section 4. – Term.**

This Agreement shall become effective upon execution by both Parties and shall continue thereafter, on a year to year basis, under the same terms and conditions herein provided, unless terminated or amended as provided herein.

**Section 5. – Project Management/Notices.**

**5.1** Until otherwise notified in writing, the Project Manager for the Municipality is \_\_\_\_\_, telephone (561) \_\_\_\_\_, email \_\_\_\_\_, facsimile (561) \_\_\_\_\_. The Project Manager for the County is \_\_\_\_\_, telephone (561) \_\_\_\_\_, email \_\_\_\_\_, facsimile (561) \_\_\_\_\_. The Parties shall direct all matters arising in connection with the performance of this Agreement to the attention of the Project Managers for resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this Agreement.

**5.2** All Default Notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the County, notices shall be addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copy to:

Palm Beach County Attorney's Office  
301 North Olive Ave., 6<sup>th</sup> Floor  
West Palm Beach, Florida 33401

If sent to the Municipality, Default Notices shall be addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Parties agree to provide a copy of all such Default Notices to each Project Manager by email or facsimile. All Default Notices shall be considered delivered upon receipt. Should either Party change its address for notifications, written notice of such new address shall promptly be sent to the other Party.

**Section 6. – Default; Termination; Remedies.**

**6.1 Default.** In the event that a Party breaches the provisions of this Agreement, the non-breaching Party shall provide the breaching Party with written notice specifying the nature



of the breach ("Default Notice"). The breaching Party shall cure such breach within thirty (30) days of receipt of the Default Notice, unless the non-breaching Party agrees in writing to additional time to cure the breach.

**6.2 Remedies.** If a Party's breach of any of the provisions of this Agreement extends beyond the cure period as set forth herein, the non-breaching Party is entitled to terminate this Agreement or pursue any available legal and equitable remedies to enforce the Agreement, including but not limited to an action for an injunction.

**6.3 Termination for Convenience.** Either Party may terminate this Agreement for convenience by providing ninety (90) days written notice to the other Party.

#### **Section 7. – General Provisions.**

**7.1 Governing Law; Venue; Waiver of Jury.** This Agreement shall be governed by and construed under the laws of the State of Florida. Venue for any lawsuit filed in connection with this Agreement shall be in Palm Beach County, Florida. THE MUNICIPALITY AND COUNTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT AND ANY OTHER DOCUMENT OR INSTRUMENT NOW OR HEREAFTER EXECUTED AND DELIVERED IN CONNECTION HEREWITH.

**7.2 Interpretation.** The titles, captions and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, limit or expand the scope or content of this Agreement or any provision hereto. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted. In the event that any provision of this Agreement conflicts or appears to conflict, this Agreement and all exhibits and documents specifically incorporated herein by reference shall be interpreted as a whole to resolve the inconsistency.

**7.3 Unexpected Delays.** Notwithstanding any provisions of this Agreement to the contrary, the Parties shall not be held liable for any failure or any delay in the performance of this Agreement that arises from fires, floods, strikes, embargoes, act of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, acts of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the Parties. Failure to perform shall be excused during the continuance and restorative aftermath period of such circumstances, but this Agreement shall otherwise remain in effect.

**7.4 Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by applicable law. If any provisions of this Agreement or the application thereof to any party or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of the invalidity or unenforceability does not destroy the basis of the agreement between the Parties as contained herein, the remainder of this Agreement shall be enforced to the greatest extent permitted by law.

**7.5 No Personal Liability of Municipality or County.** The County acknowledges that this Agreement is entered into by a municipal corporation as the Municipality, and the Municipality acknowledges that this Agreement is entered into by a political subdivision of the State of Florida as the County. The Municipality and County agree that no individual county commissioner, council member, board member, administrative official, employee, or representative of the Municipality or County shall have any personal liability under this Agreement or under any document executed in connection with the transactions contemplated by this Agreement.

**7.6 Liability.** Each Party shall be liable for its own actions and negligence.

**7.7 Insurance.** Each of the Parties, as a local government agency, warrants and represents that it is self-funded for liability insurance, or has liability insurance, both public and property, with such protection being applicable to the Parties by their officers, employees, servants and agents while acting within the scope of their employment with the Parties. The Parties further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

**7.8 Enforcement Costs.** Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective Parties provided, however, that this clause pertains only to the Parties to this Agreement.

**7.9 Remedies.** 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 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.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or Municipality.

**7.10 Public Access to Records.** The Parties shall allow public access to all documents and materials related to this Agreement in accordance with Chapter 119, Florida Statutes, and related statutes. Should either Party assert any exemption to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive relief or other relief provided by law, shall be upon the Party asserting the exemption.

**7.11 Compliance with Laws.** The Parties and their employees, subcontractors, or assigns, if any, shall comply with all applicable federal, state, and local laws and regulations relating to performance of this Agreement.

**7.13 Non-Discrimination.** No Party hereto shall discriminate against any individual because of that individual's race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression with respect to any activity occurring pursuant to this Agreement.

**7.14 Assignment.** This Agreement shall not be assigned in whole or in part.

**7.15 Inspector General.** Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 – 2-440, 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/agreements, transactions, accounts and records, to require the production of such records, and to audit, investigate, monitor, and inspect the activities of the Municipality, its officers, agents, employees, and lobbyists in order to ensure compliance with contract/agreement requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

**7.16 Entire Agreement; Amendment.** This Agreement constitutes entire Agreement between the Parties with respect to the matters contained herein, and no prior agreement or understanding pertaining to any of the matters connected with this transaction shall be effective for any purpose. This Agreement may only be amended by an agreement in writing signed by the Parties hereto.

[Remainder of this page intentionally left blank]

**IN WITNESS WHEREOF**, the Municipality and County have caused this Agreement to be executed as of the day and year first above written.

**MUNICIPALITY:**

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
Municipality Clerk

Municipality Attorney's Office  
Approved as to form and legality:  
By: \_\_\_\_\_  
Municipality Attorney

**MUNICIPALITY OF**

a Florida municipal corporation

By: \_\_\_\_\_

**COUNTY:**

ATTEST:

SHARON R. BOCK  
CLERK AND COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

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

**PALM BEACH COUNTY**, a  
Political Subdivision of the State of  
Florida

By: \_\_\_\_\_

APPROVED AS TO TERMS AND  
CONDITIONS:

By: \_\_\_\_\_