

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY, FLORIDA
AND
CITY OF RIVIERA BEACH UTILITY DISTRICT
FOR JOINT PARTICIPATION AND PROJECT FUNDING
FOR CONSTRUCTION AND UTILITY ADJUSTMENT OF
AUSTRALIAN AVENUE FROM WEST 10TH STREET TO 300' NORTH OF WEST
13TH STREET
PALM BEACH COUNTY PROJECT NO. 2012101**

THIS Interlocal Agreement, (hereinafter "Agreement"), is made as of the 5 day of October, 2016, by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter "COUNTY") and the City of Riviera Beach Utility District, a municipal corporation existing under the laws of Florida, (hereinafter "DISTRICT"), each one constituting a public agency defined in Part I of Chapter 163, Florida Statutes.

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969", authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage, thereby providing services and facilities that will harmonize geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into Interlocal Agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS, the COUNTY intends to improve the Australian Ave. from W. of 10th St. to N. of 13th St. (hereinafter the "Project"); and

WHEREAS, the COUNTY and the DISTRICT desire to jointly participate in the construction of utility adjustments to the DISTRICT'S water and sewer line and other improvements within the Project area, hereinafter referred to as the "Work"; and

WHEREAS, both COUNTY and DISTRICT 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. 2012101. Said Bid Documents include the Work as shown in DISTRICT prepared Utility Matrix, Applicable Technical Specifications, Standard Construction Details, and Approved Product List. The Project, as set forth in this Agreement, shall be performed on the Australian Ave. from W. of 10th St. to N. of 13th St.

Section 3. Responsibilities and Duties:

- A. DISTRICT shall reimburse COUNTY a total estimated cost of **Four Thousand and Four Hundred Dollars (\$4,400.00)**, 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 City of Riviera Beach Utility District Utility Items shall be paid by the DISTRICT.
- 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 the TOWN.
- C. COUNTY shall obtain written approval from the DISTRICT in advance of any change orders, including any costs associated with the DISTRICT'S failure to approve change orders in a timely manner, which increase the cost attributable to the Work to an amount greater than the contract amount as stated in Paragraph A of this Section. Approval shall not be unreasonably withheld.
- 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, the DISTRICT shall repair and maintain the Work, at DISTRICT 'S expense.

Section 4. Payments/Invoicing and Reimbursement:

The COUNTY will invoice the DISTRICT on a periodic basis during construction of the Project and the Work. The DISTRICT 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, DISTRICT 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 the

DISTRICT identifying the Work, including COUNTY'S total expenditure for the Project, and identifying the amount attributable to the Work under Exhibit "A". COUNTY shall supply any further documentation such as copies of paid receipts, canceled checks, invoices and other documents deemed necessary by the DISTRICT within seven (7) calendar days of request by the TOWN. Invoices received from COUNTY will be reviewed and approved by the DISTRICT to insure that expenditures have been made in conformity with this Agreement. Invoices will normally be paid within thirty (30) days following approval. In no event shall the DISTRICT provide advance funding to the COUNTY.

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 the DISTRICT pursuant to the terms and conditions hereof. In the event the COUNTY ceases or suspends the Project or the Work for any reason, the DISTRICT 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 the DISTRICT and the DISTRICT shall have no further obligation to honor reimbursement requests submitted by the COUNTY.

Section 5. Repayment

COUNTY shall repay the DISTRICT 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 DISTRICT 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), as promulgated by the Government Finance Officers Association from time to time. The COUNTY and DISTRICT 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 the DISTRICT 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 DISTRICT employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to DISTRICT'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 the DISTRICT 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 the DISTRICT.

All of the services required hereinunder 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 DISTRICT and COUNTY recognize their liability for certain tortious acts of its agents, officers, employees and invitees to the extent and limits provided in Section 768.28, Florida Statutes. To the extent permitted by law, the DISTRICT and COUNTY shall indemnify, defend and hold the other harmless against any actions, claims and damages arising out of the their own negligence in connection with the Work and the Project and the use of the funds provided under this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute an Agreement by the DISTRICT or COUNTY to indemnify each other for sole negligence, or willful or intentional acts of the other. The foregoing indemnification shall survive termination of this Agreement.

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 DISTRICT.

Section 10. Annual Appropriation:

All provisions of this Agreement calling for the expenditure of ad valorem tax money by either the COUNTY or the DISTRICT are subject to annual budgetary funding and should either Party involuntarily fail to fund any of their respective 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 neither party shall 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 the DISTRICT shall be sent to:

Giles Rhoads, P.E., Assistant Executive Director
City of Riviera Beach Utility District
600 West Blue Heron Boulevard
Riviera Beach, Florida 33404

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

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 DISTRICT agree that no person shall, on the grounds of age, race, color, sex, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity and expression or genetic information, 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 DISTRICT shall abide by all applicable federal, state and local laws, orders, rules and regulations when performing under this Agreement. COUNTY and DISTRICT 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, 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, 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 DISTRICT 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 Agreement on the day and year first written above.

CITY OF RIVIERA BEACH
UTILITY SPECIAL DISTRICT

PALM BEACH COUNTY, FLORIDA

BY: 
Terence D. Davis,
Chairperson

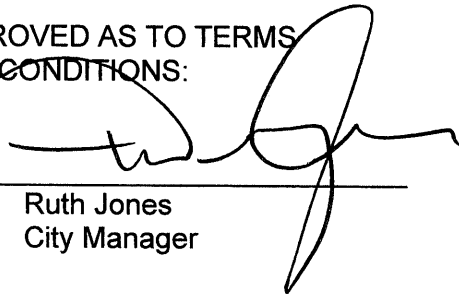
BY:  9/27/14
Tanya N. McConnell, P.E.,
Deputy County Engineer

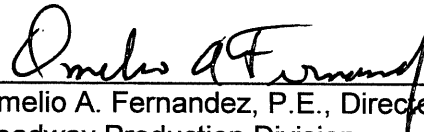
ATTEST:

ATTEST:

APPROVED AS TO TERMS
AND CONDITIONS:


APPROVED AS TO TERMS
AND CONDITIONS:

BY: 
Ruth Jones
City Manager

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

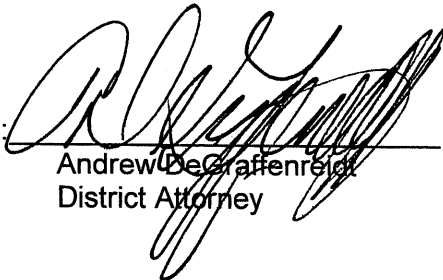
ATTEST:

Claudene L. Anthony, CMC
District Clerk

BY: 
(DATE)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY: 
Andrew DeGraffenreid
District Attorney

BY: 
Assistant County Attorney

AUSTRALIAN AVENUE, WEST 10TH STREET TO 330' NORTH OF WEST 13TH STREET
 PALM BEACH COUNTY PROJECT NO. 2012101

ENGINEERS
ESTIMATE

R & D Paving, LLC

EXHIBIT "A"

				UNIT PRICE	UNIT PRICE	TOTAL
ROADWAY ITEMS						
1	MOBILIZATION	1	LS	\$42,000.00	\$55,000.00	\$ 55,000.00
2	MAINTENANCE OF TRAFFIC (INCL. PEDESTRIAN M.O.T.)	1	LS	\$42,000.00	\$35,000.00	\$ 35,000.00
3	CLEARING AND GRUBBING	1	LS	\$20,000.00	\$45,000.00	\$ 45,000.00
4	REGULAR EXCAVATION	513	CY	\$11.07	\$40.00	\$ 20,520.00
5	EMBANKMENT (COMPACTED IN PLACE)	7	CY	\$14.61	\$200.00	\$ 1,400.00
6	TYPE B STABILIZATION	1,235	SY	\$15.61	\$30.00	\$ 37,050.00
7	FLOWABLE FILL	10	CY	\$300.00	\$350.00	\$ 3,500.00
8	OPTIONAL BASE GROUP 13	1,070	SY	\$41.00	\$77.00	\$ 82,390.00
9	MILL EXISTING ASPHALT PAVEMENT (1" AVG)	9,145	SY	\$4.00	\$4.00	\$ 36,580.00
10	SUPERPAVE ASPHALT CONCRETE TRAFFIC LEVEL C (OVERBUILD)	58	TN	\$174.00	\$155.20	\$ 9,001.60
11	SUPERPAVE ASPHALT CONCRETE TRAFFIC LEVEL C (1.5")	45	TN	\$174.00	\$180.00	\$ 8,100.00
12	SUPERPAVE ASPHALT CONCRETE TRAFFIC LEVEL C (3")	87	TN	\$174.00	\$185.00	\$ 16,095.00
13	ASPHALT CONCRETE FRICTION COURSE TRAFFIC C FC-9.5 PG 76-22 ARB	562	TN	\$163.00	\$158.50	\$ 89,077.00
14	CLASS NS CONCRETE, GRAVITY WALL	47	CY	\$553.00	\$600.00	\$ 28,200.00
15	VALVE BOXES, ADJUST	4	EA	\$350.00	\$275.00	\$ 1,100.00
16	MODIFY, EXISTING DRAINAGE STRUCTURE	1	EA	\$5,000.00	\$1,320.00	\$ 1,320.00
17	INLETS, CURB, TYPE P-6, <10'	1	EA	\$5,300.00	\$6,600.00	\$ 6,600.00
18	INLETS, CURB, TYPE J-4, >10'	1	EA	\$7,800.00	\$13,200.00	\$ 13,200.00
19	MANHOLE P-7 PARTIAL	1	EA	\$2,625.20	\$3,300.00	\$ 3,300.00
20	CONCRETE PIPE CULVERT (18")	69	LF	\$88.68	\$181.50	\$ 12,523.50
21	CONCRETE PIPE CULVERT (24")	50	LF	\$90.00	\$145.00	\$ 7,250.00
22	FRENCH DRAIN (24" DIA)(INCL BALLAST ROCK & FILTER FABRIC)	24	LF	\$171.00	\$205.00	\$ 4,920.00
23	ALUMINUM BULLET RAILING	147	LF	\$75.00	\$70.40	\$ 10,348.80
24	CONCRETE CURB & GUTTER (TYPE F)	865	LF	\$28.69	\$45.50	\$ 39,357.50
25	TRAFFIC SEPARATOR (TYPE IV) (4' WIDE)	4	LF	\$100.00	\$287.50	\$ 1,150.00
26	CONCRETE PARAPET (PEDESTRIAN/BICYCLE) (27")	147	LF	\$35.00	\$65.00	\$ 9,555.00
27	CONCRETE SIDEWALK (4" THICK)	425	SY	\$50.00	\$60.50	\$ 25,712.50
28	CONCRETE SIDEWALK (6"THICK)	102	SY	\$52.00	\$75.00	\$ 7,650.00
29	SODDING	830	SY	\$8.11	\$10.00	\$ 8,300.00
30	ENGRAVING OF CURB FACE	8	EA	\$250.00	\$350.00	\$ 2,800.00
31	CONDUIT, FURNISH & INSTALL, OPEN TRENCH	300	LF	\$17.00	\$44.00	\$ 13,200.00
32	PULL BOX (17"X30"X24"D), FURNISH AND INSTALL	2	EA	\$1,000.00	\$1,375.00	\$ 2,750.00
33	RELOCATE EXISTING STREET LIGHT	1	EA	\$4,000.00	\$5,500.00	\$ 5,500.00
34	CHANGEABLE (VARIABLE MESSAGE) SIGN (NON MOT)	56	EA	\$5.00	\$20.00	\$ 1,120.00
35	TRAFFIC CONTROL OFFICER (NON MOT)	44	MH	\$51.00	\$50.00	\$ 2,200.00
ROADWAY (SUB TOTAL)						\$ 646,770.90
UTILITY ITEMS						
36	SUPPORT AND PROTECT AT&T CABLES.CONDUIT	100	LF	\$25.00	\$ 27.50	\$ 2,750.00

AUSTRALIAN AVENUE, WEST 10TH STREET TO 330' NORTH OF WEST 13TH STREET
 PALM BEACH COUNTY PROJECT NO. 2012101

ENGINEERS ESTIMATE		R & D Paving, LLC			
UNIT PRICE	UNIT PRICE	TOTAL			
FLORIDA PUBLIC UTILITIES COMPANY					
37	SUPPORT, PROTECT GAS MAIN (INCLUDES COORDINATION, SEE NOTE)	150 LF	\$30.00	\$ 28.00	\$ 4,200.00
CITY OF RIVIERA BEACH					
38	SUPPORT AND PROTECT CITY OF RIVIERA BEACH WATER AND SEWER LINES	100 LF	\$25.00	\$ 16.50	\$ 1,650.00
39	CUT AND CAP 14" SEWER LINE ABANDONED IN PLACE	1 LS	\$5,000.00	\$ 2,750.00	\$ 2,750.00
SUBTOTAL (UTILITY)					\$ 11,350.00
CONTINGENCY ITEMS					
40	CLASS I CONCRETE (MISCELLANEOUS)	10 CY	\$200.00	\$ 225.00	\$ 2,250.00
41	INLETS (CURB) (TYPE J-5) (<10')	1 EA	\$8,000.00	\$ 11,000.00	\$ 11,000.00
42	INLETS (CURB) (TYPE J-6) (<10')	1 EA	\$9,000.00	\$ 11,550.00	\$ 11,550.00
43	MANHOLE (TYPE J-7) (<10')	1 EA	\$7,600.00	\$ 9,900.00	\$ 9,900.00
44	STORM SEWER CLEANING (EXIST.) (24" OR LESS) (SEE SP's)	250 LF	\$15.00	\$ 11.00	\$ 2,750.00
45	STORM SEWER CLEANING (EXIST.) (>24" TO 48") (SEE SP's)	100 LF	\$22.00	\$ 27.50	\$ 2,750.00
46	TREE SPADE UNITS (SEE SP's)	2 EA	\$250.00	\$ 750.00	\$ 1,500.00
SUBTOTAL (CONTINGENCY)					\$ 41,700.00

TOTAL BID

\$ 699,820.90

**AUSTRALIAN AVENUE, WEST 10TH STREET TO 330' NORTH OF WEST 13TH STREET
PBC PROJECT #2012101**

*THE ITEMS AND QUANTITIES SHOWN, SHALL GOVERN OVER THE PLANS.
PAY ITEM FOOTNOTES IN CONSTRUCTION PLANS SHALL ALSO BE INCLUDED IN ITEM UNIT PRICE.*

PAY ITEM FOOTNOTES:

All costs for Maintenance of Traffic (MOT) and mobilization shall be considered incidental to, and shall be included in, unit prices for the pay items.

All items shall include cost to furnish and install unless otherwise noted.

NPDES shall be included in mobilization.

Price and tack coat are considered incidental to asphalt construction.

The cost of connecting to existing structures is incidental to cost of pipe.

All items can be increased or decreased or deleted as directed by the Engineer.

All disturbed areas adjacent to the project limits shall be restored to its original conditions including sod.

All utility coordinations during construction and any hold time associated with utilities is included of the contract duration.

Item #37 includes coordination and time needed for the relocation of the 6" GM by FPU.

Working days to complete project: 120 calendar days, (See Special Provisions).

Bids as read at opening on Tuesday, July 12, 2016; 2:00 PM

All bids subject to OSBA SBE compliance and Board Approval.

Prepared by: Donna Lewis, Technical Assistant III

Checked by: Holly B. Knight, P.E., Contracts Section Manager

EXHIBIT "B"

City of Riviera Beach Utility District

PROJECT NAME: Australian Ave. from West 10th St. to 330' North of West 13th St.

PROJECT NUMBER: 2012101

CONTRACTOR: R & D Paving, LLC

ITEM	QUANTITY /UNITS	UNIT PRICE	AMOUNT
Utility District Water Items			
38	SUPPORT AND PROTECT CITY OF RIVIERA BEACH WATER AND SEWER LINES 100 LF	\$16.50	\$1,650.00
39	CUT AND CAP 14" SEWER LINE ABANDONED IN PLACE 1 LS	\$2,750.00	\$2,750.00
UTILITY DISTRICT TOTAL			<u>\$4,400.00</u>

**AGREEMENT BETWEEN PALM BEACH COUNTY, FLORIDA
AND
AT & T Florida
FOR JOINT PARTICIPATION AND PROJECT FUNDING
IN CONSTRUCTION OF
AUSTRALIAN AVENUE FROM WEST 10TH STREET TO 300' NORTH
OF WEST 13TH STREET
PALM BEACH COUNTY PROJECT NO. 2012101**

THIS Agreement is made as of the 1 day of September, 2016, 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 the Australian Ave. from West 10th St. to 300' North of West 13th St. (hereinafter the "Project"); and

WHEREAS, the COUNTY and the AT&T desire to jointly participate in the construction of utility adjustments to the 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.

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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. 2012101. 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 Australian Ave. from West 10th St. to 300' North of West 13th St.

Section 3. Responsibilities and Duties:

A. AT&T shall reimburse COUNTY a total estimated cost of **Two Thousand Seven Hundred and Fifty Dollars (\$2,750.00)**, 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 the 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 the AT&T.

C. COUNTY shall obtain written approval from the 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 Section. Approval shall not be unreasonably withheld. The AT&T's responsibility for change order costs includes any costs associated with the 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, the AT&T shall repair and maintain the Work, at AT&T's expense.

Section 4. Payments/Invoicing and Reimbursement:

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Section 5. Repayment

COUNTY shall repay the 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 the 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 the 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 the 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 the AT&T the right to compel the COUNTY to act for or on AT&T 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 the AT&T shall be sent to:

Garth Bedward, M.B.A. - Manager OSP Planning & Engineering Design
AT & T Florida Telecommunications Company
120 North "K" Street Room 3D-05
Lake Worth, FL 33460

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, gender identity and expression or genetic information, 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, 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, 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 Agreement on the day and year first written above.

AT&T Florida

PALM BEACH COUNTY, FLORIDA

BY: Garth Bedward
(Print Name)

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

[Signature]
(Signature)

[Signature] 9/22/16
(Signature)

ATTEST WITNESS:

APPROVED AS TO TERMS
AND CONDITIONS:

BY: Eddie Herron
(Print Name)

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

[Signature]
(Signature)

[Signature]
(Signature)

BY: Don Harris
(Print Name)
[Signature]
(Signature)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

BY: [Signature]
Assistant County Attorney

AUSTRALIAN AVENUE, WEST 10TH STREET TO 330' NORTH OF WEST 13TH STREET
 PALM BEACH COUNTY PROJECT NO. 2012101

ENGINEERS
ESTIMATE

R & D Paving, LLC

EXHIBIT "A"

				UNIT PRICE	UNIT PRICE	TOTAL
ROADWAY ITEMS						
1	MOBILIZATION	1	LS	\$42,000.00	\$55,000.00	\$ 55,000.00
2	MAINTENANCE OF TRAFFIC (INCL. PEDESTRIAN M.O.T.)	1	LS	\$42,000.00	\$35,000.00	\$ 35,000.00
3	CLEARING AND GRUBBING	1	LS	\$20,000.00	\$45,000.00	\$ 45,000.00
4	REGULAR EXCAVATION	513	CY	\$11.07	\$40.00	\$ 20,520.00
5	EMBANKMENT (COMPACTED IN PLACE)	7	CY	\$14.61	\$200.00	\$ 1,400.00
6	TYPE B STABILIZATION	1,235	SY	\$15.61	\$30.00	\$ 37,050.00
7	FLOWABLE FILL	10	CY	\$300.00	\$350.00	\$ 3,500.00
8	OPTIONAL BASE GROUP 13	1,070	SY	\$41.00	\$77.00	\$ 82,390.00
9	MILL EXISTING ASPHALT PAVEMENT (1" AVG)	9,145	SY	\$4.00	\$4.00	\$ 36,580.00
10	SUPERPAVE ASPHALT CONCRETE TRAFFIC LEVEL C (OVERBUILD)	58	TN	\$174.00	\$155.20	\$ 9,001.60
11	SUPERPAVE ASPHALT CONCRETE TRAFFIC LEVEL C (1.5")	45	TN	\$174.00	\$180.00	\$ 8,100.00
12	SUPERPAVE ASPHALT CONCRETE TRAFFIC LEVEL C (3")	87	TN	\$174.00	\$185.00	\$ 16,095.00
13	ASPHALT CONCRETE FRICTION COURSE TRAFFIC C FC-9.5 PG 76-22 ARB	562	TN	\$163.00	\$158.50	\$ 89,077.00
14	CLASS NS CONCRETE, GRAVITY WALL	47	CY	\$553.00	\$600.00	\$ 28,200.00
15	VALVE BOXES, ADJUST	4	EA	\$350.00	\$275.00	\$ 1,100.00
16	MODIFY, EXISTING DRAINAGE STRUCTURE	1	EA	\$5,000.00	\$1,320.00	\$ 1,320.00
17	INLETS, CURB, TYPE P-6, <10'	1	EA	\$5,300.00	\$6,600.00	\$ 6,600.00
18	INLETS, CURB, TYPE J-4, >10'	1	EA	\$7,800.00	\$13,200.00	\$ 13,200.00
19	MANHOLE P-7 PARTIAL	1	EA	\$2,625.20	\$3,300.00	\$ 3,300.00
20	CONCRETE PIPE CULVERT (18")	69	LF	\$88.68	\$181.50	\$ 12,523.50
21	CONCRETE PIPE CULVERT (24")	50	LF	\$90.00	\$145.00	\$ 7,250.00
22	FRENCH DRAIN (24" DIA)(INCL BALLAST ROCK & FILTER FABRIC)	24	LF	\$171.00	\$205.00	\$ 4,920.00
23	ALUMINUM BULLET RAILING	147	LF	\$75.00	\$70.40	\$ 10,348.80
24	CONCRETE CURB & GUTTER (TYPE F)	865	LF	\$28.69	\$45.50	\$ 39,357.50
25	TRAFFIC SEPARATOR (TYPE IV) (4' WIDE)	4	LF	\$100.00	\$287.50	\$ 1,150.00
26	CONCRETE PARAPET (PEDESTRIAN/BICYCLE) (27")	147	LF	\$35.00	\$65.00	\$ 9,555.00
27	CONCRETE SIDEWALK (4" THICK)	425	SY	\$50.00	\$60.50	\$ 25,712.50
28	CONCRETE SIDEWALK (6" THICK)	102	SY	\$52.00	\$75.00	\$ 7,650.00
29	SODDING	830	SY	\$8.11	\$10.00	\$ 8,300.00
30	ENGRAVING OF CURB FACE	8	EA	\$250.00	\$350.00	\$ 2,800.00
31	CONDUIT, FURNISH & INSTALL, OPEN TRENCH	300	LF	\$17.00	\$44.00	\$ 13,200.00
32	PULL BOX (17"X30"X24"D), FURNISH AND INSTALL	2	EA	\$1,000.00	\$1,375.00	\$ 2,750.00
33	RELOCATE EXISTING STREET LIGHT	1	EA	\$4,000.00	\$5,500.00	\$ 5,500.00
34	CHANGEABLE (VARIABLE MESSAGE) SIGN (NON MOT)	56	EA	\$5.00	\$20.00	\$ 1,120.00
35	TRAFFIC CONTROL OFFICER (NON MOT)	44	MH	\$51.00	\$50.00	\$ 2,200.00
ROADWAY (SUB TOTAL)						\$ 646,770.90
UTILITY ITEMS						
36	ATT SUPPORT AND PROTECT AT&T CABLES.CONDUIT	100	LF	\$25.00	\$ 27.50	\$ 2,750.00

AUSTRALIAN AVENUE, WEST 10TH STREET TO 330' NORTH OF WEST 13TH STREET
 PALM BEACH COUNTY PROJECT NO. 2012101

ENGINEERS ESTIMATE	R & D Paving, LLC
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				UNIT PRICE	UNIT PRICE	TOTAL
FLORIDA PUBLIC UTILITIES COMPANY						
37	SUPPORT , PROTECT GAS MAIN (INCLUDES COORDINATION, SEE NOTE)	150	LF	\$30.00	\$ 28.00	\$ 4,200.00
CITY OF RIVIERA BEACH						
38	SUPPORT AND PROTECT CITY OF RIVIERA BEACH WATER AND SEWER LINES	100	LF	\$25.00	\$ 16.50	\$ 1,650.00
39	CUT AND CAP 14" SEWER LINE ABANDONED IN PLACE	1	LS	\$5,000.00	\$ 2,750.00	\$ 2,750.00
SUBTOTAL (UTILITY)						\$ 11,350.00
CONTINGENCY ITEMS						
40	CLASS I CONCRETE (MISCELLANEOUS)	10	CY	\$200.00	\$ 225.00	\$ 2,250.00
41	INLETS (CURB) (TYPE J-5) (<10')	1	EA	\$8,000.00	\$ 11,000.00	\$ 11,000.00
42	INLETS (CURB) (TYPE J-6) (<10')	1	EA	\$9,000.00	\$ 11,550.00	\$ 11,550.00
43	MANHOLE (TYPE J-7) (<10')	1	EA	\$7,600.00	\$ 9,900.00	\$ 9,900.00
44	STORM SEWER CLEANING (EXIST.) (24" OR LESS) (SEE SP's)	250	LF	\$15.00	\$ 11.00	\$ 2,750.00
45	STORM SEWER CLEANING (EXIST.) (>24" TO 48") (SEE SP's)	100	LF	\$22.00	\$ 27.50	\$ 2,750.00
46	TREE SPADE UNITS (SEE SP's)	2	EA	\$250.00	\$ 750.00	\$ 1,500.00
SUBTOTAL (CONTINGENCY)						\$ 41,700.00

TOTAL BID

\$ 699,820.90

**AUSTRALIAN AVENUE, WEST 10TH STREET TO 330' NORTH OF WEST 13TH STREET
PBC PROJECT #2012101**

*THE ITEMS AND QUANTITIES SHOWN, SHALL GOVERN OVER THE PLANS.
PAY ITEM FOOTNOTES IN CONSTRUCTION PLANS SHALL ALSO BE INCLUDED IN ITEM UNIT PRICE.*

PAY ITEM FOOTNOTES:

All costs for Maintenance of Traffic (MOT) and mobilization shall be considered incidental to, and shall be included in, unit prices for the pay items.

All items shall include cost to furnish and install unless otherwise noted.

NPDES shall be included in mobilization.

Price and tack coat are considered incidental to asphalt construction.

The cost of connecting to existing structures is incidental to cost of pipe.

All items can be increased or decreased or deleted as directed by the Engineer.

All disturbed areas adjacent to the project limits shall be restored to its original conditions including sod.

All utility coordinations during construction and any hold time associated with utilities is included of the contract duration.

Item #37 includes coordination and time needed for the relocation of the 6" GM by FPU.

Working days to complete project: 120 calendar days, (See Special Provisions).

Bids as read at opening on Tuesday, July 12, 2016; 2:00 PM

All bids subject to OSBA SBE compliance and Board Approval.

Prepared by: Donna Lewis, Technical Assistant III

Checked by: Holly B. Knight, P.E., Contracts Section Manager

EXHIBIT "B"

AT & T Florida

PROJECT NAME: Australian Ave. from West 10th St. to 330' North of West 13th St.

PROJECT NUMBER: 2012101

CONTRACTOR: R & D Paving, LLC

<u>ITEM</u>	<u>QUANTITY /UNITS</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>	
Utility District Water Items				
36	SUPPORT AND PROTECT AT&T CABLES. CONDUIT	100 LF	\$27.50	\$ 2,750.00
			AT&T TOTAL	<u>\$ 2,750.00</u>