

Location Map

**INTERLOCAL AGREEMENT BETWEEN
PALM BEACH COUNTY, FLORIDA
AND THE VILLAGE OF PALM SPRINGS,
FOR JOINT FUNDING OF DESIGN, PERMITTING AND CONSTRUCTION OF
ROADWAY IMPROVEMENTS FOR CANAL 11 ROAD, ERIE TERRACE, LONE
PINE WAY AND CHILDS STREET, PALM BEACH COUNTY, FLORIDA**

THIS AGREEMENT, is made and entered into this 12th day of January, 2017, by and between Palm Beach County, a political subdivision in the State of Florida, ("County") and the Village of Palm Springs, a municipal corporation of the State of Florida ("Village").

WITNESSETH:

WHEREAS, the **Village** desires to undertake the design, permitting and construction of improvements of certain roads recently annexed by the **Village** more specifically described as paving and drainage improvements to;

- A. Canal 11 Road, Kirk Rd. to Davis Rd.
- B. Erie Terrace, Forest Hill Blvd. to Dead End
- C. Lone Pine Way, Forest Hill Blvd. to Dead End
- D. Childs Street, Dead End to Lake Worth Rd.

(hereinafter, the "**Project**"); and

WHEREAS, the **Village** has requested **County** to participate in joint funding of the design, permitting and construction, including Construction Engineering and Inspection (CEI) services for the **Project**; and

WHEREAS, the **Village** will fund all other expenses associated with the **Project**; and

WHEREAS, the **County** has determined that the necessary funding is available and has authorized the County Administrator to sign this Agreement on the **County's** behalf, as approved by the Board of County Commissioners on November 22, 2016; and

WHEREAS, Section 163.01 of the Florida Statutes allows governmental units to make the most efficient use of their powers by enabling them to cooperate with other agencies on a basis of mutual advantage and thereby provide services and facilities that will harmonize geography, economy, population and other factors influencing the needs and development of local communities; and

WHEREAS, both the **County** and the **Village** (collectively, the "**Parties**") declare it to be in the public interest that the **Project** be constructed; and

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. Recitals. The above recitals are true and correct to the best of the knowledge of the Parties and are incorporated herein by this reference.

2. The purpose of this Agreement is to specify the Parties respective roles and obligations regarding design, permitting, right-of-way and easement procurement, construction, funding and maintenance of roadway improvements in conjunction with the **Project**.
3. The cost for designing, permitting and constructing the **Project** is estimated to not exceed Seven Hundred Thousand Dollars (\$700,000). The **County** agrees to participate in funding of the **Project**, to a maximum amount of **Two Hundred and Thirty One Thousand Dollars (\$231,000), which equates to 33%** of the estimated cost. Any and all costs exceeding this amount shall be funded by the **Village** or require an amendment and reauthorization of this Agreement.

COUNTY RESPONSIBILITIES

- A. The **County** agrees to fund and pay directly to the **Village**, on a reimbursable basis, 33% of those costs attributable to the design, permitting and construction of the **Project**, as outlined and shown in the **Village's** design contract and bid documents. Total funding paid by the **County** shall not exceed \$231,000.
- B. The **County** agrees to make reimbursement payment to the **Village** within 60 days of receipt of invoices from the **Village**.
- C. The **County** shall not provide any funding for acquisition of rights-of-way or easements for the **Project**.
- D. The **County** agrees to continue maintenance grading of the **Project** roads on an as needed basis, which shall be discontinued on the date the **Village** issues a Notice to Proceed to its contractors to begin construction of the **Project**, or on December 31, 2017, whichever occurs first.

VILLAGE RESPONSIBILITIES

- A. The **Village** agrees to undertake any required design, right-of-way and/or easement acquisition, and construction of the **Project** in accordance with all applicable federal, state and local statutes, rules and regulations, and standards. The **Village** shall be responsible for obtaining all necessary clearances and permits required for the construction of the **Project** from the appropriate permitting authorities. Upon completion of the **Project**, the **Village** shall certify to the **County** in writing that the **Project** has been completed in accordance with the applicable standards, statutes, rules and regulations. The **Village** shall provide the **County** with monthly progress reports for all phases of the **Project**, to be submitted on the first work day of every month.
- B. The **Village** shall undertake the acquisition of any necessary rights-of-way or easements at its own cost.
- C. The **Village** shall obtain a right-of-way permit for all work connecting to **County** or Florida Department of Transportation (FDOT) roads or impacting **County** or FDOT rights-of-way. Permit coordination shall be maintained by the **Village** with representatives of the **County's** Land Development Division and the appropriate FDOT personnel. **County** agrees to waive **County** permitting fees.

- D. The **Village** shall not sublet, assign or transfer any responsibilities under this Agreement without the prior written consent of the **County**.
- E. The **Village** shall obtain the **County's** approval for any change orders which increase costs attributable to the design, permitting and construction of **Project**. The **County** shall notify the **Village** of its intent to approve or deny the change order within five (5) working days of receiving the **Village's** notice of the necessity for same. In the event the **County** denies the **Village's** request for change order, the **Village** may proceed at its own cost. Change orders approvals shall be in accordance with section 3.
- F. The **Village** shall be solely responsible for any costs caused by its own delays, and delays caused by the Contractor or any dispute that may arise between the **Village** and the Contractor, including but not limited to **Project** delays.
- G. The **County** will pay reimbursable expenditure costs for CEI services in accordance with section 3, however the **Village** shall be solely responsible for, and agrees to provide or cause to be performed, all inspection services during construction of the **Project**.
- H. The **Village** shall be solely responsible for, and agrees to provide or cause to be performed, full maintenance after December 31, 2017 or following construction completion of the improvements of the roads identified as the **Project**, whichever occurs first.

4. **COMPENSATION AND PAYMENT**

- A. The **County** agrees to reimburse 33% of the expenditures for the cost of designing, permitting and constructing (including CEI services), of the **Project**, in accordance with section 3.
- B. The total budget allocation by the **County** for the **Project** is two hundred and thirty one thousand dollars, (\$231,000) which is the maximum participation by the **County** for actual costs incurred. The parties further agree that in the event additional work and/or funding requires an increase of payment by the **County**, over and above the **County's** maximum participation for the **Project** as set forth herein, then an amendment and reauthorization of this agreement shall be required. The **County** shall be responsible for administering those funds in accordance with this Agreement.
- C. After the **Village** proceeds with the design, permitting and construction of the **Project**, the **Village** will only be reimbursed for direct costs (this excludes general and administrative overhead). All costs charged for the **Project**, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

D. The **Village** shall submit at a minimum, monthly invoice to the **County** for payment and must submit the final invoice to the **County** within 180 days after the final acceptance of the **Project**. Invoices submitted after the 180 day time period, will not be paid.

E. Records of costs incurred under the terms of this Agreement, shall be maintained and made available upon request to the **County** at all times during the period of this Agreement, and for five years after final payment is made. Copies of these documents and records shall be furnished to the **County** upon request. Records of costs incurred includes the **Village's** general accounting records and the projects records, together with supporting documents and records of the **Village** and all subcontractors performing work on the **Project**, and all other records of the **Village** and subcontractors considered necessary by the **County** for a proper audit of costs.

5. TERMINATION AND DEFAULT

A. This Agreement may be canceled by either the **County** or the **Village** upon sixty (60) days written notice.

B. If the **County** determines that the **Village** is not performing its responsibilities satisfactorily, the **County** shall notify the **Village** of the deficiency with a requirement that the deficiency be corrected within a specified time. If the deficiencies identified by the **County** are not corrected within the specified time, this Agreement shall automatically terminate at the end of the specified correction period.

C. If the **County** requires termination of the Agreement for reasons other than unsatisfactory performance by the **Village**, the **County** shall notify the **Village** of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

D. If the Agreement is terminated before performance is completed, the **Village** shall be paid the **County's** agreed percentage participation (33%) only for that work satisfactorily performed for which costs can be substantiated.

E. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit.

F. Village travel costs will not be reimbursed.

G. The **Village** shall submit one invoice (3 copies), plus supporting documentation required by the **County**, to the Director of the Roadway Production Division of the Engineering and Public Works Department, for approval and processing on a monthly basis.

6. **GENERAL PROVISIONS**

A. **Liability.** Neither Party shall be deemed to assume any liability for the negligent or wrongful acts or omissions of the other Party. Nothing contained herein shall be construed as a waiver or expansion by either Party of the liability limits established in Section 768.28 of the Florida Statutes. Liability for injury to personnel and the loss or damage of equipment shall be borne by the Party employing such personnel or owning such equipment.

(i). In the event a claim or lawsuit is brought against **County**, its officers, employees, servants, consultants or agents, as to the **Project** which claims or lawsuits are not as a result of acts of omission or negligence of said individuals or entities, **Village** agrees, without waiver or expansion of the limitations contained in Section 768.28, Florida Statutes, and to the extent permitted by law, to indemnify and hold harmless **County**, its officers, employees, servants, consultants and agents from and against any such claims, losses, demands, damages, liabilities or causes of action of whatsoever kind or nature that **County**, its officers, employees, servants, consultants or agents may or could sustain arising out of any act, omission or fault of **Village** in conjunction with its performance under this Agreement.

(ii). In the event a claim or lawsuit is brought against **Village**, its officers, employees, servants, or agents, **County** agrees, without waiver or expansion of the limitations contained in Section 768.28, Florida Statutes and to the extent permitted by law, to indemnify and hold harmless **Village**, its officers, employees, servants, consultants or agents from and against any claims, losses, demands, damages, liabilities or causes of action of whatsoever kind or nature that **Village**, its officers, employees, servants, consultants or agents may or could sustain arising out of any act, omission or fault of **County** in conjunction with its performance under this Agreement.

B. **Insurance.** **Village** agrees to require the contractor to include **County** as, a Certificate Holder, and for comprehensive general liability as an Additional Insured for the insurance coverage required to be provided by the contractor for construction of the **Project**.

C. **Budgetary Conditions.** The **County's** funding participation in the **Project** was approved by the Board of County Commissioners on November 22, 2016. All provisions of this Agreement calling for the expenditure of money by either **County** or **Village** prior to the time actual construction of the **Project** begins, may be subject to annual budgetary funding and should either Party involuntarily fail to fund their respective obligations pursuant to this Agreement, this Agreement may thereupon be terminated by either Party. Once construction of the **Project** commences, performance under this Agreement shall no longer be contingent upon availability of funds for same. Further, once **Village** commences construction of the **Project**, all construction activities shall be prosecuted to completion, unless **Village** notifies **County** in writing that further work on the **Project** must cease. In that event **Village** shall be responsible for all future costs incurred relating to the **Project**.

D. Notice. Any notice, request, instruction, demand, consent, or other communication required or permitted to be given under this Agreement shall be in writing (including facsimile or electronically) and shall be delivered, as elected by the Party, by means of courier or messenger service, by facsimile or email (followed by mailing of hard copy by U.S. mail) or by certified mail, postage prepaid, and certified return receipt requested to the following addresses or such other addresses as the Parties may provide to each other in writing:

To Village: Village of Palm Springs
Attn: Richard Reade
Village Manager
226 Cypress Lane
Palm Springs, FL 33461

To the County: Tanya N. McConnell, P.E.,
Deputy County Engineer
Engineering and Public Works Department
P.O. Box 21229
West Palm Beach, FL 33416-1229

E. Legal Fees. The Parties shall bear their own costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms and conditions of this Agreement.

F. Amendments. Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless agreed to by the Parties in writing and executed in the same manner as was this Agreement.

G. Venue. This Agreement shall be construed and governed by the laws of the State of Florida. Venue for any and all legal action necessary to enforce this Agreement shall be held in Palm Beach County. No remedy conferred upon either Party by this Agreement is intended to be exclusive of any other remedy existing at law, in equity or otherwise. No single or partial exercise by either Party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

H. Preparation. Preparation of this Agreement was a joint effort of the Parties and should not be construed more severely against one Party than the other.

I. Non-Discrimination. The Parties agree that no person shall be excluded on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

J. Severability. In the event any provision hereof is held invalid by a court of competent jurisdiction, the remaining portions of the Agreement shall remain in full force and effect.

K. Entire Understanding. This Agreement represents the entire understanding of the Parties and supersedes all other negotiations, representations or agreements, written or oral, relating to this Agreement.

L. Inspector General. The **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 to audit, investigate, monitor, and inspect the activities of **Village**, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with 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 provided such Local Government is a special district that has previously and by separate written instrument agreed to be subject to said Inspector General's authority or is a municipality.

M. Records. The **County** and **Village** shall maintain books, records, and documents to justify all charges, expenses and costs incurred or paid by them under this Agreement in performance of the term of this Agreement, in accordance with Generally Accepted Accounting Principles (GAAP), as promulgated by the Government Finance Officers Association from time to time. The **County** and **Village** shall have access to all books, records, and documents as required in this Agreement, and for at least five (5) years after completion of the **Project**.

N. Contractual Relationship. **County** and **Village** 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 **Village** employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to **Village'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. The **County** and **Village** do not have the power or authority to bind each other in any promise, agreement or representation without the prior written consent of the other Party.

O. Required Consultants/Personnel. **Village** represents that it has, or will secure, all necessary personnel required to perform the **Project** services required of it under this Agreement. Such personnel shall not be agents, employees of or have any contractual relationship with the **County**. All of the **Village** services required hereinunder shall be performed by **Village** or its consultants and contractors, with any such personnel engaged in performing such services to be fully qualified and, if required, authorized, licensed or permitted under State and local law to perform such services.

P. 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.

Q. Legal Compliance. **County** and **Village** shall abide by all applicable federal, State and local laws, orders, rules and regulations when performing under this Agreement. **County** and **Village** further agree to the inclusion of this provision in all subcontracts issued as a result of this Agreement.

R. Waiver of Jury Trial. The Parties hereby waive any rights either of them may have to a jury trial in any litigation arising out of or related to this Agreement and agree that they shall not elect a trial by jury. The Parties hereto have separately, knowingly and voluntarily given this waiver of right to trial by jury with the benefit of competent legal counsel.

S. Convicted Vendor List. As provided in Sections 287.132-133, Florida Statutes, as may be amended from time to time, by entering into this Agreement or performing any work in furtherance hereof, **Village** shall have its contractor certify that their affiliates, suppliers and sub-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.

T. Survivability. The obligations, rights, and remedies of the Parties hereunder, which by their nature are intended to 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.

U. Effective Date. This Agreement shall be effective and binding upon the Parties hereto once the Agreement has been signed by both Parties and filed with the Clerk of the Court in and for Palm Beach County, Florida.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals on the day and date first written above.

Village of Palm Springs

By: [Signature]
Richard J. Reade, Village Manager

BOARD OF COUNTY COMMISSIONERS

By: [Signature]
Verdenia C. Baker, County Administrator

ATTEST:

By: [Signature]
Susan M. Caljean, Village Clerk

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

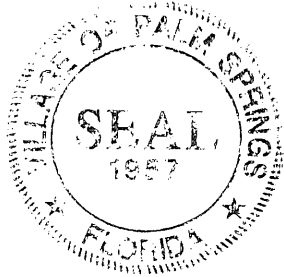
By: _____
(Deputy Clerk)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: [Signature]
Glen J. Torcivia, Village Attorney

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: [Signature]
Assistant County Attorney



APPROVED AS TO TERMS
AND CONDITIONS

By: [Signature]
Division Director