

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY
AND RIVIERA BEACH UTILITY SPECIAL DISTRICT REGARDING
OPEN CUTS UNDER COUNTY THOROUGHFARE AND NON-
THOROUGHFARE ROADS**

THIS AGREEMENT, made and entered into this ____ day of _____, 2019, by and between the **BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter "**COUNTY**"), and the **CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT**, a dependent special district, (hereinafter "**DISTRICT**").

WHEREAS, the COUNTY has adopted certain policies and procedures regarding open cuts across its thoroughfare and non-thoroughfare roads; and

WHEREAS, the DISTRICT has agreed to follow the policies and procedures set forth by the COUNTY regarding open cuts on COUNTY roads; however, the DISTRICT shall not be required to obtain a surety bond for the open cut, but, instead will be bound by the terms and conditions of this Interlocal Agreement (Agreement); and

WHEREAS, the DISTRICT agrees to be responsible for repairing the open cut, in accordance with COUNTY policies and procedures, and all costs associated with such repair.

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

Section 1. The above recitations are true and correct and are incorporated herein.

Section 2. **COUNTY POLICY:** The COUNTY has adopted policies and procedures, PPM EL-O-3605 and PPM EL-O-3606, regarding open cuts on COUNTY thoroughfare and non-thoroughfare roads and all open cuts shall be in compliance with these policies and procedures, as amended from time to time. The polices set forth the requirements of

permitting, construction, and maintenance of the open cut as well as the requirement to obtain a surety bond to insure the proper repair of the open cut. The current policies and procedures are attached to this Agreement as **Exhibit A**.

Section 3. **WORK PERFORMED BY THE DISTRICT:** The DISTRICT (any reference to DISTRICT shall include work performed not only by the DISTRICT but by its contractors or sub-contractors) shall be required to follow all of the requirements of the policies of the COUNTY regarding open cuts. However, except as provided in d) below, the DISTRICT shall not be required to obtain a surety bond for such work and instead shall be bound by the following terms and conditions:

- a) The DISTRICT shall be responsible for repairing the open cut for a six (6) month period after the final restoration of the open cut.
- b) During and on the last day of the 6 month period, the COUNTY may request certain repairs or further restoration be made to the open cut consistent with the COUNTY's policies, in which case, the DISTRICT shall make such repairs or restoration within thirty (30) days of receiving written notice from the COUNTY.
- c) In the event the DISTRICT fails to make such repairs within the time frame allowed or such repairs are inadequate after the thirty (30) day notice and opportunity to cure required by Section 8, or emergency repairs are required, the COUNTY may make such repairs as it deems necessary and invoice the DISTRICT for the cost of such work. Upon receiving such invoice the DISTRICT shall, within forty-five (45) days, make payment to the COUNTY.
- d) Work involving open cuts on COUNTY thoroughfare and non-thoroughfare roads, performed for the DISTRICT by Contractors, having a value of more

than \$200,000, shall be bonded under a Payment and Performance Bond and name the County as an obligee in accordance with Florida Statute Section 255.05.

Section 4. **AREA SUBJECT TO AGREEMENT:** The terms of this Agreement shall apply to all open cuts performed by the DISTRICT on COUNTY thoroughfare and non-thoroughfare roads located in the DISTRICT's utility service area.

Section 5. **TERM:** This Agreement shall be dissolved upon mutual consent of both parties after a 60 day notification by either party, and as long as there are no outstanding permits for which sureties were waived under this agreement, in which case the agreement will remain in effect until the open permit(s) are satisfactorily closed out by the COUNTY.

Section 6. **INSURANCE:** Without waiving the right to sovereign immunity as provided by section 768.28, Florida Statutes, (STATUTE), the DISTRICT represents that It is self-insured with coverage subject to the limitations of the STATUTE, as may be amended. If the DISTRICT is not self-insured, the DISTRICT shall, at Its sole expense, purchase and maintain in full force and effect at all times during the life of this contract, insurance coverage at limits not less than those contained in the STATUTE. Should the DISTRICT purchase excess liability coverage, the DISTRICT agrees to include the COUNTY as an Additional Insured. The DISTRICT agrees to maintain or to be self-insured for Workers' Compensation insurance in accordance with Chapter 440, Florida Statutes. Should the DISTRICT contract with a third-party (CONTRACTOR) to perform any service related to the Agreement, the DISTRICT shall require the CONTRACTOR to provide the following minimum insurance:

- Commercial General Liability insurance with minimum limits of \$1,000,000 combined single limit for property damage and bodily injury per occurrence and \$2,000,000 per aggregate. Such policy shall be endorsed to include the DISTRICT and the COUNTY as Additional Insureds. The DISTRICT shall also require that the

CONTRACTOR include a Waiver of Subrogation against the COUNTY.

- Business Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits for property damage and bodily injury per occurrence.
- Workers' Compensation insurance in compliance with Chapter 440, Florida Statutes, and which shall include coverage for Employer's Liability with minimum limits of \$1,000,000 each accident.

When requested, the DISTRICT shall provide an affidavit or Certificate of Insurance evidencing insurance or self-insurance. Compliance with the foregoing requirement shall not relieve the DISTRICT of its liability and obligations under this Agreement.

Section 7. **INDEMNIFICATION:** The DISTRICT shall comply with the COUNTY's Right of Way Permitting Ordinance (R2019-030), as amended, which is incorporated by reference herein.

Section 8. **NOTICE OF COMPLAINTS OR SUITS:** Each party will promptly notify the other of any citizen complaint, claim, suit, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement.

Section 9. **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, the party not in default shall provide to the defaulting party thirty (30) days written notice before exercising any of its rights.

Section 10. **ENFORCEMENT COSTS AND WAIVER OF JURY TRIAL:** 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; provided, however, that this clause pertains only to the parties to this Agreement. Further, the parties agree to waive their rights to a trial by jury in the event a dispute arises out of

or is related to this Agreement.

Section 11. **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:

As to the COUNTY:

Palm Beach County Engineering Department
Land Development Division
Joanne M. Keller, P.E., Director
2300 North Jog Road
West Palm Beach, Florida 33411-2745

As to the DISTRICT:

City of Riviera Beach
Utility Special District
Attention: Director
600 Blue Heron Blvd.
Riviera Beach, FL 33404

Section 12. **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 13. **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 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.

Section 14. **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 15. **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 16. **FILING:** A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

Section 17. **EFFECTIVE DATE:** This Agreement shall take effect upon execution by both parties and upon filing with the Clerk of the Circuit Court of Palm Beach County, Florida.

Section 18. **LEGAL COMPLIANCE:** The DISTRICT shall abide by all applicable federal, state and local laws, orders, rules and regulations when performing under this Agreement. The DISTRICT further agrees to include this provision In all contracts issued as a result of this Agreement.

Section 19. **ACCESS AND AUDITS:** The DISTRICT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing work associated with this Agreement for at least three (3) years after completion or termination of this Agreement. The COUNTY shall have access to such books, records and documents as required in this section for the purpose of inspection or audit during normal business hours, at the DISTRICT.

The COUNTY has established the Office of the Inspector General in 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 the DISTRICT, its officers, agents, employees and lobbyists in order to ensure compliance with Agreement 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 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.

Section 20. **THIRD PARTY:** 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 21. **FULL FORCE AND EFFECT:** In the event that any section, paragraph, sentence, clause or provision hereof is held in valid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

Section 22. **NON-DISCRIMINATION:** The DISTRICT and COUNTY agree to comply with the County's Nondiscrimination Policy, as described in Resolution 2017-1770, as amended, and that neither party conducts business with nor appropriate funds to any entity that practices discrimination on the basis of race, color, national origin, disability, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity or expression, disability, or genetic Information. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

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

ATTEST:
Sharon R. Bock, Clerk
& Comptroller

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

By: _____
Deputy Clerk

By: _____
Mack Bernard, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
Yelizaveta B. Herman,
Assistant County Attorney

By: _____
Joanne M. Keller
Division Director

ATTEST:

CITY OF RIVIERA BEACH
UTILITY SPECIAL DISTRICT

By: _____
Claudene Anthony
District Clerk

By: _____
KaShamba Miller-Anderson
Chairperson

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Dawn S. Wynn
DISTRICT Attorney