

Loxahatchee River District

Water Reclamation | Environmental Education | River Restoration

2500 Jupiter Park Drive, Jupiter, Florida 33458-8964

Telephone (561) 747-5700 • Fax (561) 747-9929 • www.loxahatcheeriver.org



D. Albrey Arrington, Ph.D., Executive Director

MEMORANDUM

TO: D. ALBREY ARRINGTON, Ph.D.
Executive Director

FROM: CLINTON R. YERKES *CR*
Deputy Executive Director

DATE: MARCH 9, 2016

SUBJECT: INTERLOCAL AGREEMENT WITH PALM BEACH COUNTY
ROAD OPEN-CUTS

In 2010 the District entered into our first Interlocal Agreement with Palm Beach County to provide assurance to the County that the District would properly restore any road cuts in Thoroughfare roads. This enabled the District to proceed with various projects without having to provide a surety deposit each time we performed construction in Palm Beach County rights-of-way. The original Agreement was for a term of five (5) years which has expired.

Over the past couple of months staff and Mr. Shenkman have been working with the County to develop a revised Interlocal Agreement that would provide legal protections and reduce reporting requirements for the District. The County has agreed to revisions in their wording and provided the attached clean document for execution. This agreement does not contain a fixed Term for expiration.

The following motion is suggested for approval of this item:

“THAT THE DISTRICT GOVERNING BOARD authorize the Executive Director to execute the Interlocal Agreement with Palm Beach County for Open Cuts Under County Thoroughfare Roads.”

Special thanks to Mr. Shenkman for resolving a significant issue in an expeditious and agreeable resolution for all parties.

Should you have any questions regarding this Agreement please feel free to contact Curt Shenkman or me.

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Gordon M. Boggie
Board Member

Stephen B. Rockoff
Board Member

Dr. Matt H. Rostock
Chairman

Harvey M. Silverman
Board Member

James D. Snyder
Board Member

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY
AND LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL
DISTRICT REGARDING OPEN CUTS UNDER COUNTY
THOROUGHFARE ROADS**

THIS AGREEMENT, made and entered into this ____ day of _____, 2016, 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 **LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL DISTRICT**, a Special District existing under the laws of the State of Florida, (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 policies 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.

- e) The DISTRICT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverage and limits (including endorsements), as described as follows: DISTRICT agrees to maintain, or self-insure, Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute Chapter 440. DISTRICT agrees to provide a statement, or Certificate of Insurance, evidencing insurance or self-insurance for the above required coverages. DISTRICT agrees to maintain its self-insurance or insurance and such insurance shall be primary with respect to any coverage afforded to or maintained by COUNTY in the event the DISTRICT is responsible for such coverage under this Agreement. DISTRICT agrees compliance with the foregoing insurance requirements is not intended to nor construed to relieve DISTRICT of its liability and obligations under this Agreement. DISTRICT shall agree to provide the COUNTY with at least ten days (10) prior notice of any cancellation, non-renewal or material change to the insurance coverage.
- f) In the event the DISTRICT engages a contractor to perform work associated with this Agreement, the DISTRICT will require each contractor engaged by the DISTRICT to maintain:

- 1) Commercial General Liability or Business Auto Liability, at limits not less than \$500,000 each occurrence. DISTRICT agrees to have contractor endorse Palm Beach County Board of County Commissioners as an "Additional Insured" to the Commercial General Liability, but only with respect to the contractor's

negligence other than County's negligence arising out of this Agreement. This paragraph does not apply to liability policies which afford only indemnity based claims-bill coverage.

2) Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute Chapter 440.

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.

Section 6. **INDEMNIFICATION:** In the event a claim or lawsuit is brought against the COUNTY, its officers, employees, servants or agents which is caused by or arises out of or is directly or indirectly related to the DISTRICT's negligent acts or omissions in performing work under this Agreement, the DISTRICT, to the extent set forth in Florida Statute 768.28 (\$200,000 per person/\$300,000 per claim) agrees to save, defend, reimburse, indemnify and hold harmless the COUNTY, its officers, employees, servants and agents from any and all claims, demands, damages, liabilities, causes or actions, legal or administrative proceedings, judgments, interest, attorney's fees, costs and expenses of whatsoever kind or nature. The DISTRICT's aforesaid obligations or portions or applications thereof shall apply to the extent set forth in section 768.28, Florida Statute, but in no event shall they apply to liability caused by the negligent acts or omissions of the COUNTY, or its agents, servants, employees or officers. This indemnification provision is also mutual from COUNTY to DISTRICT. The foregoing shall not be construed as consent by the DISTRICT or COUNTY to be sued or for the

benefit of any third parties.

Section 7. **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 8. **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 9. **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 10. **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:

Loxahatchee River District
Attention: Executive Director
2500 Jupiter Park Dr
Jupiter, FL 33458

Section 11. **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 12. **REMEDIES:** This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all 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 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. To encourage prompt and equitable resolution of any litigation, each party hereby waives its rights to a trial by jury in any litigation related to this Agreement.

Section 13. **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 14. **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 15. **FILING:** A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

Section 16. **EFFECTIVE DATE:** This Agreement shall take effect upon execution.

Section 17. **COMPLIANCE WITH CODES AND LAWS:** Each party agrees to abide by all laws, orders, rules, policies and regulations.

Section 18. **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 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.

Section 19. **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 20. **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 21. **NONDISCRIMINATION:** The COUNTY and DISTRICT agree that no person shall, on the grounds of race, color, religion or creed, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, be discriminated against in performance of this Agreement.

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: _____
, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND
CONDITIONS**

By: _____
Assistant County Attorney

By: _____
County Engineer

ATTEST:

**LOXAHATCHEE RIVER ENVIRONMENTAL
CONTROL DISTRICT**

By: _____
DISTRICT Clerk

By: _____
Executive Director

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
DISTRICT Attorney

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