

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: September 13, 2011 Consent Regular
 Workshop Public Hearing

Department:
Submitted By: Engineering & Public Works
Submitted For: Roadway Production Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to rescind: Resolution R87-916 and adopt a Resolution to authorize the Palm Beach County (County) Administrator and/or his designees to execute utility relocation agreements on behalf of the County for utilities located within County right-of-way.

SUMMARY: Resolution R87-916 authorized the County Engineer or his designee to execute utility relocation agreements on behalf of the County. Rescinding Resolution R87-916 and adopting a new resolution will allow the use of an updated form of agreement for utility relocations, and allow the County Administrator and/or his designees to execute the agreement on behalf of the County.

Countywide (MRE)

Background and Justification: Resolution R87-916 authorized the County Engineer or his designee to enter into utility relocation agreements on behalf of the County. The form of agreement authorized under Resolution R87-916 is outdated, and an updated form of agreement for utility relocations is necessary. The agreement addresses the utility company jointly participating with the County in the construction of improvements within County right-of-way when the utility company's facilities are in conflict with the proposed construction, and provides for the utility company to reimburse the County for all costs attributable to relocation, adjustment, and/or support and protection of the utility company's facilities. Therefore, we recommend rescinding Resolution R87-916 and adopting a new resolution to authorize the County Administrator and/or his designees to execute the agreement on behalf of the County.

Attachments:

1. Resolution (2)
2. Resolution R 87-916
3. Agreement Sample

Recommended by: SP *[Signature]* Division Director 8/23/11 *[Signature]* Date

Approved By: *[Signature]* County Engineer 8/25/11 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	-0-	-0-	-0-	-0-	-0-
# ADDITIONAL FTE	-0-	-0-	-0-	-0-	-0-
POSITIONS (CUMULATIVE)	-0-	-0-	-0-	-0-	-0-

Is Item Included in Current Budget? Yes No

Budget Account No.:

Fund Agency Organization Object Amount

B. Recommended Sources of Funds/Summary of Fiscal Impact:

This item has no fiscal impact.

C. Departmental Fiscal Review: D. Willhite

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

 [Signature] *[Signature]*
 OFMB 8/29/11 cc 8/25/11 Contract Administration 8/30/11

B. Legal Sufficiency:

 [Signature]
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

RESOLUTION NO. 2011-

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE
COUNTY ADMINISTRATOR AND/OR HIS DESIGNEES TO
EXECUTE UTILITY RELOCATION AGREEMENTS FOR
UTILITIES LOCATED WITHIN PALM BEACH COUNTY
RIGHT-OF-WAY ON BEHALF OF PALM BEACH COUNTY,
FLORIDA**

WHEREAS, Resolution No. 87-916 authorized the County Engineer or his designee to enter into utility relocation agreements on behalf of Palm Beach County; and

WHEREAS, Resolution No. 87-916 authorized the use of a specific form of agreement which has become outdated and is being rescinded by this action; and

WHEREAS, an updated form of agreement attached hereto is the only form which shall be permitted to be executed by the County Administrator and/or his designees, pursuant to the Board's authority.

(Intentionally Left Blank)

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that the County Administrator and/or his designees are authorized to execute utility relocation agreements with utility companies located within County right-of-way where the construction, reconstruction, or change requires relocation, adjustment, and/or support and protection of the utility facilities with the County right-of-way, when authorized and mandated by Florida Statutes, on behalf of Palm Beach County.

1. The recitations set forth herein above are true, accurate and correct and are incorporated herein.
2. This Resolution will take effect upon its adoption.

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

Karen T. Marcus, Chair	-
Shelley Vana, Vice Chair	-
Paulette Burdick	-
Steven L. Abrams	-
Burt Aaronson	-
Jess R. Santamaria	-
Priscilla A. Taylor	-

The Chair thereupon declared the Resolution duly passed and adopted this _____ day of _____ 2011.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

By: _____
Assistant County Attorney

By: _____
Deputy Clerk

Sample Agreement

**AGREEMENT BETWEEN PALM BEACH COUNTY, FLORIDA
AND
(UTILITY COMPANY)
FOR JOINT PARTICIPATION AND PROJECT FUNDING
IN CONSTRUCTION OF
(PROJECT)
PALM BEACH COUNTY PROJECT NO.**

THIS Agreement is made as of the ____ day of _____, 20__, by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter "COUNTY") and (Utility Company), a corporation existing under the laws of Florida, (hereinafter " ").

WHEREAS, the COUNTY intends to extend (Project) (hereinafter the "Project"); and

WHEREAS, the COUNTY and the (Utility Company) desire to jointly participate in the construction of utility adjustments to the (Utility Company)'s facilities and other improvements within the Project area, hereinafter referred to as the "Work"; and

WHEREAS, both COUNTY and (Utility Company) 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. _____. Said Bid Documents include the Work as shown in (Utility Company)'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 (Project).

Section 3. Responsibilities and Duties:

A. (Utility Company) shall reimburse COUNTY a total estimated cost of _____ **Dollars (\$)**, 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 (Utility Company) Utility Items shall be paid by the (Utility Company).

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 *(Utility Company)*.

C. COUNTY shall obtain written approval from the *(Utility Company)* 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 Agreement. Approval shall not be unreasonably withheld. The *(Utility Company)*'s responsibility for change order costs includes any costs associated with the *(Utility Company)*'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 *(Utility Company)* shall repair and maintain the Work, at *(Utility Company)*'s expense.

Section 4. Payments/Invoicing and Reimbursement:

The COUNTY will invoice the *(Utility Company)* on a periodic basis during construction of the Project and the Work. The *(Utility Company)* 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, *(Utility Company)* 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 *(Utility Company)* identifying the Work, including COUNTY'S total expenditure for the Project. COUNTY shall supply any further documentation such as copies of paid receipts, canceled checks, invoices and other documents deemed necessary by the *(Utility Company)* within seven (7) calendar days of request by the *(Utility Company)*. Invoices received from COUNTY will be reviewed and approved by the *(Utility Company)* to insure that expenditures have been made in conformity with this Agreement. Invoices will normally be paid within thirty (30) days following approval.

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

Section 5. Repayment

COUNTY shall repay the *(Utility Company)* 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 *(Utility Company)* 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 *(Utility Company)* 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 *(Utility Company)* 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 *(Utility Company)* employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to *(Utility Company)*'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 *(Utility Company)* 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 *(Utility Company)*.

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 (*Utility Company*) 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 (*Utility Company*) 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, (*Utility Company*) 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 (*Utility Company*) the right to compel the COUNTY to act for or on (*Utility Company*) 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 (*Utility Company*) shall be sent to:

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 (*Utility Company*) agree that no person shall, on the grounds of age, race, color, sex, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, and gender identity and expression, 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 (*Utility Company*) shall abide by all applicable federal, state and local laws, orders, rules and regulations when performing under this Agreement. COUNTY and (*Utility Company*) 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, Ordinance R2009-049, 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 (*Utility Company*) 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 Interlocal Agreement on the day and year first written above.

(Utility Company)

PALM BEACH COUNTY, FLORIDA

BY: _____
(Print Name)

BY: _____
(Signature)

ATTEST WITNESS:

BY: _____
(Print Name)

(Signature)

BY: _____
(Print Name)

(Signature)

APPROVED AS TO TERMS
AND CONDITIONS:

By: _____

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

BY: _____
Assistant County Attorney

6.8.7RAGmej "RES UTILITY RELOCATION AGMT"

RESOLUTION NO. R-87- 916

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE COUNTY ENGINEER TO EXECUTE UTILITY RELOCATION AGREEMENTS FOR UTILITIES LOCATED IN COUNTY RIGHT-OF-WAY.

WHEREAS, County from time to time constructs, reconstructs, or otherwise changes a portion of the County roadway system designed by the County which calls for the relocation of utility facilities along/over/or under said roadway; and

WHEREAS, the County Engineering Department reviews the plans for said construction, reconstruction, or other changes to be made on the said roadway including the relocation of utilities which may be necessitated by the construction, reconstruction or other alterations to be made; and

WHEREAS, the frequency with which these agreements must be entered into and executed and the requirement for expeditious disposition of the utilities would be better facilitated by permitting the County Engineer or his designee, to execute the agreement on the Board's behalf; and

WHEREAS, a form of agreement annexed hereto is the only form which shall be permitted to be executed by the County Engineer or his designee, pursuant to the Board's authority.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that the Board hereby authorizes the County Engineer as follows:

1. To permit the County Engineer or his designee, to entered into and execute utility relocation agreements in the form annexed hereto with the respective utilities located within County road right-of-way where the construction, reconstruction, or change requires the relocation of the utility facilities within the County right-of-way when the relocation is authorized and mandated by Florida Statutes.

The foregoing resolution was offered by Commissioner Adams who moved its adoption. The motion was seconded by Commissioner Wilken

6.8.7RAGmej "RES UTILITY RELOCATION AGMT"

and upon being put to a vote, the vote was as follows:

CAROL A. ROBERTS	-	AYE
KEN ADAMS	-	AYE
KAREN T. MARCUS	-	AYE
CAROL ELMQUIST	-	AYE
DOROTHY H. WILKEN	-	AYE

The Chair thereupon declared the resolution duly passed and adopted this 23rd day of June, 1987.

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

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

John B. Dunkle, Clerk

By


County Attorney

By


Deputy Clerk



Sample Agreement

**AGREEMENT BETWEEN PALM BEACH COUNTY, FLORIDA
AND
(UTILITY COMPANY)
FOR JOINT PARTICIPATION AND PROJECT FUNDING
IN CONSTRUCTION OF
(PROJECT)
PALM BEACH COUNTY PROJECT NO.**

THIS Agreement is made as of the ____ day of _____, 20__, by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter "COUNTY") and (*Utility Company*), a corporation existing under the laws of Florida, (hereinafter " ").

WHEREAS, the COUNTY intends to extend (*Project*) (hereinafter the "Project"); and

WHEREAS, the COUNTY and the (*Utility Company*) desire to jointly participate in the construction of utility adjustments to the (*Utility Company*)'s facilities and other improvements within the Project area, hereinafter referred to as the "Work"; and

WHEREAS, both COUNTY and (*Utility Company*) 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. _____. Said Bid Documents include the Work as shown in (*Utility Company*)'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 (*Project*).

Section 3. Responsibilities and Duties:

A. (*Utility Company*) shall reimburse COUNTY a total estimated cost of _____ **Dollars (\$)**, 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 (*Utility Company*) Utility Items shall be paid by the (*Utility Company*).

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 *(Utility Company)*.

C. COUNTY shall obtain written approval from the *(Utility Company)* 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 Agreement. Approval shall not be unreasonably withheld. The *(Utility Company)*'s responsibility for change order costs includes any costs associated with the *(Utility Company)*'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 *(Utility Company)* shall repair and maintain the Work, at *(Utility Company)*'s expense.

Section 4. Payments/Invoicing and Reimbursement:

The COUNTY will invoice the *(Utility Company)* on a periodic basis during construction of the Project and the Work. The *(Utility Company)* 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, *(Utility Company)* 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 *(Utility Company)* identifying the Work, including COUNTY'S total expenditure for the Project. COUNTY shall supply any further documentation such as copies of paid receipts, canceled checks, invoices and other documents deemed necessary by the *(Utility Company)* within seven (7) calendar days of request by the *(Utility Company)*. Invoices received from COUNTY will be reviewed and approved by the *(Utility Company)* to insure that expenditures have been made in conformity with this Agreement. Invoices will normally be paid within thirty (30) days following approval.

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

Section 5. Repayment

COUNTY shall repay the (*Utility Company*) 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 (*Utility Company*) 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 (*Utility Company*) 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 (*Utility Company*) 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 (*Utility Company*) employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to (*Utility Company*)'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 (*Utility Company*) 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 (*Utility Company*).

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 (*Utility Company*) 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 (*Utility Company*) 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, (*Utility Company*) 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 (*Utility Company*) the right to compel the COUNTY to act for or on (*Utility Company*) 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 (*Utility Company*) shall be sent to:

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 (*Utility Company*) agree that no person shall, on the grounds of age, race, color, sex, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, and gender identity and expression, 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 (*Utility Company*) shall abide by all applicable federal, state and local laws, orders, rules and regulations when performing under this Agreement. COUNTY and (*Utility Company*) 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, Ordinance R2009-049, 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 (*Utility Company*) 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 Interlocal Agreement on the day and year first written above.

(Utility Company)

PALM BEACH COUNTY, FLORIDA

BY: _____
(Print Name)

BY: _____
(Signature)

BY: _____

ATTEST WITNESS:

APPROVED AS TO TERMS
AND CONDITIONS:

BY: _____
(Print Name)

By: _____

(Signature)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

BY: _____
(Print Name)

BY: _____
Assistant County Attorney

(Signature)