

PALM BEACH COUNTY
 BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: October 21, 2014 **Consent** **Regular**
 Workshop **Public**

Department:

Submitted By: Engineering and Public Works
Submitted For: Land Development Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: An Interlocal Agreement with the City of Lake Worth (City) regarding open cuts in Palm Beach County (County) maintained rights-of-way.

SUMMARY: The City has agreed to follow the policies and procedures set forth by the County regarding open cuts in County roads; however, the City is requesting that it not be required to provide surety bonds for the open cuts as required by County Policy, but instead be bound by the terms and conditions of this Interlocal Agreement.

Districts 3, 7 (MRE)

Background and Justification: The County has a policy that requires a guarantee to be posted for any construction in County rights-of-way that result in the open cutting of the pavement. The City has requested that the County instead enter into an Interlocal Agreement which would relieve the City from posting surety but require them to make any required repairs upon request by the County. The City will be bound by the terms and conditions of this Interlocal Agreement. The Agreement will remain in effect until dissolved upon mutual consent of both parties as long as there are no outstanding permits for which sureties were waived.

The proposed Interlocal Agreement is consistent with Section 163.01 of Florida Statutes, known as the Florida Interlocal Cooperation Act of 1969.

Attachments:

- Interlocal Agreement with Exhibit 'A' (two originals)

Recommended by: *Joanell Kelly* 09/16/2014 *[Signature]*
 Division Director **Date**

Approved by: *S. T. Webb* 9/30/14
 County Engineer **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
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 POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes No

Budget Acct No.: Fund__ Dept.__ Unit__ Object
Program

Recommended Sources of Funds/Summary of Fiscal Impact:

*This item has no fiscal impact.

C. Departmental Fiscal Review: _____

Aliu Kovalainen

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Susan Neary 10/1/14

RD ASD OFMB
10/1 10/1

Ann J. Jacobson 10/7/14

Contract Dev. and Control
10-7-14 *Sheela*

B. Approved as to Form and Legal Sufficiency:

Monica C. Attala 10/9/14

Assistant County Attorney

C. Other Department Review:

Department Director

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

**INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY
AND THE CITY OF LAKE WORTH REGARDING OPEN CUTS
UNDER COUNTY THOROUGHFARE ROADS**

THIS AGREEMENT, made and entered into this ____ day of _____, 2014, 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 LAKE WORTH**, a municipality existing under the laws of the State of Florida, (hereinafter "**CITY**").

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

WHEREAS, the **CITY** has agreed to follow the policies and procedures set forth by the **COUNTY** regarding open cuts on **COUNTY** roads; however, the **CITY** 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 **CITY** 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 as **Exhibit A**.

Section 3. Work performed by the CITY: The CITY (any reference to CITY shall include work performed not only by the CITY 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 CITY 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 CITY 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 CITY shall make such repairs or restoration within thirty (30) days of receiving written notice from the COUNTY.
- c) In the event the CITY 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 CITY for the cost of such work. Upon receiving such invoice the CITY 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 CITY 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 CITY 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: CITY agrees to maintain, or self-insure, Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute Chapter 440. CITY agrees to provide a statement, or Certificate of Insurance, evidencing insurance or self-insurance for the above required

coverages. CITY 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 CITY is responsible for such coverage under this Agreement. CITY agrees compliance with the foregoing insurance requirements is not intended to nor construed to relieve CITY of its liability and obligations under this Agreement. CITY 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 CITY engages a contractor to perform work associated with this Agreement, the CITY will require each contractor engaged by the CITY to maintain:

1) Commercial General Liability or Business Auto Liability, at limits not less than \$500,000 each occurrence. CITY 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 CITY on COUNTY thoroughfare and non-thoroughfare roads located in the CITY’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 CITY's negligent acts or omissions in performing work under this Agreement, the CITY, 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 CITY'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 CITY. The foregoing shall not be construed as consent by the CITY 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 CITY :

CITY OF LAKE WORTH
Attention: Utilities Department
7 N Dixie Highway
Lake Worth, FL 33460

With a copy to:

CITY OF LAKE WORTH
Attention: Risk Manager
7 N Dixie Highway
Lake Worth, FL 33460

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 CITY 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 CITY.

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 CITY, 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 19. **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 20. **DISCRIMINATION.** The COUNTY and CITY agree that no person shall, on the grounds of race, color, gender, national origin, ancestry, marital status, sexual orientation, disability, religion or creed, or age be discriminated against in performance of this Agreement.

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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: _____
Priscilla A. Taylor, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

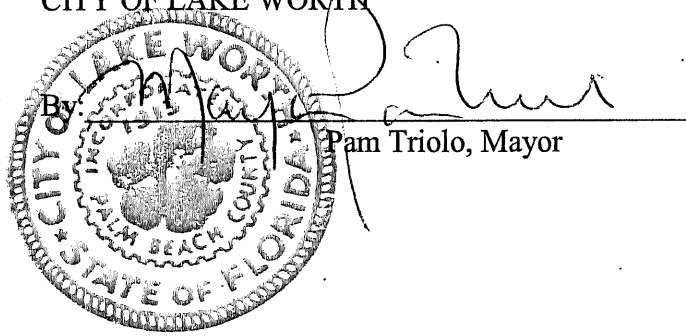
By: _____
Assistant County Attorney

By: Joanwell Kellon FOR
County Engineer

ATTEST:

CITY OF LAKE WORTH

By: Pamela Lopez 8/27/14
Pam Lopez, City Clerk



By: _____
Pam Triolo, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: Glen J. Torcivia FOR
Glen J. Torcivia, City Attorney

PALM BEACH COUNTY
DEPARTMENT OF ENGINEERING & PUBLIC WORKS

LAND DEVELOPMENT DIVISION

TO: All Division Personnel **PPM NUMBER:** EL-O-3605
FROM: Joanne M. Keller, P.E. Director **ISSUE DATE:** 04/30/2014
Land Development Division **EFFECTIVE DATE:** 04/30/2014
SUBJECT: Open-Cut Policy for Thoroughfare Plan Roads

Contact Position(s): Professional Engineer
Project Coordinator II
Technical Assistant III
Electronic Permit Specialist

Authority: Ordinance 2008-006
Countywide PPM#CW-F-055

Purpose: To establish uniform procedures for reviewing and permitting open-cutting of County Maintained Roads listed on the Thoroughfare Right of Way Identification Map (Thoroughfare Plan).

Policy: The following policy statements shall be used when applying the procedures described herein:

1. Whenever possible all utilities shall be installed in County maintained rights of way shown on the County's Thoroughfare Plan without disturbing existing pavement.
2. Where it has been deemed necessary to open cut a County maintained Thoroughfare Plan road for any type of work, all work and procedures shall be conducted in accordance with this PPM.
3. Surety will be required to guarantee that the workmanship of the open-cut and reconstruction of the roadway shall be in strict conformance with this PPM. Surety will be released if after six (6) months from the date of the initial satisfactory field review; the restoration is found acceptable.
4. Palm Beach County Departments and Divisions will be exempt from providing surety.

5. The Engineer-of-Record will provide full-time inspection during the entire open-cut operation, beginning with the excavation and continuing through completion of the paving.
6. A Surface Transition Area overlay or mill and resurface for a distance of 50' on each side of the open cut for a full lane width shall be provided for open cuts on Thoroughfare Plan Roadways.
7. The Surface Transition Area overlay or milling and resurfacing noted in Policy 6 shall not be required if re-surfacing or re-construction of the roadway section is scheduled within the next twelve (12) months. In this case, only the pavement within the ditch width will be replaced.
8. Certification from the Project Engineer that the work was conducted in accordance with PPM#EL-O-3601, PPM#EL-O-3605, and the Permit shall be provided within two weeks of the completion of the construction.
9. Failure to submit the required certification within six (6) months after the final restoration of the open cut will result in the work **not** receiving a Final Inspection, and the Posted Surety being drawn and transferred to the Road and Bridge Division, Roadway Maintenance Account.

Procedure:

1. Upon receipt of a permit application, in accordance with PPM#EL-O-3601 – Right of Way Construction Permit Process, requesting the open-cutting of a County maintained Thoroughfare Plan road, the Project Coordinator II or Technical Assistant III shall forward the submitted plans to the Roadway Production Division and the Road & Bridge Division for review.
2. The Roadway Production Division and the Road & Bridge Division reviews the proposal and returns a recommendation of approval or denial to the Land Development Division. A justification is requested for all recommendations of denial.
3. If the Roadway Production Division and the Road & Bridge Division recommends approval of the open-cut, the Project Coordinator II or Technical Assistant III shall continue the review of the application.
4. If the Roadway Production Division or the Road & Bridge Division **do not** recommend approval of the open-cut, the Project Coordinator II or Technical Assistant III shall notify the Applicant that his request will not be approved and an alternative design will be required. An appeal of this decision can be made to the Deputy County Engineer by requesting such an appeal in writing to the Project Coordinator II or Technical Assistant III. The Project Coordinator II or Technical Assistant III will then request

the Land Development Director determine whether a meeting is warranted and, if so, to arrange for a meeting with the Deputy County Engineer, the Director of Roadway Production Division, the Director of the Road & Bridge Division, and the Project's Engineer-of-Record.

5. Concurrently, the Project Coordinator II or Technical Assistant III shall confirm that the plans for the proposed open-cut are in conformance with the County's Open Cut Detail for Thoroughfare Plan Roads (Form 3605.1) and PPM# EL-O-3601, and that the Open Cut Detail is shown on the submitted construction plans.
6. The Project Coordinator II or Technical Assistant III shall review the Engineer's signed, sealed, and dated Opinion of Cost for the open cut including mobilization, maintenance of traffic and all other work in accordance with this PPM, but excluding the cost of the pipe. Upon acceptance of the Opinion of Cost, the Project Coordinator II or Technical Assistant III shall establish the surety amount at 110% of the Engineer's Opinion of Cost.
7. A surety in excess of \$25,000.00 may be paid by a Clean Irrevocable Letter of Credit meeting all the requirements of Countywide PPM#CW-F-055, with the original expiration date established two (2) years from the date of issuance (Letter of Credit - Form 3605.11).
8. A Performance Bond/Blanket Surety (Form 3605.8) to cover multiple Permits for Qualifying Utility Providers may also be accepted. The form and conditions of a Performance Bond/Blanket Surety requires the approval of the County Attorney.
9. In lieu of surety, an Inter-local Agreement between the County and other municipalities and tax districts may be approved (Form 3605.9). This Agreement cannot be dissolved while there are permits waived of surety that have not been reinspected and approved.
10. Prior to releasing the Permit, the Electronic Permit Specialist shall receive the surety required to guarantee the satisfactory construction and repair of the open cut. If the surety is a check, the Electronic Permit Specialist shall prepare a Surety Deposit Memo (Form 3605.3) to Engineering Administrative Services, attach the check to the form and include the check and the Transmittal Memo with the other fees in accordance with PPM#EL-F-3201 – Receipt Procedures for the Permit Section.

In the event the surety is in the form of an acceptable Letter of Credit, the Electronic Permit Specialist shall make entries into the E-Permits Database confirming that the surety has been posted. The surety shall be held in a locked safe in the Land Development Division. The entry on the

Permit indicating the posted surety will serve as a receipt to the Applicant.

In the event of a Performance Bond/Blanket Surety or Inter-local Agreement, a note indicating the type of guarantee shall be entered into E-Permits by the Electronic Permit Specialist.

11. After the Engineer-of-Record submits the certificate of completion and Construction Coordination has conducted a satisfactory Final Inspection, the Coordinator II in Construction Coordination will enter the Initial "Final Inspection" date on the Inspection tab in E-Permits which will show up in the Project Coordinator's "Finalized with Surety" folder. The "six (6) month follow up date" will be automatically entered by the E-Permits system. The Project Coordinator II or Technical Assistant III will merge the Completion Notice for Permits Requiring Surety (Form 3605.7) and in accordance with PPM#EL-O-3601 Right of Way Construction Permit Process.
12. Once a month a Re-Inspection Report (Form 3605.2) will be created and distributed to the Coordinator II in Construction Coordination advising which projects require a six (6) months re-inspection in accordance with Policy 3 of this PPM.
13. After the required six (6) month period, Construction Coordination will perform a re-inspection of the open cut surface and fill in a "Follow up Final" date on the Inspection Tab of E-Permits. The project will then show up in the Land Development Reviewer's "Finalized by Construction Coordination" Folder.
14. If Construction Coordination accepts the restoration as adequate the permit is then considered complete and the guarantee can be released. If the surety was posted in the form of a Letter of Credit, the Electronic Permit Specialist shall remove the Letter of Credit from the safe and return it to the party posting the Letter of Credit along with the Surety Release Letter of Credit (Form 3605.10). For all other types of guarantees, the Project Coordinator II or Technical Assistant III initiates Form 3605.4 (Final Review/Surety Release Memo) to Administrative Services requesting the surety be returned to the Remitter. A copy of this form will be provided to the Permittee and/or Remitter.
15. If the six (6) month re-inspection is found unsatisfactory, the Coordinator II in Construction Coordination sends form (Form 3605.6 – Notice of Additional Work Required) to the Applicant giving the applicant thirty (30) calendar days from date of re-inspection to correct the deficiencies.
16. If the restoration is not completed and given a satisfactory inspection after the thirty (30) calendar day period, the Coordinator II in Construction

Coordination notifies the Electronic Permit Specialist who will initiate the memo (Form 3605.5 – Surety Transfer to Road and Bridge) to Administrative Services requesting transfer of the surety to the Road & Bridge Division’s roadway maintenance account. The Road & Bridge Division will complete the restoration.

- 17. The guarantee can be released if the restoration required in Procedure 15 above is given a satisfactory inspection. The surety shall be released in accordance with Procedure 14 above.
- 18. At the County’s discretion for emergency situations, the County may make emergency repairs with little or no notice to the Permittee. All costs associated with these repairs shall be the Permittee’s responsibility.

Forms: The following forms are associated with this directive and are contained in Volume 3 of the Appendix of the Land Development Division Manual:

3605.1	Open-cut Detail for Thoroughfare Roads
3605.2	Monthly Re-Inspection Report
3605.3	Surety Deposit Memo
3605.4	Final Review/Surety Release Memo
3605.5	Surety Transfer to Road and Bridge
3605.6	Notice of Additional Work Required
3605.7	Completion Notice for Permits Requiring Surety
3605.8	Performance Bond/Blanket Surety Example
3605.9	Inter-local Agreement Example
3605.10	Surety Release Letter of Credit
3605.11	Letter of Credit Example

APPROVALS:

Division Director: Joannell Kella Date: 05/08/2014

Department Director: J. McManis Date: 6/13/14

Supersession History:

- 1. PPM#EL-O-3605 issued 5/17/11
- 2. PPM#EL-O-3605 issued 5/7/09
- 3. PPM#EL-O-3605 issued 1/9/08

PALM BEACH COUNTY
DEPARTMENT OF ENGINEERING & PUBLIC WORKS

LAND DEVELOPMENT DIVISION

TO: All Division Personnel **PPM NUMBER:** EL-O-3606
FROM: Joanne M. Keller, P.E. Director **ISSUE DATE:** 04/30/2014
Land Development Division **EFFECTIVE DATE:** 04/30/2014
SUBJECT: Open-Cut Policy for Non-Thoroughfare Plan Roads

Contact Position(s): Professional Engineer
Project Coordinator II
Technical Assistant III
Electronic Permit Specialist

Authority: Ordinance 2008-006
Countywide PPM#CW-F-055

Purpose: To establish uniform procedures for reviewing and permitting open-cutting of County maintained roads not listed on the Thoroughfare Right of Way Identification Map (Thorough Plan).

Policy: The following policy statements shall be used when applying the procedures described herein:

1. Whenever possible all utilities shall be installed in County maintained rights of way without disturbing existing pavement.
2. Whenever it has been deemed necessary to open cut a Non-Thoroughfare Plan (local) County maintained road for any type of work, all work and procedures shall be conducted in accordance with this PPM.
3. Surety will be required to guarantee that the workmanship of the open-cut and reconstruction of the roadway shall be in strict conformance with this PPM. Surety will be released if after six (6) months from the date of the initial satisfactory field review; the restoration is found acceptable.
4. Palm Beach County Departments and Divisions will be exempt from providing surety.
5. The Engineer-of-Record will provide full-time inspection during the entire

open-cut operation, beginning with the excavation and continuing through completion of the paving.

6. Certification from the Project Engineer that the work was conducted in accordance with PPM#EL-O-3601, PPM#EL-O-3606 and the Permit shall be provided within two weeks of the completion of the construction.
7. Failure to submit the required certification within six (6) months after the final restoration of the open cut will result in the work **not** receiving a Final Inspection and the Posted Surety being drawn and transferred to the Road and Bridge Division, Roadway Maintenance Account.

Procedure:

1. Upon receipt of a permit application in accordance with PPM#EL-O-3601 – Right of Way Construction Permit Process, requesting the open-cutting of a County maintained Non-Thoroughfare Plan road, the Project Coordinator II or Technical Assistant III shall forward the submitted plans to the Director of the Road & Bridge Division for review.
2. The Road & Bridge Division reviews the proposal and returns a recommendation of approval or denial to the Land Development Division. A justification is requested for all recommendations of denial.
3. If the Road & Bridge Division recommends approval of the open-cut, the Project Coordinator II or Technical Assistant III shall continue review of the application.
4. If the Road & Bridge Division **does not** recommend approval of the open-cut, the Project Coordinator II or Technical Assistant III shall notify the applicant that his request will not be approved and an alternative design will be required. An appeal of this decision can be made to the Deputy County Engineer by requesting such an appeal in writing to the Project Coordinator II or Technical Assistant III. The Project Coordinator II or Technical Assistant III will then request the Land Development Director determine whether a meeting is warranted and, if so, to arrange for a meeting with the Deputy County Engineer, the Director of the Road & Bridge Division and the Project's Engineer-of-Record.
5. Concurrently, the Project Coordinator II or Technical Assistant III shall confirm that the plans for the proposed open-cut are in conformance with the County's Open Cut Detail for Non-Thoroughfare Plan Roads (Form 3606.1) and PPM# EL-O-3601 and that the Open Cut Detail is shown on the submitted construction plans.
6. Any open cut of the pavement that is **perpendicular** to the centerline of the road requires a \$5,000.00 surety per cut.

7. For a **parallel** cut inside the pavement **or** when the parallel installation is outside the pavement but requires pavement restoration the surety requirements are as follows:
 - a. If the length of the cut does not exceed the pavement width of the road, the surety amount is \$5,000.00.
 - b. If the length of the cut exceeds the pavement width of the road, the surety amount shall be 110% of the Engineer's signed, sealed, and dated Opinion of Cost including mobilization, maintenance of traffic, and all other work in accordance with this PPM but excluding the cost of the pipe.
8. A Surety in excess of \$25,000.00 may be paid by a Clean Irrevocable Letter of Credit meeting all the requirements of Countywide PPM#CW-F-055, with the original expiration date established two (2) years from the date of issuance (Form 3606.11).
9. A Performance Bond/Blanket Surety (Form 3606.8) to cover multiple Permits for Qualifying Utility Providers may also be accepted. The form and conditions of a Performance Bond/Blanket Surety would require the approval of the County Attorney.
10. In lieu of surety, an Inter-local Agreement between the County and other municipalities and tax districts may be approved (Form 3606.9). This Agreement cannot be dissolved while there are permits waived of surety that have not been reinspected and approved.
11. Prior to releasing the Permit, the Electronic Permit Specialist shall receive the required surety for the open cut. If the surety is a check, the Electronic Permit Specialist shall prepare a Surety Deposit Memo (Form 3606.3) to Engineering Administrative Services, attach the check to the form and include the check and the Transmittal Memo with the other fees and payments that have been received and processed in accordance with PPM#EL-F-3201 – Receipt Procedures for the Permit Section.

In the event the surety is in the form of an acceptable Letter of Credit, the Electronic Permit Specialist shall make entries into the E-Permits Database confirming that the surety has been posted. The surety shall be held in a locked safe in the Land Development Division. The entry on the Permit indicating the posted surety will serve as a receipt to the Applicant.

In the event of a Performance Bond/Blanket Surety or Inter-local Agreement, a note indicating the type of guarantee shall be entered into E-Permits by the Electronic Permit Specialist.

12. After the Engineer-of-Record submits the certificate of completion and Construction Coordination has conducted a satisfactory Final Inspection, the Coordinator II in Construction Coordination will enter the Initial "Final Inspection" date on the Inspection tab in E-Permits which will show up in the Project Coordinator II or Technical Assistant III's "Finalized with Surety" folder. The "six (6) month follow up date" will be automatically entered by the E-Permits system. The Project Coordinator II or Technical Assistant III will merge the Completion Notice for Permits Requiring Surety (Form 3606.7) and in accordance with PPM#EL-O-3601 Right of Way Construction Permit Process.
13. Once a month a Re-Inspection Report (Form 3606.2) will be created and distributed to the Coordinator II in Construction Coordination advising which projects require a six (6) month re-inspection in accordance with Policy 3 of this PPM.
14. After the required six (6) month period, Construction Coordination will perform a re-inspection of the open-cut surface and fill in a "Follow up Final" date on the Inspection Tab of E-Permits. The project will then show up in the Land Development Reviewer's "Finalized by Construction Coordination" Folder.
15. If Construction Coordination accepts the restoration as adequate the Permit is then considered complete and the guarantee can be released. If the surety was posted in the form of a Letter of Credit, the Electronic Permit Specialist shall remove the Letter of Credit from the safe and return it to the party posting the Letter of Credit along with the Surety Release Letter of Credit (Form 3606.10). For all other types of guarantees, the Project Coordinator II or Technical Assistant III initiates Form 3606.4 (Final Review/Surety Release Memo) to Administrative Services requesting the surety be returned to the Remitter. A copy of this form will be provided to the Permittee and/or Remitter.
16. If the six (6) month re-inspection is found unsatisfactory, the Coordinator II in Construction Coordination sends form (Form 3606.6 – Notice of Additional Work Required) to the applicant giving the applicant thirty (30) calendar days from date of re-inspection to correct the deficiencies.
17. If the restoration is not completed and given a satisfactory inspection after the thirty (30) calendar day period, the Coordinator II in Construction Coordination notifies the Electronic Permit Specialist; who will initiate the memo (Form 3606.5 – Surety Transfer to Road and Bridge) to Administrative Services requesting transfer of the surety to the Road & Bridge Division's roadway maintenance account. The Road & Bridge Division will complete the restoration.

18. The guarantee can be released if the restoration required in Procedure 16 above is given a satisfactory inspection. The surety shall be released in accordance with Procedure 15 above.

19. At the County's discretion for emergency situations, the County may make emergency repairs with little or no notice to the Permittee. All costs associated with these repairs shall be the Permittee's responsibility.

Forms: The following forms are associated with this directive and are contained in Volume 3 of the Appendix of the Land Development Division Manual:

- 3606.1 Open-cut Detail for Non-Thoroughfare Roads
- 3606.2 Monthly Re-Inspection Report
- 3606.3 Surety Deposit Memo
- 3606.4 Final Review/Surety Release Memo
- 3606.5 Surety Transfer to Road and Bridge
- 3606.6 Notice of Additional Work Required
- 3606.7 Completion Notice for Permits Requiring Surety
- 3606.8 Performance Bond/Blanket Surety Example
- 3606.9 Inter-local Agreement Example
- 3606.10 Surety Release Letter of Credit
- 3606.11 Letter of Credit Example

APPROVALS:

Division Director: Joanne E. Kellan Date: 05/08/2014

Department Director: [Signature] Date: 6/13/14

Supersession History:

- 1. PPM#EL-O-3606 issued 5/17/11
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- 3. PPM#EL-O-3606 issued 1/9/08