

**INTERLOCAL AGREEMENT
FOR A TRAFFIC SIGNAL AT THE INTERSECTION OF
SOUTH SWINTON AVENUE AND SW/E 1ST STREET**

THIS INTERLOCAL AGREEMENT, hereinafter "the AGREEMENT", is made and entered into this _____ day of _____, 2016, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter "COUNTY", and the CITY OF DELRAY BEACH, a municipal corporation of the State of Florida hereinafter "CITY".

WITNESSETH:

WHEREAS, the COUNTY and the CITY are authorized to enter into this AGREEMENT pursuant to Section 163.01, Florida Statutes, which permits local governmental units to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage; and

WHEREAS, the CITY desires to replace the existing span wire traffic signal located at the corner of South Swinton Avenue and SW/SE 1st Street with metal mast arm supports; and

WHEREAS, South Swinton Avenue, SW 1st Street and SE 1st Street are roads owned and maintained by the CITY. The COUNTY owns and maintains the traffic signalization mechanism for the intersection; and

WHEREAS, the COUNTY and the CITY agree that it is in the public's interest to install a mast arm traffic signal at the intersection of South Swinton Avenue and SW/SE 1st Street, herein after referred to as "PROJECT".

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the COUNTY and the CITY do hereby agree:

1. The recitals set forth above are hereby adopted and incorporated herein by this reference.
2. The COUNTY responsibilities :
 - A. To award the PROJECT to one of the COUNTY'S annual signal contractors for construction.
 - B. Provide construction inspection of the PROJECT and assume maintenance responsibility upon final acceptance of the PROJECT by the County.
 - C. Provide final cost based on the accrued cost of the PROJECT, those costs to include, but not to be limited to permit fees, inspection, construction, construction administration, staff cost adjusted annually, and the cost to relocate any overhead and/or underground utilities.
3. The CITY responsibilities:
 - A. Ensure that all right-of-way necessary to accommodate the traffic signal has been acquired and is clear of any underground and overhead utilities.

B. Reimburse the County for the PROJECT COST upon construction completion and final acceptance by the County, in an amount not to exceed \$250,000.00. In the event that the cost exceeds the reimbursement amount stated herein due to unexpected circumstances or conditions and to the extent that the COUNTY can provide reasonable documentation thereof, the CITY agrees to pay an additional amount of no more than 10 percent of the agreed upon reimbursement amount. The CITY is not obligated to pay COUNTY a reimbursement amount of more than \$275,000 for this PROJECT,

C. Repair any damages to brick pavers, streets sidewalks and curbs caused by the construction.

D. To not unduly withhold any City permits that may be necessary.

4. FUNDING. All provisions of this Agreement calling for the expenditure of ad valorem tax money by either the COUNTY or the CITY are subject to annual budgetary funding and should either Party involuntarily fail to fund any of their respective obligations pursuant to the AGREEMENT, then the PROJECT may be terminated. Provided however, once the PROJECT has been awarded to the COUNTY contractor, it shall be prosecuted to completion and this AGREEMENT shall be binding upon both parties and neither party shall have the right to terminate the subject AGREEMENT for the reason that sufficient funds are not available for the construction of the PROJECT.

5. PROJECT COST shall be based on the current annual signal contract costs and current County Engineering staff cost, such cost to be adjusted annually based on County approved increases in employee salary and benefits. The cost will be calculated at completion of the PROJECT using contract unit prices and actual constructed quantities, said quantities being measured by the COUNTY's Engineering and Public Works Department. County Engineering staff cost will be added to the project cost. The CITY shall provide payment of the cost of the FULL PROJECT COST within 30 days of receipt of notice from the COUNTY.

6. INDEMNIFICATION.

A. The CITY shall indemnify, defend, and hold harmless the COUNTY against any actions, claims, or damages arising out of the CITY's negligence in connection with this AGREEMENT to the extent permitted by law. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement to indemnify the COUNTY for the COUNTY'S negligent acts or omissions.

B. The COUNTY shall indemnify, defend, and hold harmless the CITY against any actions, claims, or damages arising out of COUNTY'S negligence in connection with this AGREEMENT to the extent permitted by law. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement to indemnify the CITY for the CITY's negligent acts or omissions.

7. NOTICES.

All notices, requests, consents and other communications required or permitted under this AGREEMENT shall be in writing and shall be hand delivered by prepaid express overnight courier or messenger service, or mailed by registered or certified mail to the following addresses:

As to COUNTY: Palm Beach County Engineering Department
Attention: Tanya N. McConnell, P.E.
Deputy County Engineer
PO Box 21229
West Palm Beach, FL 33416

As to CITY: City of Delray Beach Environmental Services Division
Attention: Isaac Kovner, City Engineer
City of Delray Beach
434 S. Swinton Avenue
Delray Beach, FL 33444

If either party changes its mailing address or designated recipient for notices, such change shall be communicated in writing to the other party within 30 days of the change.

8. GOVERNING LAW/VENUE. This AGREEMENT shall be construed by and governed by the laws of the State of Florida. Venue for any and all legal actions necessary to enforce the AGREEMENT shall be held in Palm Beach County, Florida.

9. REMEDIES. This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. 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.

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 CITY.

10. ENTIRE AGREEMENT. This AGREEMENT constitutes the entire contract between the parties hereto and supersedes all prior understandings if any. There are no other oral or written promises, conditions, representations, understanding or terms of any kind as conditions of inducement to the execution hereof and none have been relied upon by either party. Any subsequent conditions, representations, warranties or agreement shall not be valid and binding upon the parties unless they are in writing and signed by both parties and executed in the same manner as this AGREEMENT.
11. SEVERABILITY. In the event any terms or provisions of this AGREEMENT shall be held invalid, such invalid terms or provisions shall not affect the validity of any other term or provision hereof and all such other terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid terms or provisions had never been a part of this AGREEMENT.

12. **RECORD KEEPING.** The COUNTY and the CITY shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for at least three years after completion of the PROJECT. The COUNTY and the CITY shall have access to all books, records and documents as required in this section for the purpose of inspection or audit during normal business hours.
13. **DEFAULT/CURE.** The parties hereto expressly covenant and agree that in the event either party is in default of its obligations herein, the party not in default shall provide to the party in default, 30 days written notice to cure said default before exercising any of its rights as provided for in this AGREEMENT.
14. **ENFORCEMENT COSTS.** Any costs (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this AGREEMENT shall be borne by the respective parties, provided, however, that this clause pertains only to the parties to this AGREEMENT.
15. **INSPECTOR GENERAL.** The COUNTY has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.
16. **EFFECTIVE DATE.** This AGREEMENT shall become effective upon its execution by the COUNTY and the CITY.
17. **TERMINATION.** This AGREEMENT may be terminated, in writing, by either party if the design work of the PROJECT has not commenced within 12 months of the execution of this AGREEMENT by the respective parties subject to Paragraph 4.
18. **NONDISCRIMINATION:** The CITY warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement on the date and year first above written.

ATTEST:

SHARON R. BOCK,
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: _____
County Attorney

APPROVED AS TO TERMS
AND CONDITIONS:

By: _____
Director

ATTEST:

By: _____
Chevelle Nubin, City Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: _____
City Attorney

APPROVED AS TO TERMS
AND CONDITIONS:

By: _____
City Engineer

COUNTY:

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

By: _____
Mary Lou Berger, Mayor

CITY:

CITY OF DELRAY BEACH

By: _____
Cary D. Glickstein, Mayor