

INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY OF DELRAY BEACH FOR THE DESIGN AND CONSTRUCTION OF A TRAFFIC SIGNAL AT THE INTERSECTION OF W LINTON BOULEVARD AND CATHERINE DRIVE/LINTON LAKES DRIVE

THIS INTERLOCAL AGREEMENT, (AGREEMENT), is made and entered into this _____ day of _____, 2020, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners (COUNTY) and the City of Delray Beach (CITY), a municipal corporation of the State of Florida (individually Party or collectively Parties).

WITNESSETH:

WHEREAS, the COUNTY and the CITY are authorized to enter into this AGREEMENT pursuant to Section 163.01, Florida Statutes, as amended, 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 COUNTY and the CITY entered into an interlocal agreement, dated March 24, 1987, as amended, for the purpose of the CITY to transfer certain traffic control functions and duties to the COUNTY (TRAFFIC ENGINEERING SERVICES AGREEMENT); and

WHEREAS, pursuant to the TRAFFIC ENGINEERING SERVICES AGREEMENT, the COUNTY is responsible for the installation and maintenance of traffic signals, traffic signal support structures, traffic markings, and traffic lane striping at signalized intersections along Linton Boulevard within the CITY municipal limits; and

WHEREAS, pursuant to the TRAFFIC ENGINEERING SERVICES AGREEMENT the COUNTY has traffic control jurisdiction over the intersection of W Linton Boulevard and Catherine Drive/Linton Lakes Drive (INTERSECTION); and

WHEREAS, the COUNTY has determined that the COUNTY's criteria for the installation of a new traffic signal at the INTERSECTION has been met; and

WHEREAS, the COUNTY and the CITY desire to design and construct a new span wire traffic signal at the INTERSECTION; and

WHEREAS, Linton Boulevard is within the municipal limits of the CITY and is a COUNTY maintained right-of-way; and

WHEREAS, Catherine Drive is within the municipal limits of the CITY and is a CITY maintained right-of-way; and

WHEREAS, Linton Lakes Drive is within the municipal limits of the CITY and is a privately owned and maintained right-of-way; and

WHEREAS, the COUNTY and the CITY agree that it is in the public's interest to install a span wire traffic signal at the INTERSECTION, herein after referred to as PROJECT; and

WHEREAS, the PROJECT will be designed and constructed within COUNTY, CITY, and private right-of-way; and

WHEREAS, COUNTY has agreed to design and construct the PROJECT; and

WHEREAS, the CITY has agreed to design and construct a second southbound lane for right turn only traffic at Linton Boulevard and Catherine Drive (RIGHT TURN LANE); and

WHEREAS, COUNTY and CITY have agreed to share the costs for design and construction of the PROJECT.

NOW, THEREFORE, in consideration of the mutual representations, terms, and covenants contained herein, the Parties hereto agree as follows:

1. The above recitations are true and correct and incorporated herein by this reference.
2. The CITY agrees to:
 - a. Provide to the COUNTY, the engineering design and construction plans for the RIGHT TURN LANE for review and comment.
 - b. Obtain all required permits from COUNTY for the construction of the RIGHT TURN LANE.
 - c. Construct the RIGHT TURN LANE.
 - d. Fund 100% of the design and construction costs of the RIGHT TURN LANE.
 - e. Provide construction inspection of the RIGHT TURN LANE and assume maintenance responsibility upon final acceptance of the RIGHT TURN LANE.
 - f. Restore landscaping affected by the construction of the RIGHT TURN LANE.
 - g. Reimburse the COUNTY for 100% of the total costs incurred by the COUNTY to acquire any easements determined necessary by the COUNTY for the PROJECT. This includes any easements needed by the COUNTY to maintain the PROJECT in perpetuity once it is built. The costs to acquire the easements needed for the PROJECT shall be based on the actual costs incurred by the COUNTY as documented by the COUNTY's Engineering and Public Works Department. Costs are not anticipated to exceed \$200,000. Within thirty (30) days of the COUNTY's written request, the CITY shall pay COUNTY the full amount requested. If the required easements are determined to cost more than \$200,000, the CITY will have the option of 1) Providing the COUNTY the additional funds, or 2) terminate this AGREEMENT within thirty (30) days written notice to the COUNTY, and reimburse the COUNTY for 100% of the actual prior expenses incurred associated with the PROJECT's design and easement acquisition process.
 - h. Reimburse the COUNTY for 50% of the total actual costs required to design, construct and inspect the PROJECT. The costs of the PROJECT shall be based on the actual costs incurred by the COUNTY as documented by the COUNTY's Engineering and Public Works Department. Based on the current COUNTY annual signal construction contract, the COUNTY's preliminary cost estimate for 100% of the PROJECT costs related to design, construction, and inspection is \$280,000. As the PROJECT design is finalized, the COUNTY will update the CITY of the revised cost estimate. If the cost exceeds \$280,000 the CITY is still required to reimburse the COUNTY for 50% of the total actual costs required to design, construct and inspect the PROJECT. Within thirty (30) days of the COUNTY's written request, the CITY shall pay the COUNTY the full amount requested.
 - i. To not unduly withhold any CITY permits that may be necessary to construct the PROJECT.

- j. Grant any required easements on CITY right-of-way to the COUNTY at no cost to the COUNTY.
3. The COUNTY agrees to:
 - a. Provide the engineering design and construction plans for the PROJECT.
 - b. Obtain all required permits from the CITY for the PROJECT.
 - c. Award the PROJECT to one of the COUNTY'S annual signal contractors for construction.
 - d. Acquire all necessary easements needed for the PROJECT.
 - e. Construct the PROJECT.
 - f. Provide construction inspection of the PROJECT and assume maintenance responsibility upon final acceptance of the PROJECT.
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 its 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 AGREEMENT for the reason that sufficient funds are not available for the construction of the PROJECT.
5. **Insurance.** Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes (STATUTE), the CITY represents that it is self-insured with coverage subject to the limitations of the STATUTE, as may be amended. If the CITY is not self-insured, then, CITY shall, at its sole expense, maintain in full force and effect at all times during the term of this contract, liability coverage with limits not less than those contained in the STATUTE. Should the CITY purchase excess liability coverage, the CITY agrees to include COUNTY as an Additional Insured. The CITY agrees to maintain coverage, or to be self-insured for Workers' Compensation in accordance with Chapter 440, Florida Statutes. When requested, the CITY shall provide an affidavit or Certificate of Insurance evidencing insurance or self-insurance. Compliance with the foregoing requirement shall not relieve the CITY of its liability obligations under this AGREEMENT.

Should the CITY contract with a third-party (CONTRACTOR) to perform any service related to this AGREEMENT, the CITY shall require the CONTRACTOR to provide the following minimum insurance on a primary and non-contributory basis as applicable:

 - a. Commercial General Liability insurance with minimum limits of \$500,000 each occurrence. Such policy shall be endorsed to include the CITY and COUNTY as Additional Insureds. The CITY shall also require that the CONTRACTOR include a Waiver of Subrogation against COUNTY.
 - b. Business Automobile Liability insurance at a limit of liability not less than \$500,000 each accident.
 - c. Workers' Compensation coverage in compliance with Chapter 440, Florida Statutes. Such policy shall include coverage for Employer's Liability.
6. **Notices.** All notices or inquiries required or allowed by this AGREEMENT shall be delivered in person or mailed by Certified Mail, Return Receipt Requested, with sufficient postage affixed, to the

Party to whom such notice is to be given. Notices are to be sent to the following locations:

As to the activities of COUNTY and the CITY:

COUNTY: Palm Beach County Engineering and Public Works Department
Attn: Motasem A. Al-Turk, Ph.D., P.E.
Traffic Division Director
P.O. Box 21229
West Palm Beach, FL 33416-1229

With a copy to: Palm Beach County Attorney's Office
Attn: Yelizaveta B. Herman
Assistant County Attorney
P.O. Box 1989
West Palm Beach, FL 33416-1229

CITY: City of Delray
Attn: City Manager
100 NW 1st Avenue
Delray Beach, FL 33444

With a copy to: Delray Beach City Attorney's Office
Attn: City Attorney
200 NW 1st Avenue
Delray Beach, FL 33444

7. **Severability.** In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this AGREEMENT and the same shall remain in full force and effect.

8. **Entire Agreement.** This AGREEMENT and any required COUNTY permit represents the entire understanding between the Parties, and supersedes all other negotiations, representations, or agreements, written or oral, relating to this AGREEMENT.

9. **Legal Fees.** Any costs or expenses including reasonable attorney's fees associated with the enforcement of the terms or conditions of this AGREEMENT shall be borne by the respective Parties.

10. **Venue.** This AGREEMENT shall be governed by and in accordance with the laws of the State of Florida. Venue for any and all legal actions 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.

11. **Records.** The COUNTY and CITY shall maintain books, records and documents to justify all charges, expenses and costs incurred under this AGREEMENT for at least five (5) years after completion or termination of this AGREEMENT.

12. **Indemnification.**

- a. The CITY shall protect, defend, reimburse, indemnify and hold the COUNTY, its agents, employees and elected officers free and harmless from and against any and all claims, liability, expenses, losses, costs, fines and damages or causes of action of every kind or character including attorney's fees, whether at trial or appellate levels or otherwise

arising out of, during, or as a result of the CITY's performance of the terms of this AGREEMENT, or due to the acts or omissions of the CITY. The CITY's aforesaid indemnity and hold harmless obligations shall apply to the fullest extent permitted by law. Notwithstanding the foregoing, nothing set forth in this paragraph shall constitute a waiver of sovereign immunity beyond the limits set forth at Section 768.28, Florida Statutes. This paragraph shall survive the expiration or termination of this AGREEMENT.

- b. The COUNTY shall protect, defend, reimburse, indemnify and hold CITY, its agents, employees and elected officers free and harmless from and against any and all claims, liability, expenses, losses, costs, fines and damages or causes of action of every kind or character including attorney's fees, whether at trial or appellate levels or otherwise arising out of, during or as a result of the COUNTY's performance of the terms of this AGREEMENT, or due to the acts or omissions of the COUNTY. The COUNTY's aforesaid indemnity and hold harmless obligations shall apply to the fullest extent permitted by law. Notwithstanding the foregoing, nothing set forth in this paragraph shall constitute a waiver of sovereign immunity beyond the limits set forth at Section 768.28, Florida Statutes. This paragraph shall survive the expiration or termination of this AGREEMENT.

13. **Non-Discrimination.** The Parties agree that no person shall be excluded on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this AGREEMENT, as provided in R-2017-1770, as amended.

14. **Contractual Relationship.** The CITY is, and shall be, in the performance of all work, services and activities under this AGREEMENT, an independent contractor and not an employee, agent or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to the AGREEMENT shall at all times in all places be subject to the CITY's sole direction, supervision, and control. The CITY shall exercise control over the means and manner in which its employees, agents or contractors perform the work in all respects. The CITY's relationship and the relationship of its employees, agents or contractors to the COUNTY shall be that of an independent contractor and not as employees or agents of the COUNTY.

The CITY does not have the power or authority to bind the COUNTY in any promise, agreement, nor representation.

15. **Legal Compliance.** The CITY shall abide by all applicable federal, state and local laws, orders, rules and regulations when performing under this AGREEMENT. The CITY further agrees to include this provision in all contracts issued as a result of this AGREEMENT.

16. **Convicted Vendor List.** As provided in Section 287.132-133, Florida Statutes, as may be amended from time to time, by entering into this AGREEMENT or performing any work in furtherance hereof, the CITY 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.

17. **Preparation of the Agreement.** 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.

18. **Assignment.** Neither the COUNTY nor the CITY shall assign, sublet, convey or transfer its interest in this AGREEMENT without the prior written consent of the other.

19. **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. Except that either Party may from time to time change the address to which notice under this AGREEMENT shall be given upon three (3) days prior written notice to the other Party.

20. **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 CITY, 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 a 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.

21. **Third-Party Beneficiary.** 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 the CITY.

22. **Effective Date.** This AGREEMENT shall become effective immediately upon the execution by both Parties and upon filing with the Clerk of the Circuit Court of Palm Beach County, Florida.

23. **Default/Cure.** The Parties 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-day written notice to cure said default before exercising any of its rights as provided for in this AGREEMENT.

24. **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.

25. **Counterparts.** This AGREEMENT, including any exhibits referenced herein, may be executed in one or more counterparts all of which shall constitute collectively but one and the same AGREEMENT. The COUNTY may execute the AGREEMENT through electronic or manual means. The CITY shall execute the AGREEMENT by manual means only, unless the COUNTY provides otherwise.

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

CITY OF DELRAY:

ATTEST:

Shelly Petrolia
CITY Mayor

Katerri Johnson
CITY Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Lynn Gelin
CITY Attorney

(CITY seal)

ATTEST:

COUNTY:

**SHARON R. BOCK
CLERK AND COMPTROLLER**

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS
AND CONDITIONS**

By: [ybh](#) _____
Yelizaveta B. Herman
County Attorney

By: _____
Motasem Al-Turk
Traffic Division Director