

**TOWN OF LOXAHATCHEE GROVES**

**RESOLUTION NO. 2010-014**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, MAKING LEGISLATIVE FINDINGS THAT COMPETITIVE BIDDING FOR ROAD GRADING SERVICES FOR NON-DISTRICT ROADS IS NOT IN THE BEST INTEREST OF THE TOWN, AND THAT CONTRACTING WITH THE DISTRICT FOR THE SERVICES IS IN THE BEST INTEREST OF THE TOWN PURSUANT TO ORDINANCE 2008-09, SECTION 2(C)(2)(H); APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE TOWN AND THE LOXAHATCHEE GROVES WATER CONTROL DISTRICT FOR THE GRADING OF NON-DISTRICT ROADS WITHIN THE TOWN OF LOXAHATCHEE GROVES AND AUTHORIZING THE EXECUTION THEREOF; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town is in need of road grading services for Non-District Roads within the Town; and,

**WHEREAS**, the Loxahatchee Groves Water Control District (the "District") currently grades all District Roads located within the geographical boundaries of the Town and District; and,

**WHEREAS**, it is in the best interest of the Town to enter into an Interlocal Agreement with the District in order that the District may provide grading services on Non-District roads on behalf of the Town; and,

**WHEREAS**, the Town Council finds for the reasons set forth within this Resolution that it is in the best interest of the Town to not competitively bid for the road grading services and to contract with the District for such services.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, THAT:**

**Section 1.** The foregoing "WHEREAS" clauses are hereby ratified and confirmed as

being true and correct and are hereby made a specific part of this Resolution.

**Section 2.** The Town Council finds that there is a need for the Town to provide grading services for Non-District Roads (roads within the boundaries of the Town not owned or controlled by the District) pursuant to criteria approved by the Town Council from time to time; and finds, pursuant to Ordinance 2008-09, Section 2(C)(2)(h), that it is in the best interest of the Town to not competitively bid for the services and instead to contract with the District for grading services for Non-District Roads because:

- a. The District already grades and maintains all of the roads under its control within the Town and district boundaries;
- b. The District has the equipment, personnel and supplies located within the Town at its District offices, which alleviates the need for additional equipment and personnel to use the roads within the Town, or the need for a staging or storage area for equipment and supplies needed to grade Non-District Roads;
- c. The District personnel are familiar with the unique conditions of the roadways within the boundaries of the Town, including potential safety issues, which will enable it to provide the services in an efficient and safe manner;
- d. Using the District will ensure that all roads within the boundaries of the Town will be graded in a consistent manner, which should promote safety on the roads within the Town; and,
- e. The District, as a governmental entity, is subject to the same statutory ethics, records and openness laws as the Town, ensuring that all activities

of the District in its role as a contractor for the Town, will be transparent and open to inspection by the Town, as well as its residents and property owners.

**Section 3.** The Interlocal Agreement for the Grading of Non-District Roads Within the Town of Loxahatchee Groves, attached hereto as Exhibit "A", is hereby approved, and the execution of such Interlocal Agreement by the appropriate Town officials and officers is hereby authorized.

**Section 4.** This Resolution shall be effective immediately upon adoption.

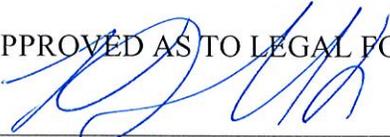
**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA THIS \_\_\_7th\_\_\_ DAY OF DECEMBER, 2010.**

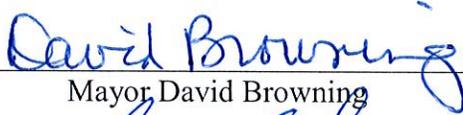
TOWN OF LOXAHATCHEE GROVES,  
FLORIDA

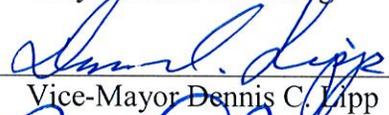
ATTEST:

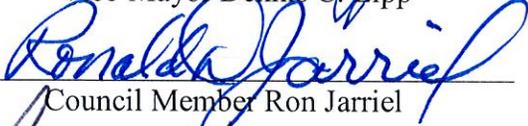
  
\_\_\_\_\_  
Ann Harper, Town Clerk

APPROVED AS TO LEGAL FORM:

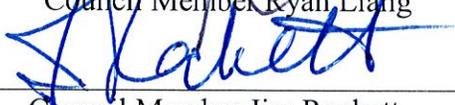
  
\_\_\_\_\_  
Michael Cirullo, Town Attorney

  
\_\_\_\_\_  
Mayor David Browning

  
\_\_\_\_\_  
Vice-Mayor Dennis C. Lipp

  
\_\_\_\_\_  
Council Member Ron Jarriel

  
\_\_\_\_\_  
Council Member Ryan Liang

  
\_\_\_\_\_  
Council Member Jim Rockett

**INTERLOCAL AGREEMENT FOR THE MAINTENANCE OF NON-DISTRICT ROADS WITHIN THE TOWN OF LOXAHATCHEE GROVES**

This **INTERLOCAL AGREEMENT** is made and entered into by and between:

**TOWN OF LOXAHATCHEE GROVES**, a municipal corporation existing under the laws of the state of Florida, hereafter referred to as "TOWN,"

and

**LOXAHATCHEE GROVES WATER CONTROL DISTRICT**, an independent special district existing under the laws of the state of Florida, hereafter referred to as "DISTRICT".

**WITNESSETH:**

**WHEREAS**, this Agreement is entered into pursuant to §163.01, Florida Statutes, also known as the "Florida Interlocal Cooperation Act of 1969"; and

**WHEREAS**, the DISTRICT is an independent special district of the State of Florida, the powers and responsibilities of which are defined in Chapter 189 and 298, Florida Statutes, and in Chapters 99-425 as amended by Chapter 2004-410, Laws of Florida (collectively the "District's Authorizing Legislation"); and

**WHEREAS**, the TOWN is a municipal corporation of the State of Florida, the powers of which are defined in the TOWN's Charter and State law; and

**WHEREAS**, the DISTRICT has constructed and owns, operates and maintains certain public roads within the boundaries of the TOWN; and

**WHEREAS**, there are certain roads within the geographical boundaries of the DISTRICT and TOWN which are not under the control or ownership of the DISTRICT, which have been designated by the parties as "Non-District Roads" and are the maintenance responsibility of the TOWN; and

**WHEREAS**, the TOWN is in need of grading and other maintenance services (hereafter "Maintenance Services") for these Non-District Roads; and

**WHEREAS**, the DISTRICT has the experience, expertise, equipment and materials to maintain DISTRICT roads and is capable of providing Maintenance Services for Non-District Roads, subject to the agreement of the parties on criteria for such Maintenance Services and the TOWN's agreement to pay for such Maintenance Services, including supplies; and

**WHEREAS**, the Town Council and the District Board of Supervisors have determined that this Agreement is in the best interest of the health, safety, and welfare of the residents within the TOWN and the landowners within the DISTRICT.

**NOW, THEREFORE, IN CONSIDERATION** of the mutual terms, conditions, promises, covenants and payments hereafter set forth, DISTRICT and TOWN agree as follows:

### **ARTICLE I - RECITALS**

- 1.1 The foregoing recitations are true and correct and are hereby incorporated herein by reference. All exhibits to this Agreement are hereby deemed a part hereof.

### **ARTICLE 2 – COURTESY GRADING OF NON-DISTRICT ROADS**

- 2.1 Attached hereto as **Exhibit “A”** and incorporated herein is the Town of Loxahatchee Groves Criteria for Grading Town Roads (“Criteria”). The parties agree that the services provided herein by the DISTRICT shall be based upon the parties’ compliance with the Criteria. The Criteria may be amended by the parties without amending this Agreement so long as such amendment is in writing and approved by motion adopted by both of the governing bodies of the parties.
- 2.2 DISTRICT will provide Maintenance Services on Non-District Roads upon receipt of a written request from the Town Manager provided that such request is consistent with the Criteria, as follows:
  - 2.2.1 Upon receipt of the written request from the TOWN, the DISTRICT will provide the TOWN with a cost estimate for the requested Maintenance Services. The DISTRICT will proceed with the Maintenance Services only upon receipt of written confirmation from the TOWN directing the DISTRICT to proceed according to the estimate.
  - 2.2.2 Upon completion of the requested Maintenance Services , the DISTRICT will submit an invoice for actual costs for such Maintenance Services, which will include acceptable documentation to substantiate its costs. Should the TOWN determine that the documentation for a particular Maintenance Service is incomplete, it shall request additional information from the DISTRICT within ten (10) working days of receipt of the original invoice.
  - 2.2.3 The TOWN shall pay the DISTRICT within forty-five (45) days of receipt of the final written invoice and documentation from the DISTRICT.
- 2.3 The TOWN’s obligation is limited to its payment obligation and shall have no obligation to any other person or entity.

### **ARTICLE 3 - TERM OF AGREEMENT**

- 3.1 This Agreement shall be deemed to have commenced on the Effective Date provided in Section 6.11, below, and shall continue until terminated as provided in Sections 3.2 through 3.6, below.
- 3.2 This Agreement may be terminated by either party at the end of a fiscal year by the adoption of a resolution by the governing body of the terminating party on or before July 1.
- 3.3 This Agreement may be terminated for cause by either party upon thirty (30) days written notice given by the terminating party to the other party setting forth the breach. If the breaching party corrects the breach within thirty (30) days after written notice of same, to the satisfaction of the terminating party, the Agreement shall remain in full force and effect. If such breach is not corrected within thirty (30) days of receipt of notice of breach, the terminating party may terminate the Agreement.
- 3.4 Termination of this Agreement for cause shall include, but not be limited to: failure of the parties to suitably perform the services required under this Agreement, and failure of the parties to continuously perform the services required by the terms and conditions of this Agreement in a manner calculated to meet or accomplish the objectives set forth herein, notwithstanding whether any such breach was previously waived or cured.
- 3.5 The Agreement may be terminated upon the mutual agreement of TOWN and DISTRICT, as evidenced by the adoption of a resolution by the governing bodies of both parties.
- 3.6 Notice of termination shall be provided in accordance with Article 5, "NOTICES," herein.

### **ARTICLE 4 - GOVERNMENTAL IMMUNITY; INDEMNIFICATION**

- 4.1 Independent Contractor: DISTRICT is an independent contractor and not an agent or servant of TOWN or its TOWN Council. DISTRICT further acknowledges that the TOWN's duty under this Agreement is limited to reimbursing the DISTRICT for the Maintenance Services provided and that DISTRICT will use the funds provided for maintenance of Non-District Roads in the manner provided herein. TOWN shall exercise no control over or responsibility for the improvements Maintenance Services provided by DISTRICT. In the event a claim or lawsuit is brought against TOWN, its officers, employees, servants or agents, arising from or relating to the DISTRICT's Maintenance Services or any matter that is the responsibility of DISTRICT under this Agreement, DISTRICT will indemnify and hold harmless the TOWN in the manner and to the extent set forth in Section 4.2, below.
- 4.2 Hold Harmless and Indemnification: The parties hereto agree, to the extent permitted by law to:

(A) indemnify, save and hold harmless the other, their officers, employees, servants or agents, and to defend said persons from any such claims, liabilities, causes of action and judgments of any type whatsoever arising out of or relating to the negligent or wrongful acts or omissions of each relating to their obligations under this Agreement; and

(B) be responsible for their own costs, attorney's fees and expenses in connection with such claims, liabilities or suits except as may be incurred due to the negligent performance of this Agreement by the negligent party. The forgoing indemnity shall survive the termination or expiration of this Agreement. A party shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party (or parties). Nothing contained herein shall be construed as a waiver by the parties of the liability limits established in Section 768.28, Florida Statutes.

## **ARTICLE 5 - NOTICES**

- 5.1 Any and all notices given or required under this Agreement shall be in writing and may be delivered in person or by United States mail, postage prepaid, first class and certified, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgement of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided for in this article. For the present, the parties designated the following:

### **TO TOWN OF LOXAHATCHEE GROVES:**

Mayor David Browning  
Town of Loxahatchee Groves  
14579 Southern Blvd., Suite 2  
Loxahatchee Groves, FL 33470

With copies to:

Frank R. Spence, Town Manager  
Town of Loxahatchee Groves  
14579 Southern Blvd., Suite 2  
Loxahatchee Groves, FL 33470

And

Michael D. Cirullo, Jr., Town Attorney  
Goren, Cherof, Doody & Ezrol, P.A.

3099 East Commercial Boulevard  
Suite 200  
Fort Lauderdale, FL 33308

**TO LOXAHATCHEE GROVES WATER CONTROL DISTRICT:**

Clete J. Saunier, District Administrator  
P. O. Box 407  
Loxahatchee Groves, FL 33470

With copy to:

Mary M. Viator, Esq., District Legal Counsel  
Caldwell Pacetti Edwards Schoech & Viator LLP  
One Clearlake Centre  
250 South Australian Avenue, Suite 600  
West Palm Beach, Florida 33401

**ARTICLE 6 - MISCELLANEOUS PROVISIONS**

- 6.1 **ASSIGNMENT:** The parties to the Agreement shall have NO right to assign, transfer, or otherwise encumber this Agreement, without the express consent of the other party.
- 6.2 **WAIVER:** The waiver by any party to this Agreement of any failure on the part of another party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing similar or dissimilar failure.
- 6.3 **THIRD PARTY BENEFICIARIES:** Neither TOWN nor DISTRICT intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based on this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 6.4 **SEVERABILITY:** The invalidity of any provision of this Agreement shall in no way affect the validity of any other provision.
- 6.5 **ENTIRE AGREEMENT:** It is understood and agreed that this Agreement incorporates and includes all prior negotiations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

- 6.6 **JOINT PREPARATION:** The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations here and that the preparation of this Agreement has been a joint effort. The language agreed to expresses their mutual intent and their resulting documents shall not, solely, as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 6.7 **APPLICABLE LAW AND VENUE:** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Court of the 15<sup>th</sup> Judicial Circuit of Palm Beach County, Florida, the venue site and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereby waives any rights it may have to trial by jury of any such litigation.
- 6.8 **AMENDMENTS:** No modification, amendment, or alteration of the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by both parties.
- 6.9 **MULTIPLE ORIGINALS:** This Agreement may be fully executed in multiple copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.
- 6.10 **FILING WITH CLERK OF CIRCUIT COURT.** An executed original of this Agreement and any amendment(s) hereto shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.
- 6.11. **EFFECTIVE DATE.** This Agreement and any amendment hereto shall take effect upon its filing with the Clerk of Circuit Court, as provided in Sections 3.1 and 6.10, above, and Section 163.01(11), Florida Statutes.

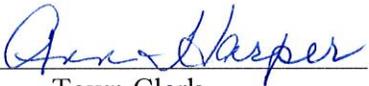
**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

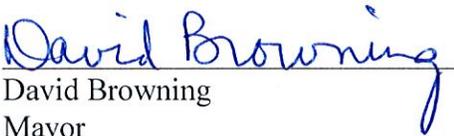
**IN WITNESS WHEREOF**, the parties hereto have made and executed this Interlocal Agreement between TOWN and DISTRICT on the respective dates under each signature: TOWN, signing by and through its MAYOR, authorized to execute same by Council action on the 7<sup>th</sup> day of December, 2010 and the DISTRICT, signing by and through its CHAIRMAN, authorized to execute same by Board of Supervisor's action on the 13<sup>th</sup> day of December, 2010.

Executed by **TOWN** this 7<sup>th</sup> day of December, 2010

**TOWN OF LOXAHATCHEE GROVES**, a  
Florida Municipal Corporation

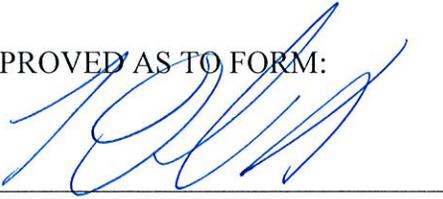
ATTEST:

  
Town Clerk

By   
David Browning  
Mayor

[TOWN SEAL]

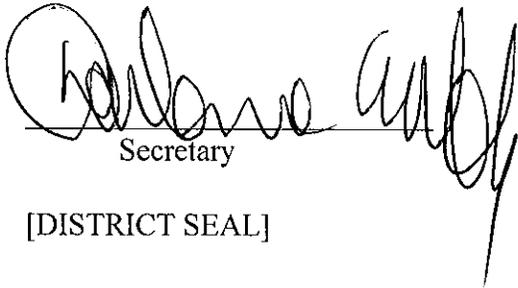
APPROVED AS TO FORM:

By   
Town Attorney

Executed by **DISTRICT** this 13<sup>th</sup> day of December, 2010

**LOXAHATCHEE GROVES WATER  
CONTROL DISTRICT**, an Independent  
Special District of the State of Florida

ATTEST:

  
Secretary

[DISTRICT SEAL]

By David DeMarois  
David DeMarois  
Chairman

**EXHIBIT A:**

**COURTESY GRADING CRITERIA**

**TOWN OF LOXAHATCHEE GROVES  
CRITERIA FOR GRADING NON-DISTRICT ROADS**

All roads not under the control and ownership of the Loxahatchee Groves Water Control District (LGWCD), formerly known as Non-District roads, are the responsibility of the Town of Loxahatchee Groves. This includes the responsibility of maintaining and grading such roads. In order to prioritize which road is graded based upon need or property owner's requests, the following criteria will be use.

1. ACTIVE COURTESY GRADING.

To be eligible for an Active Courtesy Grading a Town road must:

- A. Directly connect to a LGWCD road.
- B. Be accessible on a regular basis by the U.S. Postal Service, Palm Beach County Fire-Rescue and Sheriff's Department, garbage and trash collection services, and the general public.
- C. Active Courtesy Grading will be performed only after a request is submitted via a petition signed by a majority of affected landowners, to the Town Management Office. If the request meets all criteria for Active Courtesy Grading, the Town Manager will initiate a Work Order to the Water Control District Office requesting and authorizing said grading.
- D. It is acknowledged that the Water Control District will undertake such grading requests only when manpower, equipment and time are available and not required for normal or emergency District work.

2. PASSIVE COURTESY GRADING.

In the event that a Town Road does not qualify for an Active Courtesy Grading, a Passive Courtesy Grading may be requested. To be eligible for a Passive Courtesy Grading, a Town Road must:

- A. Be open to access by the general public (evidence to that effect must be provided).
- B. Exhibit sufficient adverse road conditions as to prevent access by the U.S Postal Service, County Fire-Rescue vehicles, Sheriff's vehicles or garbage and trash collection vehicles.
- C. Passive Courtesy Grading will be performed only after a request is submitted via a petition signed by a majority of affected land owners, is made to the Town Management Office. If the request meets all criteria for Passive Courtesy Grading, the Town Manager

will initiate a Work Order to the Water Control District Office requesting and authorizing said grading.

- D. Passive Courtesy Grading will be done on an “as needed” basis, as described above in 2.B.
- E. Active Courtesy Grading requests shall have priority over Passive Courtesy Grading requests.
- F. The same restrictions and availability of District personnel as outlined in 1.D. above, are the same.

### 3. APPLICATION PROCESS

- A. Application for either type of courtesy grading must be made through the Town Manager at the Town Management Office. The Town Manager, or his/her representative, shall visit the site of the proposed courtesy grading and approve it before the road is accepted for courtesy grading.
- B. A property owner who is a signatory on the requesting petition must provide their name, address and phone number to be the liaison with the Town on behalf of the group signing the petition.
- C. All petitions for either active or passive courtesy grading may only be signed by affected landowners. Evidence of land ownership such as a copy of the deed, title policy, assessment roll, or other legal document shall be submitted with the petition.

### 4. PRIOR PROPERTY PREPARATIONS

- A. Due to the type of equipment used by the District to perform courtesy grading of roads, the landowners requesting the service must provide and prepare the materials necessary for the work to be done, as well as providing a minimum of 15 feet of horizontal clearance and a minimum of 20 feet of vertical clearance from overhanging limbs, power and telephone lines.
- B. These conditions must continue to exist so long as courtesy grading is to be performed. The District Administrator is the final arbiter as to the adequacy and completeness of pre-grading preparations.
- C. This may require the addition of road material and removal of encroaching vegetation from time to time at the affected landowner’s sole cost and expense.
- D. If for any reason problems arise on any courtesy grading request on Town roads, the Water Control District Administrator is authorized to terminate courtesy grading at any time, and notify the Town Manager as soon as possible of his action and reason.
- E. When the District Administrator is satisfied that, (a), the road provides the necessary clearance for the equipment to perform the work, and (b), the criteria in Sections 1 and 2 have been satisfied, he will authorize the work to proceed.

5. ROADWAY DRAINAGE

- A. Roadway drainage on Town roads will not be provided by the Town. Such drainage is to be provided by the residents of the area of the courtesy grading, which run-off may be collected and discharged through the District's canal system.
- B. It will be the obligation of the residents of the area, as noted above, to provide adequate roadway drainage facilities for their roadways and the drainage pipe connection from the subject roadway drainage system to the District's roadways and/or canal banks.
- C. An application to install the drainage system, if it involves a culvert connection with a District canal or affects a District road, shall be submitted to the District, and such installation shall not be constructed until a permit is issued by the District.

6. LIABILITY and RESPONSIBILITIES

- A. To the extent permitted by law, subject to its statutory sovereign immunity limitations, the Town will Hold Harmless the Loxahatchee Groves Water Control District while the District, with its personnel and equipment, act as contractors to the Town to provide courtesy grading services.
- B. The Town is solely responsible for paying the District for all courtesy gradings it requested.
- C. The Town will be responsible for collecting any funds due from the requesting landowners for courtesy grades on Town roads.
- D. The District Administrator will provide estimated costs for all grading requests. Generally, it will be so many dollars per mile plus cost of materials, like loads of lime rock or limestone to fill in holes.

THIS POLICY IS SUBJECT TO CHANGE BY THE TOWN COUNCIL OF LOXAHATCHEE GROVES FROM TIME TO TIME AS THEY DETERMINE IS IN THE BEST INTERESTS OF THE TOWN.

Frs: 11/3/10