

**INTERLOCAL AGREEMENT BETWEEN THE FLAGLER  
COUNTY BOARD OF COUNTY COMMISSIONERS AND THE  
CITY OF FLAGLER BEACH MEMORIALIZING EXISTING BEACH  
MANAGEMENT RELATED ISSUES BETWEEN THE CITY AND  
COUNTY**

**THIS INTERLOCAL AGREEMENT** (hereinafter, the "Agreement") is made and entered into by and between **FLAGLER COUNTY, FLORIDA** (hereinafter referred to as "County"), a political subdivision of the State of Florida whose address is 1769 East Moody Boulevard, Building #2, Suite 301, Bunnell, Florida 32110, and the **CITY OF FLAGLER BEACH, FLORIDA** (hereinafter referred to as "City"), a municipal corporation of the State of Florida whose address is 105 South Second Street, Flagler Beach, Florida 32136, and, collectively known as the "Parties".

**WITNESSETH:**

**WHEREAS**, this Agreement is authorized by the Florida Intergovernmental Cooperation Act of 1969 (hereinafter referred to as "Act"), Section 163.01, *Florida Statutes, et seq.*, which authorizes the joint exercise by two or more public agencies of any power common to them and is authorized under other applicable law; and

**WHEREAS**, the Act permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other units of government on the basis of mutual advantage; and

**WHEREAS**, the Parties are engaged in a dune restoration program that includes public access improvements, dune crossover maintenance, vegetation planting, and a dune preservation zone; and

**WHEREAS**, over the last decade, the Parties have collectively worked together on many beach issues and spent millions of dollars studying, planning, and constructing access and maintaining and planting vegetation in an effort to protect and preserve the dunes and beach; and

**WHEREAS**, the Parties have suffered extensive erosion to their coastline and severe damage to public and private property behind the coastline as a direct result of Hurricane Matthew as well as seasonal Nor'easters which continue to exacerbate the vulnerability of the County's coastline; and

**WHEREAS**, the City and County are experiencing continuing and progressive additional damage to the dune system with rainfall events, winds, high tides and waves; and

May 31, 2017



**WHEREAS**, without an immediate emergency protective dune as soon as practicable and a permanent dune in place for the long term, City and County infrastructure and public and private property will remain extremely vulnerable to damage and loss; and

**WHEREAS**, Hurricane Matthew destroyed many dune crossovers, resulting in an increase of individuals walking directly over the dunes in order to access the beach despite numerous public service announcements and postings that warn of the damage such foot traffic does to dunes and dune vegetation, as well as the risk of harm to using unsafe access to and from the beach; and

**WHEREAS**, the rebuilding of dune crossovers is, therefore, critical to the prevention of further erosion caused by foot traffic and depleted dune vegetation and the general protection of the public using the beach; and

**WHEREAS**, the County's Beach Restoration Fund derived from a portion of its tourist development tax finances public beach protection and enhancement; and

**WHEREAS**, the Fund even when combined with other sources of revenue is inadequate to restore the dunes and the crossovers lost to the storms and the continuing erosion following the storms; and

**WHEREAS**, the necessary installation of emergency protective and permanent dunes, and restoration of over 50 dune crossovers, are beyond the City and County's financial capabilities; and

**WHEREAS**, the Parties desire to coordinate and cooperate in their efforts to construct emergency protective dunes and permanent protective dunes to mitigate against future damage and restore and maintain safe, ADA accessible beach access (crossovers) to protect both the dunes and the public.

**NOW THEREFORE**, in consideration of the mutual promises made by the Parties they hereby agree as follows:

**SECTION 1. FINDINGS.** The above recitals are true and correct and are incorporated as if set out fully herein.

**SECTION 2. SERVICES PROVIDED BY THE CITY AND COUNTY RELATED TO DUNE CROSSOVER STRUCTURES.** Within the City limits, the City shall fully administer the design and installation of all dune crossover structures and the pier. The dune crossovers shall be those evidenced by the Mott MacDonald Study (dated November 1, 2016), which is incorporated herein by this reference, showing which crossovers need to be constructed, replaced, or repaired. The City shall seek at least three (3) competitive bids for any contracted services for these projects, following its standard procurement and competitive bidding procedures, also meeting state and federal standards if applicable, to

identify a contractor to install or repair any dune crossovers. The City shall be responsible for obtaining any permits or approval required from regulatory agencies.

Once the dune crossovers are constructed, the City agrees to assume in perpetuity any and all maintenance responsibilities associated with the dune crossovers, along with any signs, fixtures, or appurtenances thereto required by the construction contract or any permitting regulatory agencies.

The County agrees to provide up to twelve and one half percent (12.5%) of any federal or state funding matches for said repair and replacement. Additional matches above twelve and one half percent (12.5%) for new dune crossovers may be possible, as funding permits and as allocated by the Board of County Commissioners through the County's application process. Additionally, the Parties shall work cooperatively where they can lend in-kind assistance to one another in the furtherance of additional public crossovers, parking, beach safety and public access.

**SECTION 3. SERVICES PROVIDED BY THE CITY AND COUNTY RELATED TO EMERGENCY PROTECTIVE DUNES AND PERMANENT DUNE RESTORATION AND MAINTENANCE.** In accordance with the terms of this Agreement, within the City limits, the County, with the City's oversight and assistance, shall fully administer the design and installation of the dunes (hereafter, the "Dune Restoration Project" or the "Project"). The County shall seek at least three (3) competitive bids for any contracted services for the Project, following its standard procurement and competitive bidding procedures, also meeting state and federal standards if applicable, to identify a contractor to install the Dune Restoration Project. The County shall be responsible for obtaining any permits or approval required from any regulatory agencies for the Project. Once the Dune Restoration Project is constructed, the City, with the County's oversight and assistance, agrees to assume in perpetuity any and all maintenance responsibilities associated with the dune restoration, along with any requirements by any permitting regulatory agencies. The County shall agree to provide all upfront funding with up to twelve and one half percent (12.5%) of any funding matches for emergency protective dunes. The County shall provide additional matches for future permanent dune restoration projects as funding permits and as allocated by the Board of County Commissioners. Additionally, the Parties shall work cooperatively to provide each other in-kind assistance as necessary in the furtherance of dune restoration and protection and ongoing dune maintenance.

**SECTION 4. SERVICES PROVIDED BY THE CITY AND COUNTY RELATED TO BEACH TRASH AND DEBRIS CLEANUP.** Within the City limits, the City, with the County's assistance, shall administer normal trash cleanup on the beach and any special pickup events such as the 4<sup>th</sup> of July. The County will advertise special event cleanups and handle any hazardous materials deposited on the beach through its hazardous material solid waste program.

If for any reason, the Parties' staff cannot remove a type or instance of debris, the Parties may designate a lead Party to handle the particular debris issue. If a contractor is necessary, the lead Party shall follow procurement protocols as required by law. The lead Party may at its option use its personnel and equipment, solely or in part, to remove such debris.

Together, the Parties shall continue to work with their staff and equipment as necessary to keep the beach free from trash and debris. Additionally, the Parties shall work cooperatively to offer in-kind assistance and to seek any available funding as necessary in the furtherance of debris removal for environmental, tourism and public safety reasons.

**SECTION 5. SERVICES PROVIDED BY THE CITY AND COUNTY RELATED TO LIFEGUARDS, 4<sup>TH</sup> OF JULY CELEBRATION, AND OCEAN RESCUE.** Within the City limits, the City, with the County's assistance, shall administer the Lifeguard Program and the 4<sup>th</sup> of July Celebration. The County will seek to continue financial support of these efforts through the County's tourism funding and General Fund as funding permits and subject to annual appropriations by the Flagler County Board of County Commissioners. The County will also provide in-kind assistance where possible for manpower, emergency management, and similar assistance.

Together, the Parties shall both continue to develop their ocean/beach rescue programs and coordinate where necessary to close gaps and improve service. Additionally, the Parties shall work cooperatively on any available funding and other in-kind assistance as necessary in the furtherance of public safety and tourism for these activities.

**SECTION 6. GRANT OF MUTUAL EASEMENTS.** The Parties grant to each other any necessary non-exclusive easements, for the benefit of each other, including for their respective employees, agents (including those third parties that have entered into a contract with the County or City to construct the Projects contained herein), over, under, upon and across their publically owned beach front properties on land situated in Flagler County, Florida. The Party desiring to utilize this grant of easement shall secure a letter of approval from the City Manager or County Administrator, as applicable, for each project commenced on or across the other Party's property, and said approval shall be for the duration of the project. The exercise of the easement rights by any Party shall in no way grant that Party any permanent ownership interest in the property encumbered by the easement. All work conducted pursuant to this easement shall have all required permits and shall be done in a workman like manner. The easement grantee shall indemnify the grantor for use of the easement, subject to any terms and conditions herein.



**SECTION 7. MUTUAL INDEMNIFICATION.**

7.1 Subject to the limits of liability provided by Section 768.28, *Florida Statutes*, or its successor, each Party shall be liable for all damages or injury to persons or property caused solely by its actions, errors, omissions, neglect or mismanagement, or by the actions of any of its officers, agents and employees while engaged in the operations herein authorized, and for any actions or proceedings brought as a result of this Agreement.

7.2 Should a Party be sued for actions that are solely the result of the other Party, the other Party shall be notified of such suit and, thereupon, shall have the duty to defend the suit.

7.3 Should judgment be awarded against a Party in any such case where the Party is solely at fault, the Party shall forthwith pay the same and relieve the other Party of any obligations relating thereto.

7.4 Subject to the limitations of Section 768.28, *Florida Statutes*, the Parties shall indemnify and save harmless the other Party, its agents, officers and employees from any and all judgments recovered by anyone for personal injury, death or property damage, or any other theory of liability sustained by reason of any of the indemnifying Party's activities or for any actions or proceedings brought as a result of this Agreement and shall pay all expenses including, but not limited to, defense and legal costs and attorney's fees, in defending against any such claim made against the indemnified Party or any of the indemnified Party's agents, officers or employees.

7.5 Nothing herein shall be deemed or construed as a waiver of sovereign immunity by the County or the City, and the Parties shall have and maintain at all times and for all purposes any and all rights, immunities and protections available under controlling legal precedent and as provided under Section 768.28, *Florida Statutes*, or its successor and as provided under other applicable law.

7.6 The liability provisions herein shall not inure to the benefit of any third parties.

**SECTION 8. FUNDING.** The Parties understand that performance of this Agreement is contingent upon annual appropriation of adequate funds by the City of Flagler Beach and/or Flagler County Board of County Commissioners to perform their obligations under the Agreement. If the City's or the County's Commission reduce or eliminate such needed appropriations, authorization for continuation and completion of work and payment associated therewith may be rescinded at the discretion of the City or County as applicable upon delivery of proper notice to the other Party upon such terms as the Parties may agree.

**SECTION 9. TERM.** This Agreement shall become effective on the filing date with the Clerk of the Circuit Court in accordance with Section 163.01(11), *Florida Statutes*, and shall continue indefinitely. Time is of the essence in the lawful performance of the duties and obligations of the Parties under this Agreement.

**SECTION 10. NOTICES.**

(a) Whenever either Party desires or is required to give notice unto the other, notice shall be in writing and may be by hand delivery or by Certified Mail (return receipt requested) to:

**CITY OF FLAGLER BEACH**

City of Flagler Beach  
Attn: City Manager  
P.O. Box 70  
Flagler Beach, Florida 32137

**FLAGLER COUNTY**

Flagler County  
Attn: County Administrator  
1769 East Moody Boulevard, Bldg. 2  
Bunnell, Florida 32110

(b) Either Party may change, by written notice as provided herein, the address or person for receipt of notices. Notice shall be deemed to have been given when received.

**SECTION 11. FORCE MAJEURE.** No Party shall be in default in the performance of its obligations under this Agreement to the extent that performance of such obligations, or any of them, is delayed or prevented by *Force Majeure*. *Force Majeure* shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, terrorism, hurricane, explosion, any emergency declaration under federal, state or local law, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the Party seeking relief under this Section.

**SECTION 12. BINDING EFFECT.**

(a) This Agreement shall be binding upon and inure to the benefit of the successors in interest, transferees and assigns of the Parties. Neither Party may assign its rights herein without the written consent of the other Party.

(b) Each Party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement and that it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it by this Agreement.

(c) The signatories hereof represent that they have the requisite legal authority to execute this Agreement and bind the respective Parties herein.

**SECTION 13. RECORDS AND AUDITS.**

(a) The Parties shall maintain in their place of business all public records pertaining to work performed under this Agreement.

(b) Such records shall be available at any time that a Party may reasonably request inspection and copying of the said records.

**SECTION 14. FURTHER ASSURANCES.** The Parties agree that at any time following a request by the other Party, each shall execute and deliver to the other Party such further documents and instruments, in form and substance reasonably necessary to confirm and/or effectuate the obligations of either Party under this Agreement and the consummation of the Project contemplated hereby. The obligation to provide further assurances shall survive the term of this Agreement.

**SECTION 15. ENTIRE AGREEMENT/MODIFICATION.** This Agreement constitutes the complete, integrated and entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior agreements, arrangements, contracts or understandings, whether oral or written, between the Parties all of which, if any, have been integrated herein. This Agreement may not be amended, changed, or modified and material provisions hereunder may not be waived, except by a written document, of equal dignity herewith and signed by both Parties to this Agreement.

**SECTION 16. THIRD PARTY BENEFICIARIES.** Notwithstanding the benefit derived by the public from the obligations described in this Agreement, no right or cause of action shall accrue by reason of this Agreement to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Agreement or by any of its provisions or conditions, other than the Parties hereto and their respective representatives, successors and assigns.

**SECTION 17. SEVERABILITY.** If any one or more of the covenants or provisions of this Agreement shall be held to be contrary to any express provision of law or be held invalid by a court of competent jurisdiction, then such covenants or provisions shall be null and void, shall be deemed separable from the remaining covenants or provisions of this Agreement, and shall in no way affect the validity of the remaining covenants or provisions of this Agreement; provided, however, that the public interest in the terms set forth herein is not substantially adversely impacted.

**SECTION 18. COUNTERPARTS.** The Parties may execute this Agreement in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document. The Parties may electronically scan and send counterpart signatures to the other Party by email, and this shall be as effective as original signatures.



IN WITNESS WHEREOF, the Parties hereto have executed this instrument as of the day and year first above written.

**FLAGLER COUNTY BOARD OF  
COUNTY COMMISSIONERS**

By: [Signature]  
Nate McLaughlin, Chair

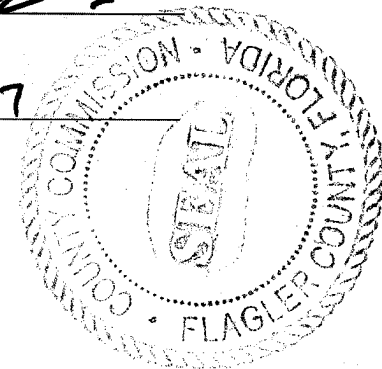
Date Signed: 11-21-17

ATTEST:

[Signature]  
Tom Bentley, Clerk of the  
Circuit Court and Comptroller

APPROVED AS TO FORM:

[Signature]  
Al Hadeed, County Attorney



**THE CITY OF FLAGLER BEACH**

By: [Signature]  
Mayor Linda Provencher

Date Signed: 11-13-2017

ATTEST:

[Signature]  
Penny Overstreet, City Clerk

APPROVED AS TO FORM:

[Signature]  
D. Andrew Smith, III, City Attorney

6/27/2017

[Signature]