

Prepared by:  
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Return to:  
City Clerk  
City of Palm Coast  
160 Cypress Point Pkwy, B-106  
Palm Coast, FL 32164

**INTERLOCAL AGREEMENT**  
**BETWEEN THE CITY OF PALM COAST AND FLAGLER COUNTY RELATING TO THE**  
**DEVELOPMENT OF UNINCORPORATED AND INCORPORATED LANDS IN AND**  
**AROUND THE FLAGLER COUNTY AIRPORT**

**THIS INTERLOCAL AGREEMENT** (hereinafter called "Agreement") is made and entered into this \_\_\_\_\_ day of December, 2010, by and between the **County of Flagler** (hereinafter called "COUNTY"), a political subdivision of the State of Florida, whose mailing address is 1769 East Moody Blvd., Building 2, Suite 302, Bunnell, Florida 32110, and the **City of Palm Coast** (hereinafter called "CITY"), a municipal corporation of the State of Florida, whose mailing address is 160 Cypress Point Parkway, Suite B-106, Palm Coast, Florida 32164.

**WITNESSETH:**

**WHEREAS**, the County Airport began as a former naval base during WW II; and

**WHEREAS**, in February 1947 the Flagler County Board of County Commissioners enacted a resolution accepting from the War Assets Administration the Flagler County Airport; and

**WHEREAS**, the COUNTY owns and operates the Flagler County Airport on property described in Exhibit "A" ("Airport"); and

**WHEREAS**, the COUNTY has developed and maintained the Airport consistent with

the adopted 1987 Airport Master Plan (“Airport Master Plan”) and Airport Layout Plan (“ALP”) , through the latest 2006 Plan and continues to utilize and update both documents to guide the use, development, and maintenance of the Airport; and

**WHEREAS**, the CITY and COUNTY cooperated in the development of the 2009 Palm Coast/Flagler County Airport Area Master Plan for the area around the airport (hereinafter called “Airport Area Master Plan”) to develop a vision and guidelines for the future growth of the areas surrounding the Airport; and

**WHEREAS**, the CITY and COUNTY agree that this Agreement further supports these plans; and

**WHEREAS**, the CITY and COUNTY agree that development of the lands in and around the Airport require coordination and cooperation between the CITY and COUNTY in order to ensure that economic development and diversification of the tax base is encouraged, and the area develops in harmony with the existing developed areas and adopted land development standards; and

**WHEREAS**, the ~~COUNTY~~ Airport began receiving potable water and sanitary sewer service, prior to the incorporation of the CITY, from Florida ~~W~~water; and

**WHEREAS**, the COUNTY owns approximately 55 acres of land (hereinafter called the “Site”) abutting the southwest west side of the Airport and adjacent to the municipal boundary of the City of Palm Coast, as described in Exhibit “B” attached hereto and by reference made a part hereof; and

**WHEREAS**, the COUNTY has leased the Site to the Florida Army National Guard for construction of a National Guard Readiness Center with some parcels reverting back to the County over time; and

**WHEREAS**, the CITY and COUNTY agree that construction of a National Guard Readiness Center will provide benefits to the local community, including, but not limited to: job creation, direct and indirect return to the community diversifying the local economy, and support in times of natural and man-made disasters; and

**WHEREAS**, as part of the ~~1987 Airport Master Plan~~ (“Airport Master Plan”) and Airport Layout Plan (“ALP”), through the latest 2006 Plan, the COUNTY has planned for and continues to work towards developing an Industrial/Business Park on the south side of the Airport property with access from Belle Terre Boulevard, to further job creation, support the Airport, and diversify the local economy; and

**WHEREAS**, the County had an Airport Industrial/Business Park plan with the former utility provider as part of the Airport Master Plan; and

**WHEREAS**, the CITY agrees to provide utilities as utility provider to the South Industrial/Business Park on the Airport property and the entire Site to include the National Guard Facility; and

**WHEREAS**, the COUNTY and CITY desire to provide recreational opportunities to citizens on a portion of the Site by creating a City Park on property described in Exhibit “C” (hereinafter called “City Park”); and

**WHEREAS**, the COUNTY agrees to the granting of a “County deed” to the CITY for the City Park parcel ~~on property described in Exhibit “F” (“City Park”)~~ within ninety (90) days of issuance of a Certificate of Occupancy for the National Guard Readiness Center; and

**WHEREAS**, the CITY will not pursue annexation of any of the remaining COUNTY owned lands in and around the Airport, ~~except including~~ the Ssite, after the National Guard Readiness Center is constructed; and

WHEREAS, the CITY is making an exception to City Code Section 49-53 under the authority of Resolution 2005-10, to further intergovernmental cooperation and for economic development; and

WHEREAS, the COUNTY agrees not to challenge the CITY's voluntary annexation of any non-COUNTY owned lands around the Airport.

NOW, THEREFORE, the parties hereto, for and in consideration of the premises and mutual covenants, terms and conditions hereinafter contained, hereby covenant and agree as follows:

**SECTION 1. RECITALS.** The foregoing recitals are true and correct and are fully incorporated herein by this reference.

**SECTION 2. 55 ACRE SITE ("SITE").**

(a) The COUNTY agrees to cooperate with the CITY on any development approvals related to development of the National Guard Readiness Center, to the extent that such cooperation consists of CITY review and comment on submitted plans, but with the ultimate approval and permitting authority being is vested with the COUNTY.

(b) The CITY and COUNTY agree that the COUNTY may take in all or a portion of the Site into the Airport, excluding the proposed City Park parcel.

~~(b)~~(c) The COUNTY agrees to the annexation of the Site after a certificate of occupancy for the National Guard Readiness Center is issued by the COUNTY.

**SECTION 3. TRANSPORTATION IMPROVEMENTS.**

(a) The COUNTY agrees, and will strive to work with the CITY, to construct or cause to be constructed the off-site transportation improvements listed below in connection with development of the National Guard Readiness Center and Airport Industrial

Park, as depicted on Exhibit “D” attached hereto and by reference made a part hereof. Said improvements to CITY streets shall be constructed to CITY standards, and require CITY approval, which will not be unreasonably withheld. The improvements are: and further described below:

1. The construction of a modified northbound right hand turn lane on Belle Terre BoulevardParkway at the driveway/road entrance. This is proposed to be constructed by the National Guard prior to a Certificate of Occupancy being issued on the building per the COUNTY’s lease agreement with the National Guard. The National Guard will receive COUNTY transportation impact fee credits for these improvements.
2. The COUNTY agrees to make the improvement contemplated in the paragraph above into a full right-hand decel lane to the extent physical design conditions permits, upon the issuance of a certificate of occupancy permit resulting in the occupancy of over 20,000 square footage of industrial space upon the southern portion of the airport utilizing Belle Terre Boulevard as its primary access.
3. The construction of a full southbound left hand turn lane on Belle Terre BoulevardParkway at the driveway/road entrance. This is proposed to be constructed by the National Guard prior to a Certificate of Occupancy being issued on their building per the COUNTY’s lease agreement with the National Guard. The National Guard will receive COUNTY transportation impact fee credits for these improvements.
4. The construction of a full northbound right hand turn lane on Belle Terre

Boulevard at the intersection of SR 100 and Belle Terre Boulevard. This shall be the responsibility of the COUNTY.

- (b) The CITY hereby agrees to a canal crossing for the South Airport entrance road/driveway, along with the conveyance of a non-exclusive ingress/egress, utility and drainage easement to the COUNTY, subject to an engineering technical review/approval by CITY staff, which shall not be unreasonably withheld.
- (c) In addition to the improvements above, the COUNTY agrees to provide to the CITY all privately generated COUNTY impact fees generated on ~~the~~ Airport property that accesses the South Airport entrance road/driveway, ~~to the CITY~~ with the exception of the National Guard Facility. The COUNTY may modify the timing of payment of these fees, but may not otherwise waive these fees except with the concurrence of the CITY.
- (d) The above transportation improvements and transportation impact fees shall be sufficient transportation mitigation for ~~the~~ all the potential development on the South Airport Industrial/Business Park and on the Site that will access the South Airport entrance road/driveway and ultimately Belle Terre Boulevard.

#### **SECTION 4. UTILITY SERVICES.**

- (a) The CITY agrees to provide potable water and sanitary sewer service to the Site and the south side of the Airport, including the Airport Industrial/Business Park, without the requirement to annex. The COUNTY agrees to contribute to the CITY all existing utility infrastructure at the Airport including: the water distribution system from the existing City Master Meter up to the meters of the individual customers, the wastewater collection system from the customer's service lateral, the on-site pump

station, and the force main up to the utility's meter, as more fully shown in the map attached as Exhibit "E." The COUNTY also agrees to grant the CITY all necessary utility easements to allow the CITY to operate the Airport utility system shown in Exhibit "E." The CITY will not refuse to provide additional taps, provided water and sewer capacity is available and all pertinent fees are paid in full.

(b) The COUNTY, if the National Guard is built, will construct or cause to be constructed the water and sanitary sewer service improvements as depicted on Exhibit "F" attached hereto and by reference made a part hereof, and the COUNTY will contribute those improvements to the CITY, and the National Guard will be a CITY customer.

~~(e)~~ (c) It is understood by all the Parties that a 12 inch water main is proposed to be looped and that wastewater is proposed to be extended from Belle Terre Boulevard. After these improvements are constructed, they will be contributed to the CITY as will be provided for in a future agreement between the parties.

(d) The CITY will continue to charge the COUNTY the prevailing usage rates and fees for utility services consistent with CITY regulations.

~~(e)~~ (e) For Capital Facility Fee/Impact Fees the COUNTY shall pay the CITY Capital Facility Fees for the increases in water and sewer service capacity as demands on the airport property increases. The COUNTY shall pay the then CITY Capital facility rate per gallon taking down such capacity, in 1,000 gallon increments. The COUNTY agrees to pay any additional capacity fees to the CITY within 60 days of the Effective Date of this Agreement for current usage above what was previously paid for capacity.

(f) All water and sewer improvements will be constructed to CITY standards and will

require CITY approval, which will not be unreasonably withheld.

**SECTION 5. CITY PARK.**

- (a) The CITY and COUNTY will cooperate on the development of the plans and any development approvals within the COUNTY for the CITY Park until such time as the City Park property is transferred to the CITY.
- (b) The COUNTY will also work jointly with the National Guard in good faith to develop and construct the park facilities identified in the Draft Plan sheet developed by the Consultant and dated \_\_\_\_\_, as depicted on Exhibit “GE” attached hereto and by reference made a part hereof, with the Parties acknowledging that such construction is contingent solely upon federal approvals and guidelines.
- (c) The COUNTY will transfer ownership of the CITY Park to the CITY by a County deed within ninety (90) days of the issuance of the Certificate of Occupancy for the National Guard Facility.
- (d) The City Park parcel shall be provided to the CITY with deed restrictions restricting the site for recreation uses only, and related utility, and stormwater purposes. The deed shall contain a reverter clause requiring that the property revert back to the COUNTY in the event the property is no longer utilized as a City Park or is utilized for non-recreational purposes, unless otherwise approved by the COUNTY.
- (e) The COUNTY shall not oppose annexation of the City Park once deeded to the CITY.
- (f) The COUNTY shall, at the time of conveyance to the CITY, attempt to provide the City Park property to the CITY free from any liens and new encumbrances realizing that several easements/encumbrances currently exist for drainage, and the

COUNTY's lease agreement with the National Guard Lease currently exists and will be modified as potentially necessary after approval of this ~~Interlocal~~ Agreement. The COUNTY shall attempt to use good faith efforts to make the CITY aware of any known liens and encumbrances. However, in any case, the CITY shall be fully responsible for conducting its own due diligence regarding any liens, debts, claims, and encumbrances prior to accepting the City Park property.

(g) Right of Entry. The COUNTY acknowledges and consents to the CITY's right for its employees, to enter upon the City Park parcel prior to conveyance to the CITY for the purpose of scientific investigation, surveying, and for the purpose of inspecting and determining compliance with the terms of this Agreement. The CITY shall fully indemnify the COUNTY for the safety and actions of its employees, and its employees shall not otherwise interfere with the development of the proposed City Park property.

(h) The CITY agrees that it will assume all responsibilities for the City Park upon ~~conveyance~~ deeding by the County.

#### **SECTION 6. UNINCORPORATED LANDS IN AND AROUND THE AIRPORT.**

(a) Unless the COUNTY executes a voluntary petition for annexation, the CITY will not pursue annexation of the remaining COUNTY owned land in and adjacent to the Airport, ~~except for the Site to include the Site less the City Park parcel.~~

(b) The COUNTY agrees not to challenge the CITY's ~~voluntary~~ annexation of any non-COUNTY owned lands around the Airport for development consistent with the Airport Area Master Plan. The CITY, in turn, ~~by not challenging such voluntary annexations above,~~ shall agree to provide appropriate future land use and zoning

designations and other land use restrictions necessary to ensure that said future development that occurs in the CITY is in compliance with the COUNTY's Airport Master Plan and that any proper restrictions are in place to ensure said compliance.

- (c) The COUNTY agrees to adhere, and to require all other owners/developers to adhere, to the CITY's architectural and landscaping standards and sign regulations, for all developments visible from SR 100 or Belle Terre Boulevard.

#### **SECTION 7. INCORPORATED LANDS AROUND THE AIRPORT.**

- (a) The CITY ~~\_, in cooperation with the COUNTY, to the extent that such cooperation consists of the reviewing and commenting on submitted plans, but the ultimate approval and permitting authority is vested with the CITY,~~ will ensure that development occurring around the Airport is consistent with the Airport Area Master Plan, together with the COUNTY's Airport Master Plan and ALP, placing particular emphasis on~~consideration to~~ future runway expansion plans and required minimum buffer/easement areas adjacent to anticipated runway expansion areas. The CITY will forward submitted plans to the COUNTY for comment as a courtesy.

- (b) The CITY agrees not to challenge the COUNTY's expansion of the Airport impacting only which impacts non-CITY owned lands around the Airport, so long as the development ~~of which~~ is consistent with the Airport Area Master Plan, ~~together with~~ the COUNTY's Airport Master Plan and ALP, and the CITY's Comprehensive Plan and Land Development regulations.

#### **SECTION 8. INSURANCE/INDEMNIFICATION/EMPLOYEE STATUS.**

The Parties to this Agreement shall, provide, maintain and keep in force a program of

insurance or self-insurance covering its liabilities as prescribed by Section 768.28, *Florida Statutes*. Nothing in this Agreement shall be deemed as a waiver of sovereign immunity of any of the parties beyond any statutorily limited waiver which may have been or may be adopted by the Florida Legislature, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claims which would otherwise be barred under the doctrine of sovereign immunity. The parties agree that nothing contained in this Agreement shall be construed or interpreted as denying to either party any legal remedy or defense available under the laws of the State of Florida. The waiver of a provision herein or a right available to a party shall not operate as a further waiver or continuing waiver of said provision or right or any other provision of this Agreement. Each of the Parties agrees to provide the other with written notice of any claim subject to these provisions within ten (10) days of its receipt of notice that a claim exists. The Parties agree to cooperate fully, subject to the provisions hereof, in the defense of any such claim. Notice of claim shall be deemed to be given on the date of mailing as provided in Section 8 of this Agreement. The term "claims", as used in this Section, shall include all demands, damages, expenses, fees, penalties, suits, proceedings or actions. Persons employed by one party in the performance of services and functions pursuant to this Agreement shall have no claim against any other party hereto for salary, pension, workers' compensation, civil service, or other employee rights or privileges.

#### **SECTION 9. NOTICES.**

~~All notices, consents, approvals, waivers and elections, Except for the coordination~~  
cooperation between the CITY and the COUNTY where such coordination

consists only of review and comment on submitted plans, through processes which will continue as presently established, all notices, consents, approvals, waivers and elections, that any party shall be required or shall desire to make or give under this Agreement shall be in writing and/or shall be considered sufficiently made or given only when mailed by Certified Mail, postage prepaid, return receipt requested, addressed as follows to the parties listed below or to such other address as any party hereto shall designate by like notice given to the other parties hereto:

COUNTY: Flagler County  
Attn: County Administrator  
1769 East Moody Boulevard, Building 2, Suite 302  
Bunnell, Florida 32110

CITY: City of Palm Coast  
Attn: City Manager  
160 Cypress Point Parkway, Suite B-106  
Palm Coast, Florida 32164

Notices, consents, approvals, waivers and elections given or made as provided herein shall be deemed to have been given and received on the date of the mailing thereof.

**SECTION 10. ENTIRE AGREEMENT, AMENDMENT AND ASSIGNMENT.**

This Agreement constitutes the entire agreement of the parties, and there are no understandings dealing with the subject matter of this Agreement other than those contained herein. This Agreement may not be modified, changed or amended, except in writing signed by the parties hereto or their authorized representatives. No party shall assign the Agreement, nor any interest herein, without the express written consent of the other parties.

**SECTION 11. INTERPRETATION.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it

may have been prepared by counsel for one of the parties, it being recognized that both the CITY and the COUNTY have contributed substantially and materially to the preparation hereof.

**SECTION 12. EFFECTIVE DATE.** For all purposes of this Agreement, the Effective Date hereof shall mean the date when the last of the parties ~~and the~~ has executed the same, and that date shall be inserted at the top of the first page hereof.

**SECTION 13. FORCE MAJEURE.** No party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them singularly, 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 state 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 authority and without the fault or negligence of the party seeking relief under this Section. The maximum relief granted to any party under this Section shall be the tolling of time for the duration of the *force majeure*.

**SECTION 14. TIME OF THE ESSENCE.** Time is of the essence of the lawful performance of the duties and obligations contained in this Agreement. The parties covenant and agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Agreement.

**SECTION 15. BINDING EFFECT.** 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.

**SECTION 16. RECORDING.** The COUNTY shall be responsible for the recording of this Agreement in the Public Records (Land Records) of Flagler County, Florida. The costs of the recording shall be borne equally by the parties.

**SECTION 17. CAPTIONS/EXHIBITS.**

(a) The headings or captions of the sections and subsections contained in this Agreement are used for convenience and reference only, and do not, in themselves, have any legal significance and shall not be afforded any. They are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement, or any provision hereto.

(b) The exhibits to this Agreement are hereby incorporated into this Agreement and form an integral part of this Agreement.

**SECTION 18. COUNTERPARTS.** This Agreement may be executed 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.

THIS SPACE LEFT INTENTIONALLY BLANK  
SIGNATURE PAGES FOLLOW

**INTERLOCAL AGREEMENT  
SIGNATURE PAGE**

**FLAGLER COUNTY**

By: \_\_\_\_\_  
George Hanns, Chairman

Flagler Board of County Commissioners

Date executed: \_\_\_\_\_

*ATTEST:*

\_\_\_\_\_  
Gail Wadsworth, Clerk and  
Ex-officio Clerk to the  
Board of County Commissioners

Approved as to form by:

\_\_\_\_\_  
Albert J. Hadeed, County Attorney

**INTERLOCAL AGREEMENT  
SIGNATURE PAGE**

**CITY OF PALM COAST**

By: \_\_\_\_\_  
Jon Netts, Mayor

City of Palm Coast

Date executed: \_\_\_\_\_

*ATTEST:*

\_\_\_\_\_  
City Clerk

Approved as to form and content

\_\_\_\_\_  
William E. Reischmann, Jr., Esq.

|

EXHIBIT "A"  
(AIRPORT LEGAL DESCRIPTION)

EXHIBIT "B"  
(55 acre SITE)

EXHIBIT "C"

| (CITY PARK LEGAL DESCRIPTION~~OFF-SITE TRANSPORTATION IMPROVEMENTS~~)

EXHIBIT "D"  
(OFF-SITE TRANSPORTATION ~~UTILITY~~ IMPROVEMENTS)

EXHIBIT "E"  
(UTILITY IMPROVEMENTS MAP~~PARK SITE~~)

EXHIBIT "F"

(~~FUTURE UTILITY IMPROVEMENTS~~~~PARCEL MAP~~ and ~~LEGAL DESCRIPTIONS~~  
of ~~55 Acre Site Tracts~~)

|

EXHIBIT "G"  
(DRAFT PLAN OF PARK FACILITIES)