

**CITY OF PALM COAST / FLAGLER COUNTY  
INTERLOCAL AGREEMENT FOR  
COUNTY TRANSPORTATION IMPACT FEES**

**THIS INTERLOCAL AGREEMENT** is made by and between the City of Palm Coast, Florida (hereinafter the “City”), a municipal corporation of the State of Florida, whose address is 160 Cypress Point Parkway, Ste. B106, Palm Coast, Florida 32164, and Flagler County, Florida (hereinafter the “County”), a political subdivision of the State of Florida, whose address is 1769 East Moody Boulevard, Building 2, Suite 302, Bunnell, Florida 32110. Hereafter, collectively the City and County shall be referred to as the “Parties.”

**WITNESSETH:**

**WHEREAS**, the transportation networks of the City and the County are interconnected and include transportation facilities of major importance to the traveling public as they traverse the roads within the geographical limits of the County and the City; and

**WHEREAS**, in 1989 the County, prior to the incorporation of the City, enacted Ordinance Number 89-19 which levied transportation facilities impact fees, said Ordinance being thereafter amended by Ordinance Number 2002-27, Ordinance Number 2003-14, and Ordinance Number 2012-07; (the “Transportation Impact Fee Ordinance”); and

**WHEREAS**, the County Transportation Impact Fee Ordinance has standards for the collection and expenditure of transportation impact fees; and

**WHEREAS**, the Parties entered into a certain Interlocal Agreement after the City incorporated in 1999 titled “Interlocal Agreement Between Flagler County, Florida and the City of Palm Coast, Florida Regarding Transportation Impact Fees” effective on September 29, 2000 (hereinafter referred to as the “ILA 2000”); and

**WHEREAS**, under the ILA 2000, the City collected County transportation impact fees as part of its building permit process prior to the issuance of a building permit and remitted those fees to the County net of the service fee collected by the City as authorized by the ILA 2000; and

**WHEREAS**, the ILA 2000 identified a list of road segments both within and outside the City’s corporate limits for which the County could utilize the collected impact fees, including Matanzas Woods Parkway, Old Kings Road, and Palm Harbor Parkway; and

**WHEREAS**, on March 16, 2004, the City provided notice to the County to terminate the ILA 2000, effective as of October 1, 2004, per the Interlocal Agreement termination provisions; and

**WHEREAS**, the City's collection of impact fees under the County Transportation Impact Fee Ordinance ended effective October 1, 2004; and

**WHEREAS**, the County expended the impact fee revenue both before and after October 1, 2004, on improvement projects on road segments identified in the ILA 2000; and

**WHEREAS**, the County utilized grants for some of the projects which grants reimbursed the County for authorized project expenditures; and

**WHEREAS**, such grant reimbursements were re-paid into the account maintained by the County, designated as Fund 136, for the impact fees; and

**WHEREAS**, the Parties acknowledge that the County is completing the design of the Matanzas Woods Parkway Interchange and making final payments from Fund 136 without any grant reimbursement; and

**WHEREAS**, the Parties agree that there is a balance of approximately \$3,500,000 in the County transportation impact fee account remaining that could be made available for use by the City for its projects; and

**WHEREAS**, these remaining impact fee revenues and receipts are in County Fund 136; and

**WHEREAS**, the Parties entered into a certain Interlocal Agreement titled "Interlocal Agreement By and Between The County of Flagler and the City of Palm Coast For the Transfer of Certain Streets From the County to the City" on July 20, 2001 (hereinafter referred to as the "ILA 2001"); and

**WHEREAS**, the streets to be transferred from the County to the City are identified in ILA 2001, to include Matanzas Woods Parkway, shown in Schedule C as a roadway "To be transferred to City of Palm Coast when proposed improvements by County are completed;" and

**WHEREAS**, during subsequent actions/meetings in 2006, the Parties generally agreed on the transfer to the City of Matanzas Woods Parkway; and

**WHEREAS**, the City has permitted several DRIs and other developments that will create major traffic impacts to Matanzas Woods Parkway necessitating its future widening and other improvements that will need to occur, over time, concurrent with these impacts; and

**WHEREAS**, the City has negotiated developer agreements or otherwise has its own impact fees that will help offset these traffic impacts and is in the best position to seek the responsible enforcement of these provisions and make any necessary improvements; and

**WHEREAS**, the County and City are cooperating on a number of important projects involving Matanzas Woods Parkway, Old Kings Road and Palm Coast Parkway to maximize resources and capabilities; and

**WHEREAS**, the County is willing to provide some of the County transportation impact fee balance remaining in County Fund 136 to assist the City with its projects based on the former ILA 2000 and the City's agreement to accept the transfer of Matanzas Woods Parkway and to assume other obligations as further set forth herein; and

**WHEREAS**, the provision of such impact fee funds to the City must be consistent with the County's Transportation Impact Fee Ordinance and Florida law governing the use of impact fees and this Agreement provides a protocol for same which also will serve and facilitate the pending road projects being undertaken by the County and City; and

**WHEREAS**, the Parties further agree to cooperate and coordinate with the Florida Department of Transportation to advance the construction of Old Kings Road Extension; and,

**WHEREAS**, the City acknowledges the County's contributions in the form of Right-of-Way for Matanzas Woods Parkway and Old Kings Road for the current streets and future expansion of these roadways, together with floodplains and wetlands that help manage stormwater for the larger platted subdivisions of the City, as sufficient compensation to justify the City's waiver of, or credit against, any current or future stormwater fees or other City assessments for property retained by the County as shown on Exhibit 2; and,

**WHEREAS**, this Interlocal Agreement is authorized pursuant to the provisions of Chapter 125, 163, and 166, Florida Statutes, and other applicable law.

**NOW THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**SECTION 1. RECITALS.** The above recitals are true and correct and form a material part of this Interlocal Agreement upon which the Parties have relied.

**SECTION 2. AVAILABILITY OF COUNTY TRANSPORTATION IMPACT FUNDS.** Immediately after the Effective Date of this Agreement, the County agrees to make available to the City up to \$1,500,000 from County Fund 136 for the reimbursement of allowable City transportation improvement costs, as set forth in Section 3. An additional amount of \$1,500,000 from County Fund 136 shall be made available upon the County's receipt of the final grant reimbursement payment from the Florida Department of Transportation for the County's wetland mitigation costs associated with the Matanzas Woods Parkway Interchange project. The County shall apply for reimbursement to the Florida Department of Transportation no later than 45 days after payment of mitigation credits. The remaining balance in County Fund 136, which would then be approximately \$500,000, shall be utilized by the County to temporarily cover costs associated with the County's project and fiscal management of the design phase of the Old Kings Road extension project which it is performing for the City. Upon the County's receipt of the final grant reimbursement payment from the Florida Department of Transportation for the County's costs associated with the design phase of the Old Kings Road extension project, any balances remaining in County Fund 136 shall then be made available to the City in accordance with Section 3. It is intent of this Agreement that as the road improvement projects are completed, Fund 136 will be closed with no ending balance.

**SECTION 3. REIMBURSEMENT OF CITY EXPENDITURES FOR ALLOWABLE CITY TRANSPORTATION PROJECTS.** Allowable City transportation improvement costs shall be those costs that are determined by the County to be permissible expenditures under the County's Transportation Impact Fee Ordinance and which are associated with those eligible road segments identified by the County and City in Exhibit "A" to the former ILA 2000. The Parties hereby agree that the project cost reimbursement items identified on Exhibit "1" to this Agreement are allowable City transportation improvement costs for Palm Harbor Parkway and Old Kings Road, and are approved for reimbursement by the County to the City within sixty days of the Effective Date of this Agreement. Thereafter, any reimbursement requests by the City for transportation improvement costs made after the Effective Date of this Agreement shall be for expenditures related to transportation capacity improvements for Palm Harbor Parkway and Old Kings Road and shall include documentation of the expenditures that meet the criteria established herein. The County will process these requests in an expedited manner. Additional City projects outside these two roadways must be approved by the City and County in order for the City to be eligible for reimbursement.

**SECTION 4. CITY ACCEPTANCE OF MANTANZAS WOODS PARKWAY AND OLD KINGS ROADWAY EXTENSION.**

a. Jurisdiction of, and maintenance responsibility for, Matanzas Woods Parkway shall proceed as follows:

- 1) On or before June 1, 2014, Matanzas Woods Parkway from US Highway #1 to Bird of Paradise Drive shall automatically transfer from the County to the City. Such transfer shall follow the completion by the County of presently planned sidewalks and the final determination by FDOT of the definition of the limited access boundary for the Matanzas Woods Parkway Interchange project.
- 2) Upon the FDOT's final acceptance of the Matanzas Woods Parkway Interchange, project including any required donation of right-of-way by the County to FDOT, the balance of Matanzas Woods Parkway right of way to the Old Kings Road right of way, including the Interchange property, shall automatically transfer from the County to the City. Not included in this transfer is any property transferred to the State of Florida and any excluded items in paragraph (e) below, as further depicted on Exhibit "2" "Transfer Map" attached hereto and incorporated herein by reference.
- 3) In order to complete the Matanzas Woods Parkway Interchange project, the City shall within sixty (60) days of the Effective Date of this Agreement, provide the additional land needed for floodplain compensation caused by the impacts created by the Interchange improvements and that meets Federal right-of-way acquisition standards, currently estimated to be approximately six (6) acres.

b. On the same date as the final acceptance by FDOT of the Matanzas Woods Parkway Interchange project, the City shall accept jurisdiction of, and maintenance responsibility for, Old Kings Road Extension from Forest Grove Road to the Existing Old Kings Road right-of-way, as further depicted on Exhibit "2."

c. Jurisdiction and maintenance responsibility for these roads shall include, but not be limited to, associated related stormwater improvements, mitigated/protected wetlands, conservation easements, trails/sidewalks, and any floodplain or other regulatory agency requirements related to the roadways. The City will accept those lands with existing and past mitigation requirements after successful criteria have been found acceptable by the applicable agency.

d. The County shall provide the City with quit claim deeds or any other instruments which may be necessary to effectuate the transfer of the facilities to the City; however, the City's acceptance of its obligations set forth herein shall not be contingent upon the completion of those documents. The Parties agree that the transfer instruments shall contain restrictions prohibiting the sale or transfer of any property granted for transportation purposes without the County's written approval and requiring the proceeds of any approved sale or transfer be paid to the County. Additionally, any lease fees or other revenues generated on any property transferred by the County to the City shall be required to be provided to the County. Further the City shall be

required to permanently waive or provide credits against any current or future stormwater fees or other City assessments for the parcels retained by the County within the areas shown on Exhibit “2,” based on the donations herein.

e. Specifically not included in this transfer and acceptance will be:

- 1) Any easement or property necessary for the provision of communication devices, public and private, or for use by the 800 MHZ system or some successor communication system.
- 2) Any easements and rights of use separately granted by the County to the Flagler County School Board as part of the Matanzas High School grounds.
- 3) Other outparcels not part of the transportation improvements described in paragraphs a-c above.

f. This Section further specifically excludes all existing sections of Old King Road and associated right-of-way and facilities, which will be addressed upon completion of all the projects in the area.

**SECTION 5. INDEMNITY.**

a. The City agrees to indemnify the County for any claim by any person that paid the Transportation Impact Fees for the use of those impact fees by the City. This Agreement by the City to indemnify and hold the County harmless shall include all charges, expenses and costs including attorney’s fees incurred by the County on account of or by any reason of any such claims, suits, or losses. This indemnification is not intended to waive the City’s sovereign immunity rights under the Florida Constitution and Fla. Stat. 768.28.

b. The City also hereby waives any claims it has, now or in the future, in any way related to the County’s implementation of its Transportation Impact Fee Ordinance, including but not limited to, the collection and/or expenditure of impact fee revenues, and for any claims it has, or may have in the future, in any way related to the former ILA 2000.

**SECTION 6. NOTICES.**

a. Whenever either party desires or is required to give notice unto the other, notice may be sent by hand delivery or by Certified Mail (return receipt requested) to:

**CITY OF PALM COAST**

City of Palm Coast  
Attn: City Manager  
160 Cypress Point Parkway  
Suite B106  
Palm Coast, Florida 32164

**FLAGLER COUNTY**

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

b. Any 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.

c. Any legal notices provided to either Party from outside parties challenging any expenditure of funds described herein shall immediately be provided to the other Party, and in no event later than seven (7) calendar days after receipt.

**SECTION 7. PUBLIC RECORDS.** The Parties shall allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, *Florida Statutes*, and the *Constitution of the State of Florida* and which have been made or received by the Parties in conjunction with this Interlocal Agreement.

**SECTION 8. ENTIRE AGREEMENT/MODIFICATION.** This Interlocal 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 Interlocal 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 all parties to this Interlocal Agreement.

**SECTION 9. THIRD PARTY BENEFICIARIES.** This Interlocal Agreement is solely for the benefit of the formal parties to this Interlocal Agreement, and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal party hereto. Nothing in this Interlocal 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 Interlocal Agreement or any provisions or conditions hereof, other than the Parties hereto as set forth herein.

**SECTION 10. COUNTERPARTS.** This Interlocal 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.

**SECTION 11. COVENANTS OF FURTHER ASSURANCES.** The City and the County agree that from and after the date of execution hereof, each will, upon the request of the other, execute and deliver such other documents and instruments and take such other action as may be reasonably required to carry out the purpose and intent of this Interlocal Agreement.

**SECTION 12. DISPUTES.** The City Manager for the City and the County Administrator for the County shall use their best efforts and diligence to amicably resolve any dispute or disagreement concerning any provision of this Interlocal Agreement; however, failing such best efforts and diligence, then any dispute to this Agreement shall be resolved by a civil

court located in Flagler County. For purposes herein, the Parties agree that should such dispute result which necessitates judicial intervention, that all conditions and prerequisites under the Florida Governmental Conflict Resolution Act (set forth in Chapter 164, Florida Statutes), shall be deemed to have been met and that the Parties shall be presumed to be at impasse for all purposes including judicial review. Further, to the extent allowed by law, the parties expressly waive all procedures, processes and time frames set forth in Chapter 164, Florida Statutes. Each party shall be responsible for its own costs and attorneys' fees in the event of any dispute, claim, action or appeal related to or arising from this Agreement.

**SECTION 13. EFFECTIVE DATE.** This Interlocal Agreement shall become effective on the date this Agreement is filed with the Clerk of Courts.

**SECTION 14. LIABILITY.** The County shall not be liable to any person, firm, entity or corporation in connection with the transportation improvements the City will be making pursuant to this Interlocal Agreement, or for debts or claims accruing to such entities against the City. This Interlocal Agreement shall not create a contractual relationship, either express or implied, between the County and any other person, firm, or corporation supplying any work, labor, goods or materials to the City.

**IN WITNESS WHEREOF,** the PARTIES hereto have caused the execution by their duly authorized officials on the dates indicated below.

**\*\*\*THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK\*\*\***



*ATTEST:*

**CITY OF PALM COAST, FLORIDA**

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\_\_\_\_\_

Virginia A. Smith, City Clerk

BY: Jon Netts, Mayor

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

Approved as to form.

\_\_\_\_\_

William E. Reischmann, Jr., City Attorney

*ATTEST:*

**FLAGLER COUNTY**

\_\_\_\_\_

\_\_\_\_\_

Gail Wadsworth, Clerk

BY: Nate McLaughlin, Chair

Ex Officio Clerk to the Board

County Board of Commissioners

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

Approved as to form.

\_\_\_\_\_

Al Hadeed, County Attorney

**Exhibit 1**  
**County Approved City Transportation Improvement Expenditures for**  
**For Palm Harbor Parkway and Old Kings Road Improvements**

**Exhibit 2**  
**Transfer Map**  
**(Showing property to be transferred to the City)**