

**INTERLOCAL AGREEMENT BETWEEN THE FLAGLER
COUNTY BOARD OF COUNTY COMMISSIONERS AND THE
CITY OF FLAGLER BEACH REGARDING DUNE RESTORATION
PROJECTS WITHIN CITY**

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 have previously entered into Interlocal Agreements relative to protection and management of the beach; and

WHEREAS, among those agreements, the Parties have established customary public use of their beaches in furtherance of their beach management objectives and in accordance with state law; and

WHEREAS, the Parties recognize the central and critical importance of the beach to the area's environment, economy, public recreation and tourism; and

WHEREAS, Hurricanes Matthew, Irma and the recent brush by Hurricane Dorian, along with periodic storm surges and beach erosion, have magnified the threat to dunes within Flagler Beach, as well as in other coastal areas in Flagler County; and

WHEREAS, accordingly, the Parties have intensified their efforts to limit storm impacts in the future through cooperative actions with the U. S. Army Corps of Engineers, the Florida Department of Transportation, and the Florida Department of Environmental Protection (hereafter individually the "Army Corps," "FDOT" and "FDEP," and collectively the "federal and state agencies"); and

WHEREAS, the Parties have supported agreements with the federal and state agencies to secure funding and other actions to repair and restore the dunes that have been damaged through coastal storms, tidal surges and erosion (hereafter the “Dune Restoration Project” or “Project”); and

WHEREAS, the Parties have supported agreements and activities by the federal and state agencies to protect State Road A1A within Flagler Beach (hereafter “A1A Road Project”) that complement the Dune Restoration Project; and

WHEREAS, with the cooperation of the City, the County has entered into agreements and sought permits or caused permits to be issued to implement the Dune Restoration Project and to protect State Road A1A; and

WHEREAS, the City has worked extensively with FDOT for the work being performed in connection with the State Road A1A right of way within Flagler Beach; and

WHEREAS, the Parties, by this Interlocal Agreement, will continue their cooperation and joint actions and efforts to implement and secure the Dunes Restoration Project and the A1A Road Project in partnership with the federal and state agencies; and

WHEREAS, the Parties have conducted public meetings and workshops relative to the Projects to address the necessary interagency participation in these Projects and have otherwise provided information concerning the Projects to the public.

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

SECTION 1. FINDINGS. The above recitals are true and correct and are incorporated herein.

SECTION 2. COUNTY AGREEMENTS AND OBLIGATION TO PERFORM. The County has and is entering into Project related agreements with the Army Corps, FDOT and FDEP and has and is procuring or processing permits as necessary for the Dune Restoration Project. The County shall be responsible for fully performing and complying with these agreements and any Project related permits that the County secures. Such performance and compliance include any Project administration, funding requirements, cost shares, procurement activities to the extent applicable, construction and associated activities by vendors contracting with the County, certification of lands (procuring required easements) and provision of all Project close out documents as required by the federal and state agency agreements or permits. The County’s Project related activities also shall comply with all federal, state and local laws, rules or regulations.

SECTION 3. CITY'S PROJECT AND OBLIGATION TO PERFORM. The City shall continue to pursue with FDOT the A1A Road Project, and such efforts shall complement the Dune Restoration Project performed by the County or by the federal and state agencies on behalf of the Parties. The County likewise pledges that work on the Dune Restoration Project shall be consistent with protecting State Road A1A and will support the City's efforts in this regard until project conclusion. With respect to the Dune Restoration Project, the City agrees to execute easements (permanent beach storm damage reduction easements as prescribed by the Army Corps) for each of the parcels it owns located east of State Road A1A. The Parties recognize that such easements materially advance the successful implementation of the Dune Restoration Project. As for completion of the Project, the County will notify the City when the County completes the Dune Restoration Project in each segment of the beach as funded and permitted by the relevant federal and state agencies. Upon the completion notice(s) from the County to the City, the City shall assume full regulatory control of the completed Project areas. The City shall assume the post-construction maintenance for the restored dunes for each Project area when completed. Such maintenance shall be in full compliance with the Project agreements, permits, and federal, state and local laws, rules and regulations and any maintenance manuals promulgated by the federal and state agencies.

SECTION 4. INTERGOVERNMENTAL COOPERATION AND COORDINATION. The Parties pledge to continue their cooperative and coordination efforts with each other and with the federal and state agencies. To further such cooperation and coordination, the Parties will establish regular communication between their points of contact for Project related implementation. The point of contact for the County shall be the County Engineer and for the City, the City Manager or his appointed designee. These points of contact may agree to protocols to facilitate Project implementation that do not otherwise contravene any of the agreements and permits with state and federal agencies. Such protocols, if any, shall be in due regard for the benefits of Dune Restoration Project and A1A Road Project to the community at large. The Parties further agree to work cooperatively to offer in-kind assistance and to seek any available funding as necessary and appropriate to accomplish the Projects.

SECTION 5. 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 or effectuate the obligations of either party under this Agreement and the consummation of the Projects contemplated hereby. Such further documents include, but are not limited to, those necessary to process permits and funding agreements with federal and state agencies. The obligation of the Parties to provide further assurances shall survive any termination of this Agreement.

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 perform or complete 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 Projects. 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 workmanlike manner and shall minimize disruptions to public beach access and use in areas removed from project activities. 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 scope and monetary 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 the availability of funding from federal and state agencies and available funding from the Parties.

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.

(c) The foregoing shall not apply to the point of contacts pursuant to Section 4 unless they deem such written notices are appropriate.

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. 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 15. 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.

[The following space intentionally blank; signature pages to follow.]

IN WITNESS WHEREOF, the Parties hereto have executed this instrument as of the day indicated below and this instrument shall be effective when recorded with the Flagler County Clerk of the Circuit Court and Comptroller.

**FLAGLER COUNTY BOARD OF
COUNTY COMMISSIONERS**

By: _____
Donald T. O'Brien, Jr., Chair

ATTEST:

Date Signed: _____

Tom Bexley, Clerk of the
Circuit Court and Comptroller

APPROVED AS TO FORM:

Al Hadeed, County Attorney

[This space intentionally left blank; signature page to follow.]



THE CITY OF FLAGLER BEACH

By: Linda Provencher
Mayor Linda Provencher

Date Signed: 9/26/19

ATTEST:

Penny Overstreet
Penny Overstreet, City Clerk

APPROVED AS TO FORM:

D. Andrew Smith, III
D. Andrew Smith, III, City Attorney