

**INTERLOCAL AGREEMENT BETWEEN
CITY OF PALM COAST AND FLAGLER COUNTY
FOR THE OLD KINGS ROAD WIDENING DESIGN PROJECT**

FDOT PROJECT NUMBER FPN 415964-1-38-01

THIS INTERLOCAL AGREEMENT is made by and between the CITY OF PALM COAST, FLORIDA (hereinafter referred to as "CITY"), a municipal corporation of the State of Florida, whose address is 160 Cypress Point Parkway, Suite B-106, Palm Coast, Florida 32164, and 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 302, Bunnell, Florida 32110.

WITNESSETH:

WHEREAS, the PARTIES have pledged to cooperate on important improvements to the transportation network within the CITY limits; and

WHEREAS, the CITY has several key projects for which it needs outside funding assistance, one of which is the planned widening of a 3.44 mile section of Old Kings Road, between Palm Coast Parkway to Forest Grove Drive (hereinafter the "OKR Widening Design Project"); and

WHEREAS, the CITY already has completed a Project Development and Environment Study (PD&E), which includes the OKR Widening Design Project that was approved by the Florida Department of Transportation (hereinafter "FDOT") in July 2012; and

WHEREAS, the COUNTY anticipates being the recipient of grant funding from the FDOT pursuant to a County Incentive Grant Program Agreement (hereinafter "CIGP Agreement") for the OKR Widening Design Project; and

WHEREAS, the CITY is prepared, in accordance with FDOT's currently adopted work program, and with the cooperation of the COUNTY, to engage a qualified consultant and to complete the design for the OKR Widening Design Project, said project also described in the CITY's capital improvement budget as "North Old Kings Road 4-Laning, in Fiscal Year 2013", and also known as FPN 415964-1-38-01; and

WHEREAS, the PARTIES recognize that the OKR Widening Design Project will provide needed improvements to Old Kings Road which will, in turn, benefit the overall transportation network within Flagler County; and

WHEREAS, the PARTIES have determined that the OKR Widening Design Project serves a CITY and COUNTY public purpose; and

WHEREAS, the COUNTY is legally obligated to ensure that the OKR Widening Design Project, including the expenditures associated with the grant funding, is in accordance with the terms and conditions of the CIGP Agreement; and

WHEREAS, the CITY is legally obligated to ensure that the OKR Widening Design Project, including the expenditures associated with the grant funding, is in accordance with the terms and conditions of the CIGP Agreement, via this Interlocal Agreement; and

WHEREAS, the PARTIES desire to work together to ensure completion of the design for the OKR Widening Design Project, to administer the funds from FDOT, and to set forth their relative rights and responsibilities for implementation of the OKR Widening Design Project; and

WHEREAS, upon completion of the OKR Widening Design Project, the improvements will be owned and maintained by the CITY; and

WHEREAS, this Interlocal Agreement is authorized pursuant to the provisions of Chapters 125, 163 and 166, and 336 and 337, *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. PURPOSE. The purpose of this Interlocal Agreement is to establish the PARTIES' respective responsibilities for completing the design of the OKR Widening Design Project and for complying with the CIGP Agreement requirements.

SECTION 3. CITY RESPONSIBILITIES:

(a) Upon execution of the CIGP Agreement by the COUNTY and FDOT, the CITY shall perform all acts reasonably related to the design of the OKR Widening Design Project as are authorized and required by the CIGP Agreement. The CITY will further provide all services required by the CIGP Agreement, including but not limited to, procurement services associated with bidding and awarding contracts, and will perform or cause to be performed any other necessary preliminary engineering work,

such as obtaining all required permits, conducting environmental assessments, soil tests, groundwater tests, surveys, topographies, archeological surveys, etc., and any other services as may be applicable to complete the design of the OKR Widening Design Project.

(b) The CITY shall ensure that the design of the OKR Widening Design Project is consistent with the alignment established in the PD&E.

(c) The CITY shall cause all work associated with the OKR Widening Design Project to be performed in accordance with the standards, regulations, laws, codes and procedural requirements, whether federal, state, or local, which are applicable to, or in any manner affect, the completion of the design of the OKR Widening Design Project; including but not limited to, all terms, conditions, and project schedule requirements of the CIGP Agreement, and the associated rules and regulations of the FDOT.

(d) The CITY shall receive and review all proposals associated with the OKR Widening Design Project in accordance with applicable federal and state procurement requirements, and shall provide all documentation necessary for the COUNTY to certify that the procurement procedures were accomplished in compliance with Florida Statutes. The CITY further agrees to appoint the County Engineer to sit as a member of the CITY's procurement selection committee for any such solicitations.

(e) The CITY shall ensure that the amount of its insurance coverage or self-insurance program or the insurance coverage of its contracted agents is adequate and sufficient for the activities performed pursuant to this Interlocal Agreement. The CITY shall provide that the insurance requirements imposed on all contractors conform to and comply with all applicable federal, state and local regulations and that the COUNTY is named as an additional insured on all insurance certificates of contractors and subcontractors.

(f) The CITY acknowledges that payment for the services of its consultants and vendors performing work for the OKR Widening Design Project shall be limited to the reimbursement of expenditures authorized by, and for the amounts set forth in, the CIGP Agreement. In order to ensure the CIGP Agreement requirements are satisfied and that the CITY is reimbursed as expeditiously as possible, the City Engineer shall meet with the County Engineer within 30 days of the Effective Date of this Agreement and establish a mutually agreeable set of written protocols to govern the process for submitting invoices and supporting information to the COUNTY for payment processing,

check issuance, and for maintaining compliance with all other CIGP Agreement requirements. The protocols shall further establish a routine meeting schedule for the City Engineer and the County Engineer to discuss the status, progress and schedule of the OKR Widening Design Project and to address any problems that may arise.

(g) The CITY shall be responsible for providing all information and documentation required for the COUNTY to seek reimbursement of eligible funds expended by the CITY on the OKR Widening Design Project from FDOT.

(h) The CITY shall comply with the FDOT record retention requirements and associated procedures set forth in the CIGP Agreement and shall be responsible for providing all information and documentation in response to an FDOT or state agency audit request. The CITY shall further hold the COUNTY harmless in the event that the results of any such audit conclude that the terms and conditions of the CIGP Agreement were not adhered to by the CITY. This provision shall survive the termination of this Agreement.

SECTION 4. COUNTY RESPONSIBILITY.

(a) The COUNTY will cooperate with the CITY to ensure the parties maintain compliance with the terms of the CIGP Agreement and will provide oversight and technical assistance to the CITY with respect to the administration of the CIGP Agreement requirements.

(b) The COUNTY shall promptly forward any documentation required by the CIGP Agreement to FDOT, consistent with the protocols established in Section 3.

(c) The COUNTY shall not have any jurisdiction or control over the CITY's activities, except as specifically stated in this Agreement.

(d) In the event that any approval or permit, notice or other proceeding or authorization is required to be undertaken by the COUNTY to enter into this Interlocal Agreement or to undertake the OKR Widening Design Project, the COUNTY will initiate and consummate, as provided by law, all actions necessary with respect to any such matters.

(e) Once a payment request has been reviewed by the County Engineer and has been submitted to the FDOT for reimbursement, the payment request will be deemed "approved" by the COUNTY. The County Engineer shall execute and deliver any certificates or other documents required by the FDOT to secure reimbursement for the CITY's expenditures. Upon receipt of the funding from FDOT in response to the

reimbursement request, the County shall forward the payment to the Clerk of Courts no later than five (5) business days after receipt. On behalf of the COUNTY, the Clerk shall tender payment to the CITY within 20 business days of receipt. Apart from this requirement, the COUNTY shall have no other financial obligations for this PROJECT.

SECTION 5. AUTHORIZATION. The COUNTY hereby authorizes the CITY to make arrangements for the coordination of all utility work necessary for the OKR Widening Design Project with the owners of non-City utility facilities, and hereby delegates to the CITY the authority to act on behalf of the COUNTY as the “Authority” under Sections 337.403 and 337.404 of the Florida Statutes. Such arrangements shall include the execution of such utility agreements and utility work schedules as the CITY deems necessary and acceptable.

SECTION 6. EFFECTIVE DATE/TERMINATION. This Interlocal Agreement shall become effective on the date this Agreement is filed with the Clerk of Courts. As to each provision herein, the provision shall terminate and sever from this Agreement upon the party or PARTIES who must perform that obligation fully and competently completing all obligations described therein, or by operation of applicable law, whichever comes first. Notwithstanding any other provision contained herein to the contrary, neither party may terminate this Interlocal Agreement and both PARTIES shall remain bound to this Interlocal Agreement for the term of the CIGP Agreement. Time is of the essence in the lawful performance of the duties and obligations contained in this Agreement.

SECTION 7. 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.

SECTION 8. 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, 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 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 9. 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 10. 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 11. 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 12. SEVERABILITY. If any one or more of the covenants or provisions of this Interlocal Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void, shall be deemed separable from the

remaining covenants or provisions of this Interlocal Agreement, and shall in no way affect the validity of the remaining covenants or provisions of this Interlocal Agreement; provided, however, that the public interest in the terms set forth herein is not substantially, adversely impacted.

SECTION 13. 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 14. 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 15. 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 which after 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 16. MAINTENANCE. Upon completion of the construction of the OKR Widening Design Project, the improvements will be maintained by the CITY (absent any subsequent agreements to the contrary).

SECTION 17. LIABILITY. The COUNTY shall not be liable to any person, firm, entity or corporation in connection with the services the CITY has agreed to perform hereunder, 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.

SECTION 18. INDEMNIFICATION/SOVEREIGN IMMUNITY.

(a) To the extent permitted by Florida law and without waiving any statutory and constitutional sovereign immunity protections, the CITY agrees to hold harmless and shall indemnify the COUNTY from any and all claims and all manner of action and actions, losses, demands, damages, penalties and expenses including reasonable attorney's fees, which may result from, or arise out of the intentional or negligent acts of the members, employees, appointees or agents of the CITY while in the performance of this Interlocal Agreement, subject to applicable law including Section 768.28, Florida Statutes, regarding governmental agency liability.

(b) To the extent permitted by Florida law and without waiving any statutory and constitutional sovereign immunity protections, the COUNTY agrees to hold harmless and shall indemnify the CITY from any and all claims and all manner of action and actions, losses, demands, damages, penalties and expenses including reasonable attorney's fees, which may result from, or arise out of the intentional or negligent acts of the members, employees, appointees or agents of the COUNTY while in the performance of this Agreement, subject to applicable law including Section 768.28, Florida Statutes, regarding governmental agency liability.

(c) Nothing herein shall be deemed a waiver, express or implied, of either PARTIES' sovereign immunity or an increase in the limits of liability pursuant to Section 768.28, Florida Statutes, regardless of whether any such obligations are based in tort, contract, statute, strict liability, negligence, product liability or otherwise, To the extent anything contained in this Interlocal Agreement constitutes a waiver of sovereign immunity, such terms and conditions shall be interpreted to the fullest extent possible to effectuate the intent of the PARTIES, but deleting any terms or conditions which would constitute a waiver of sovereign immunity. Nothing herein shall be construed as consent by either party to be sued by third parties in any matter arising out of any contract, act or action.

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

ATTEST:

CITY OF PALM COAST, FLORIDA

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
Ex Officio Clerk to the Board

BY: Nate McLaughlin, Chair
County Board of Commissioners

Date: _____

Approved as to form.

Al Hadeed, County Attorney