

**INTERLOCAL AGREEMENT BETWEEN  
CITY OF PALM COAST AND FLAGLER COUNTY  
FOR THE PALM COAST PARKWAY CONSTRUCTION PROJECT**

**FDOT PROJECT NUMBER FPN 415963-1-58\_68-01**

**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. Together the CITY and COUNTY may collectively be referred to as the "PARTIES".

**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 6-laning construction of a 1.47 mile section of Palm Coast Parkway, between Cypress Point Parkway/Boulder Rock Drive to Florida Park Drive (hereinafter the "Construction Project"); and

**WHEREAS**, the CITY already has completed a Project Development and Environment Study (PD&E) , for the Construction Project that was approved by the Florida Department of Transportation (hereinafter "FDOT") in November 2010; and

**WHEREAS**, the COUNTY anticipates being the recipient of grant funding from the FDOT pursuant to a Local Agency Program Agreement (hereinafter "LAP Agreement"); 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 contractor and to complete the Construction Project, said project also described in the CITY's capital improvement budget as "Palm Coast Parkway 6-Laning" and also known as FPN 415963-1-58\_68-01; and

**WHEREAS**, the PARTIES recognize that the Construction Project will provide needed improvements to Palm Coast Parkway which will, in turn, benefit the overall transportation network within Flagler County; and

**WHEREAS**, the PARTIES have determined that the Construction Project serves a CITY and COUNTY public purpose; and

**WHEREAS**, the COUNTY is legally obligated to ensure that the Construction Project, including the expenditures associated with the grant funding, is in accordance with the terms and conditions of the LAP Agreement; and

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

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

**WHEREAS**, upon completion of the Construction 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 Construction Project and for complying with the LAP Agreement requirements.

**SECTION 3. CITY RESPONSIBILITIES.**

(a) Upon execution of the LAP Agreement by the COUNTY and FDOT, the CITY shall perform all acts reasonably related to the completion of the Construction Project in accordance with the plans and specifications prepared by Dyer, Riddle, Mills & Precourt, Inc., signed and sealed on January 18, 2013. Said acts shall include, but not be limited to, obtaining all required permits, performing any required mitigation, and acquiring all necessary right of way. The CITY agrees to diligently pursue construction without unreasonable delay, and in accordance with sound engineering practices and construction methods.

(b) The CITY shall cause all work associated with the Construction 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 Construction Project; including but not limited to, all terms, conditions and project requirements set forth in the LAP Agreement, and the associated rules and regulations of the FDOT.

(c) The CITY shall receive and review all proposals and bids associated with the Construction 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 Consultant Construction Engineering & Inspection services solicitations. Contracts shall be awarded to the lowest responsible and responsive bidder for construction of the Construction Project.

(d) 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 and vendors 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.

(e) The CITY acknowledges that payment for the services of its contractors and vendors performing work for the Construction Project shall be limited to the reimbursement of expenditures authorized by, and for the amounts set forth in, the LAP Agreement. Should Project costs exceed those identified in the Agreement, the CITY shall be responsible for the payment of said expenditures. In order to ensure that the LAP 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 LAP 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 Construction Project and to address any problems that may arise.

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

(g) The CITY shall comply with the FDOT record retention requirements and associated procedures set forth in the LAP 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 LAP Agreement were not adhered to by the CITY. This provision shall survive the termination of this Agreement.

#### **SECTION 4. COUNTY RESPONSIBILITIES.**

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

(b) The COUNTY shall promptly forward any documentation required by the LAP 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 Construction 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 received 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 after 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 Construction 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 the 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 LAP 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 203  
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 of 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 disputes 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 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 768.289, 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 Interlocal Agreement, subject to applicable law including Section 768.289, 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: John 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

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