**INTERLOCAL AGREEMENT RELATING TO MATANZAS WOODS INTERCHANGE PROJECT BETWEEN THE CITY OF PALM COAST AND FLAGLER COUNTY**

**THIS INTERLOCAL AGREEMENT** is made and entered into this \_\_\_\_ day of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2014, by and between the CITY OF PALM COAST, a

Florida municipal corporation, whose address is 160 Cypress Point Pkwy, Suite B-106,

Florida, 32164, hereinafter referred to as “PALM COAST”, and the FLAGLER

COUNTY, a political subdivision of the State of Florida, whose address is 1769

East Moody Boulevard, Building 2, Bunnell, Florida, 32110, hereinafter referred

to as “COUNTY.”

# W I T N E S S E T H

**WHEREAS**, PALM COAST operates water, wastewater and reclaimed water systems to serve the citizens of PALM COAST and its environs; and

**WHEREAS**, the COUNTY operates a County Road System to serve the traveling public within Flagler County in accordance with the provisions of the Florida Transportation Code; and

**WHEREAS,** the COUNTY is involved in constructing a road improvement project which is an interchange for Interstate Highway 95 at Matanzas Woods Parkway and PALM COAST desires to construct a utility project that can be implemented with the COUNTY’s road project; and

**WHEREAS**, the parties desire to cooperate and collaborate in order to wisely expend public funds, coordinate their governmental projects, enhance the quality of life of the residents of PALM COAST and the COUNTY, and protect the public safety, health and welfare of their citizens, residents, property owners, visitors, and businesses; and

**WHEREAS**, this Interlocal Agreement serves a legitimate and important public purpose; and

**WHEREAS**, this Interlocal Agreement conforms with all applicable provisions of State law, the codes and ordinances of the parties, and the Charter of Palm Coast.

**NOW, THEREFORE,** in consideration of the premises, mutual covenants, agreements and promises herein contained, the parties hereby covenant and agree as follows:

**SECTION 1. RECITALS.** The foregoing 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 provide the parties with a continuing mechanism to cooperate and collaborate in providing essential and important public safety services to their citizens.

**SECTION 3. JOINT PROJECT RELATING TO AN INTERCHANGE WITH INTERSTATE HIGHWAY 95 AT MATANZAS WOODS PARKWAY.**

(a) The initial COUNTY project which is the subject of this Interlocal Agreement is an interchange with Interstate Highway 95 at Matanzas Woods Parkway. The project is to be constructed as four single lane ramps connecting to Interstate 95 at the intersection of Matanzas Woods Parkway and Interstate 95. Subsequently, PALM COAST initiated a utility extension project which encompasses a segment of sixteen inch (16”) reclaimed water main transmission system to be installed utilizing direct bury and/or other approved means and methods within the limits of the original roadway project.

(b) PALM COAST has provided the COUNTY with its final construction plans for its utility work on September 29, 2014.

(c) The COUNTY shall engage in a good faith and open competitive bidding process and procedure in order to obtain competitive bids for the construction of the projects in conjunction with PALM COAST’s utility work on or before a time mutually agreeable to the parties. Bids shall be submitted for the COUNTY’s project and PALM COAST’s utility work.

(d) The COUNTY covenants and agrees to exercise due diligence and to act in good faith in seeking the lowest and best qualified bidder for constructing the project and PALM COAST’s utility work.

(e) The selection of a construction firm shall be made only with PALM COAST’s prior approval which shall not be unreasonably withheld or delayed and copies of all bid documents shall be provided for PALM COAST’s review prior to award. PALM COAST shall determine whether the pricing of the bid proposed to be accepted by the COUNTY is acceptable to PALM COAST within five (5) working days of the receipt of the COUNTY’s intention to award the contract.

(f) After the bids are received by the COUNTY, as mutually agreed to by the parties, the COUNTY shall use reasonable efforts to award and enter into a construction contract, consistent with the terms of this Agreement, with the construction company whose bid is the lowest and best acceptable bid as determined by the COUNTY.

(g) The COUNTY shall require that all construction is completed in a timely manner after award of the contract.

(h) The terms of all contracts awarded pursuant to this Section shall provide for payment bonds, performance bonds and maintenance bonds and shall also contain such terms, conditions and provisions and contract sums as are reasonably and mutually satisfactory to the COUNTY and PALM COAST; provided, however, that the contract for the construction work entered into by the COUNTY to accomplish the purposes of this Agreement shall contain the following terms:

(1) The contractor shall covenant not to place any lien of whatsoever type or nature on any public property and shall include similar provisions of prohibition in any permitted subcontract.

(2) The contractor shall furnish payment bonds and performance bonds each in an amount of not less than one hundred (100%) of the construction contract.

(3) The contractor shall furnish a bond in an amount of not less than ten percent (10%) of the construction contract or any other form of contract fully guaranteeing maintenance and the repair of the work for a period of not less than two (2) years after issuance of the Certificates of Completion and guaranteeing the materials and workmanship used in the construction of the work against latent defects for the same period.

(4) A retainage of not less than ten percent (10%) shall be provided for and enforced.

(5) Coverage of the construction work by means of warranties, guarantees, liabilities, indemnifications, covenants, bonds and insurances which typically run to a party to a construction contract. Said warranties, guarantees, liabilities, indemnifications, covenants, bonds, and insurances shall be enforced by the COUNTY.

(i) The parties shall enter memoranda of understanding (MOUs) from time-to-time as may be necessary or desirable to implement further the cooperation and collaboration as intended by this Interlocal Agreement. Said MOUs may be entered by the City Manager and the County Administrator.

**SECTION 4. TERM.** This Interlocal Agreement shall be effective on the date of the complete execution hereof and shall remain in effect until the completion of the project and utility work described in Section 3 of this Interlocal Agreement.

**SECTION 5. DUTIES DURING CONSTRUCTION.** In addition to all other covenants, obligations, dutiesand responsibilities set forth herein, during the course of this Interlocal Agreement the parties agree as follows:

(a) The parties shall administer and supervise, in conjunction and in cooperation with one another, their respective work in accordance with the plans and contract documents.

(b) Upon award of the construction contract by the COUNTY, PALM COAST shall deposit the sum due for PALM COAST’s portion of the construction work within three (3) business days of notification of the award after PALM COAST has elected to accept the contract amount as set forth in Subsection 3(e) of this Interlocal Agreement.

(c) The COUNTY shall review and approve all payment requests submitted for labor, materials or services used in PALM COAST’s portion of the construction work and provide copies of same to PALM COAST and provide PALM COAST with three (3) business days after receipt of same for review and comment by PALM COAST prior to payment by the COUNTY.

(d) The COUNTY shall obtain any and all necessary lien waivers or releases in connection with payment requests or disbursements.

(e) The COUNTY shall furnish PALM COAST with the contract close out documents pertaining to construction costs and disbursements.

(f) The parties shall obtain any and all local, regional, State and Federal permits necessary for their respective work.

(g) The parties shall schedule and request inspections of the construction of the work when and as required by PALM COAST or as otherwise may be required. PALM COAST shall provide its own construction engineering and inspection (CEI) personnel to accomplish inspections (observations and materials testing) pertaining to PALM COAST’s portion of the construction work. PALM COAST’s CEI personnel shall make comments and coordinate its efforts with the COUNTY’s CEI firm which shall have all direct contacts with the construction contractor awarded the contract. With regard to communications made by the COUNTY to PALM COAST, PALM COAST shall have three (3) business days to respond to inquiries. In the event that the COUNTY has not received a timely response from PALM COAST, the COUNTY may act, as it deems reasonably appropriate to implement the matter to which the inquiry was made.

**SECTION 6. DISCLAIMER OF THIRD PARTY BENEFICIARIES.** This Interlocal Agreement is solely for the benefit of the formal parties herein, and no right or cause of action shall accrue upon or by reason hereof to or for the benefit of any third party not a formal party hereto.

**SECTION 7. ASSIGNMENTS.** This Interlocal Agreement shall be binding on the parties hereto and their representatives and successors. Neither party shall assign this Interlocal Agreement or the rights and obligations to any other party.

**SECTION 8. REASONABLE APPROVAL.** In those instances in this Interlocal Agreement in which a party’s approval, consent or satisfaction is required, then it shall be implied that such action shall be exercised in a reasonable manner and within a reasonable time frame.

**SECTION 9. REMEDIES.** Each party shall have any and all remedies as permitted by law; provided, however, that the parties agree to provide for positive dialogue and communications if disputes or disagreements arise as to the interpretation or implementation of this Interlocal Agreement.

**SECTION 10. TIME IS OF THE ESSENCE.** Time is of the essence of the lawful performance of the duties and obligations contained in this Interlocal Agreement. The parties covenant and agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Interlocal Agreement and diligently seek to ensure the timely completion of the contractual work.

**SECTION 11. NOTICES.**

(a) Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when either (1) hand delivered to the official hereinafter designated, or (2) upon receipt of such notice when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party’s name below, or at such other address as the party’s name below, or at such other address as the party shall specify by written notice to the other party delivered in accordance herewith.

FLAGLER COUNTY Mr. Craig Coffey

County Administrator

1769 E. Moody Blvd., Building 2,

Bunnell, Florida 32110

PALM COAST Mr. Jim Landon

City Manager

City of Palm Coast

160 Cypress Point Pkwy, Suite B-106

Palm Coast, Florida 32164

(b) The parties may change the person or notice address for the provisions of this Section by providing notice of same as set forth in this Interlocal Agreement.

**SECTION 12. SEVERABILITY.** If any part of this Interlocal Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Interlocal Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be effected. To that end, this Interlocal Agreement is declared severable.

**SECTION 13. HOLD HARMLESS.** Consistent with applicable State law, including, but not limited to, Chapter 768, *Florida Statutes*, PALM COAST and the COUNTY agree to hold the other harmless from the negligent acts or omissions of itself and its officers, employees and agents.

**SECTION 14. APPLICABLE LAW.** This Interlocal Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida.

**SECTION 15. EFFECTIVE DATE**. This Interlocal Agreement shall take effect when adopted by PALM COAST and the COUNTY, and when recorded with the Clerk of the Court.

**SECTION 16. NONDISCRIMINATION**. Both parties to this Interlocal Agreement agree not to discriminate against any person on the basis of race, religion, national origin, age, sex, disability or marital status in the use of facilities pursuant to this Interlocal Agreement.

**SECTION 17. FURTHER DOCUMENTS**. The parties agree that they will execute and deliver such further instruments and do such further acts and things as may be necessary or desirable to carry out the purpose of this Interlocal Agreement.

**SECTION 18. CAPTIONS**. Sections and other captions contained in this Interlocal Agreement are for reference purposes only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Interlocal Agreement, or any provision hereto.

**SECTION 19. *FORCE MAJEURE***. The obligations of the parties hereunder shall be subject to the concept of *force majeure*. Accordingly, in the event of Acts of God, riot, weather disturbances, permitting, war, terrorism, civil disobedience, geologic subsidence, electrical failure, malfunctions, and events of a similar nature, the parties shall be excused from performing under this Interlocal Agreement until the cause or causes thereof have been remedied.

**SECTION 20. INTERPRETATION.** PALM COAST and the COUNTY agree that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one (1) heading may be considered to be equally applicable under another in the interpretation of this Interlocal Agreement. This Interlocal Agreement shall not be construed more strictly against either party on the basis of being the drafter thereof, and both parties have contributed to the drafting of this Interlocal Agreement.

**SECTION 21. MODIFICATION.** 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, approved by the governing bodies of the parties and executed by all parties to this Interlocal Agreement.

**SECTION 22. 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 23. ENTIRE AGREEMENT; EFFECT ON PRIOR AGREEMENTS.** This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Interlocal Agreement. Amendments to and waivers of the provisions herein shall be made by the parties in writing by formal amendment.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Interlocal Agreement for the purposes stated herein on the date first above written.

**CITY OF PALM COAST, FLORIDA FLAGLER COUNTY, FLORIDA**

BY: BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Jon Netts, Mayor George Hanns, Chairman

ATTEST:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ATTEST: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Virginia Smith, City Clerk Gail Wadsworth, Clerk of the

Circuit Court and Comptroller

For use and reliance of the Board

County Commissioners only.

Approved as to form and legality Approved as to form and legality.

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William E. Reischmann, Jr., Esquire Albert J. Hadeed, Esquire

City Attorney County Attorney