Prepared by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Return to:

City Clerk

City of Palm Coast

160 Cypress Point Parkway, Ste. B106

Palm Coast, FL 32164

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PALM COAST, FLORIDA; AND Town Center at Palm Coast Community Development District; RELATING TO THE MAINTENANCE OF INFRASTRUCTURE, PUBLIC IMPROVEMENTS AND COMMUNITY FACILITIES WITHIN THE BOUNDARIES OF THE TOWN CENTER COMMUNITY DEVELOPMENT DISTRICT**

**THIS INTERGOVERNMENTAL AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2015 ("Effective Date") by and among the **CITY OF PALM COAST, FLORIDA** ("the City"), a municipal corporation of the State of Florida, whose mailing address is 160 Cypress Point Parkway, Suite B‑106, Palm Coast, Florida 32164; and the **Town Center at Palm Coast Community Development District** (the "CDD"), a Chapter 190, Florida Statutes, unit of special purpose government existing under the laws of the State of Florida, whose address is 145 City Place, Suite 300, Palm Coast, Florida 32164 (collectively the "Parties.")

**RECITALS:**

**WHEREAS,** it is in the mutual interest of the City and the CDD to establish intergovernmental relations that encourage, promote and improve the coordination, overall effectiveness and efficiency of governmental activities and services within the boundaries of the Town Center Community Development District (“District”); and

 **WHEREAS,** Section 163.01, Florida Statutes, known as the “Florida Interlocal Cooperation Act of 1969,” permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

 **WHEREAS,** the City and the CDD find this Intergovernmental Agreement to be necessary, proper and convenient to the exercise of their powers, duties and purposes authorized by law; and

**WHEREAS,** the City and the CDD desire to promote the cost effective and most responsive system for the maintenance of certain infrastructure, public improvements and community facilities within the District; the avoidance of inefficiencies caused by the unnecessary duplication of services and facilities; and the clarification of responsibilities, obligations, duties, powers, and liabilities of each of the governmental bodies; and

 **WHEREAS**, the District consists of that area whose boundaries are depicted in Figure 1.

 **NOW, THEREFORE,** in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the CDD agree as follows:

**ARTICLE I**

**INTRODUCTION**

**Section 1.01. Authority.**

This Interlocal Agreement is entered into pursuant to the authority set forth in the Interlocal Cooperation Act, the District Act and the Home Rule Act, and other applicable laws.

**Section 1.02. Recitals.**

The foregoing Recitals are true and correct and by this reference are incorporated as if fully set forth herein.

**Section 1.03. Purpose.**

The purpose of this Agreement is to set forth the mutual agreements among the Parties to identify maintenance responsibilities for infrastructure, public improvements and community facilities within the boundaries of the District boundaries.

**ARTICLE II**

**OUTLINE OF MAINTENANCE RESPONSIBILITIES IN THE DISTRICT**

**Section 2.01. Bicycle & Pedestrian Facilities.**

Maintenance responsibilities for bicycle and pedestrian facilities are depicted in Figure 1. Through the City’s development review process, the City will inform property owners within the Urban Core area of their responsibility for maintenance of sidewalks and any upgraded sidewalks or extensions adjacent to their subject property. The City shall make this obligation part of all development orders

**Section 2.02. Docks, Piers, and Other Structures.**

The **CDD** shall be responsible for docks, piers, or other structures on, over or near bodies of water within the District, including signs that pertain to lakes.

**Section 2.03. Landscaping, Irrigation, & Gateway Signs.**

The **CDD** shall be responsible for landscaped medians within City Rights-of-Way (ROW) in the District, including: irrigation equipment, and gateway signs. Additionally, the CDD agrees to continue maintenance of the pocket park on Central Ave. located approximately 400’ west of Town Center Blvd.

**Section 2.04. Lighting.**

The maintenance responsibilities for lighting and light poles shall be as set forth in the Joint Facilitation of Public Infrastructure Agreement pertaining to Florida Power and Light Roadway Premium Lighting Agreements dated December 13, 2007 between the **CDD** and the **City**, recorded in O.R. Book 2018, Page 673.

**Section 2.05. Litter**.

(a) The **City** shall be responsible for periodic street sweeping activities and collection of deceased animals within the City ROW.

(b) The **CDD** shall be responsible for litter control within the public ROW.

(c) Litter control on vacant private property is the responsibility of the landowner. For CDD maintained property, it shall be the responsibility of the **CDD**.

**Section 2.06. Roadways including Traffic Circles.**

(a) The **City** shall be responsible for all publicly dedicated and accepted improved ROW set forth on the recorded plats, from curb-to-curb, including: gutters; ribbon curbs; and striping.

(b) The **CDD** shall be responsible for all upgraded features within the roundabouts which include, but are not limited to pavers; fountains; and other features.

(c) The **CDD** shall be responsible for pavers at crosswalks or speedtables.

(d) The **City** shall be responsible for the placement of temporary traffic regulatory signs.

(e) The **CDD** will maintain regulatory and directional signage in the public ROW.

**Section 2.07. Stormwater Facilities.**

(a) The **CDD** shall be responsible for all stormwater facilities, including inlets, pipes, swales, and drainage structures within the City ROW. The CDD shall apply for a Right-of-Way Permit prior to any construction work within the City ROW.

(b) The **CDD** shall be responsible for interface drainage ways between man-made stormwater drainage systems and natural drainage systems.

(c) The **CDD** shall be responsible for ensuring that all stormwater systems related to private property are properly maintained, including: lakes; stormwater treatment ponds; and conveyance and control facilities.

(d) The **CDD** shall be responsible for ensuring maintenance meets any permit conditions.

(e) The **CDD** shall provide all Stormwater Reports meeting NPDES permit requirements to the City.

**Section 2.08. Water and Sewer Utilities.**

Consistent with existing Utility Agreements, the water distribution, sewer collection and reuse distribution systems are owned and maintained by the City. For water service, the City’s responsibility for maintaining the water distribution system normally extends to the on-site water meter; for the sewer collection system, the City’s responsibility normally begins at the property line where the sewer service goes from private property to public property.

**ARTICLE III**

**MANAGEMENT OF MAINTENANCE RESPONSIBILITIES WITHIN THE DISTRICT**

**Section 3.01. Maintenance Schedule.**

(a) The responsible maintenance party shall establish an appropriate maintenance schedule to ensure that infrastructure, public improvements, and community facilities continue to function appropriately, meet the community standards established in the City Code or the CDD Deed Restriction, whichever is stricter, and do not present a threat to health, safety, and welfare.

(b) Either party may elect to provide repair service when there is an immediate threat to health, safety and welfare without prior approval of the other. The party providing services may seek reimbursement if the repair is on a facility required to be maintained by the other party.

**Section 3.02. Bill of Sale.**

Town Center CDD shall provide a bill of sale prior to transfer of ownership of any infrastructure, public improvements or community facilities to the City.

**Section 3.03. Deeds or Other Assignments**

As necessary, deeds, assignments, or easements shall be executed to ensure necessary access to the facilities to be maintained.

**ARTICLE IV**

**MISCELLANEOUS PROVISIONS**

**SECTION 4.01. Notices.**

Any notice required hereunder shall be given in writing and sent by any of the following means: (i) hand delivery; (ii) facsimile transmission; (iii) registered or certified mail, return receipt requested or (iv) deposited into a recognized overnight courier service to the parties hereto:

**To the City: CITY OF PALM COAST, FLORIDA**

 Jim Landon, City Manager

160 Cypress Point Parkway, Suite B‑106

Palm Coast, Florida 32164

FAX: (386) 986-3703

e-mail: JLandon@palmcoastgov.com

**To the CDD: Town Center at Palm Coast Community Development District**

 David Root

145 City Place, Suite 300

Palm Coast, Florida 32164

e-mail: drroot@cfl.rr.com

**SECTION 4.02. ENTIRE AGREEMENT**

 This Agreement constitutes the entire agreement of the Parties, and there are no understandings regarding this Agreement other than those contained herein. This Agreement may not be modified, changed or amended, except in writing signed by all the Parties.

**SECTION 4.03. INTERPRETATION**

 This Agreement shall not be construed more strictly against one Party than against any other Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that the Parties have all contributed substantially and materially to the preparation hereof.

**SECTION 4.04. VENUE**

 This Agreement shall be construed, controlled, interpreted according to the laws of the State of Florida. Venue for any dispute resulting from the Agreement shall be in Flagler County, Florida.

**SECTION 4.05. TIME OF THE ESSENCE.**

Time is of the essence of the lawful performance of the duties and obligations contained in this Agreement. The parties covenant and agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Agreement.

**SECTION 4.06. BINDING EFFECT.**

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.

**SECTION 4.07. MISCELANEOUS.**

**Recording:** The **CDD** shallberesponsiblefortherecordingofthis Agreement in the Public Records (Land Records) of Flagler County, Florida. The costs of the recording shall be borne equally by the parties.

# **Disputes/Enforcement.** All disputes under this Interlocal Agreement shall be governed in accordance with the requirements of Chapter 164, Florida Statutes. In the event that either party seeks to enforce this Interlocal Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution or appellate proceedings.

# **Severability.** In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be construed or deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

# **No Violation of District Bond Covenants; No Impact on Public Facility.** Nothing contained in this Interlocal Agreement shall operate to violate any of the District's bond covenants. In the event any or all of the obligations contained in the Interlocal Agreement would constitute a violation of the District's bond covenants or trust indenture, as supplemented, such obligations shall be null and void. In such event, the District shall have the unilateral right to immediately cancel this Interlocal Agreement.

# **Indemnification**. To the extent permitted by law, each party agrees to indemnify and hold the other party harmless from and against any and all damages, losses or claims, including, but not limited to, legal fees and expenses, to the extent that such damages, losses or claims are attributable to either party’s actions, omissions or negligence in its performance under this Interlocal Agreement. Nothing in this Interlocal Agreement shall be deemed as a waiver of immunity or limits of liability of either party, including their supervisors, officers, agents and employees and independent contractors, beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Chapter 768.28, Florida Statutes or other statute, and nothing in this Interlocal Agreement or the Construction Manager Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

 **IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed for the uses and purpose herein expressed.

*[signatures to follow]*

 **CITY OF PALM COAST, FLORIDA**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Jim Landon, City Manager

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City Clerk

Approved as to form and content

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

William E. Reischmann, Jr.

City Attorney

**Witnesses: Town Center at Palm Coast Community Development District**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 David Root, Chairman

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(print name) ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(print name)

STATE OF FLORIDA

COUNTY OF FLAGLER

 The foregoing instrument was acknowledged before me this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2014, by David Root, the Chairman of **Town Center at Palm Coast Community Development District** (check one) who is personally known to me or who produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission expires:

**FIGURE 1.**

**Town Center CDD**

**Road, Bicycle & Pedestrian Facilities Maintenance Map**