

**INTERLOCAL AGREEMENT
BETWEEN CITY OF PALM COAST
AND THE CITY OF BUNNELL FOR TRAFFIC SIGNAL REPAIRS AND
MAINTENANCE**

This Agreement, made and entered into on _____, by and between the CITY OF PALM COAST (hereinafter referred to as "COPC"), whose address is 160 Lake Avenue, Palm Coast, FL 32164 and the CITY OF BUNNELL (hereinafter referred to as "BUNNELL"), whose address is 201 W Moody Blvd., FL 32110 and hereby agrees to the following:

WITNESSETH:

WHEREAS, COPC and BUNNELL have entered into this Agreement pursuant to Chapters 163 and 166, Florida Statutes; and

WHEREAS, BUNNELL has requested the services of the COPC relating to maintenance of traffic control signals on Florida Department of Transportation (FDOT) roadways within BUNNELL city limits; and

WHEREAS, COPC has a contract with the Florida Department of Transportation (FDOT) to maintain the traffic signals on all FDOT roadways within the City of Palm Coast; and

WHEREAS, BUNNELL desires that COPC assist BUNNELL in maintaining the FDOT traffic signals on state roadways within BUNNELL city limits; and

WHEREAS, COPC will amend its' existing contract with FDOT to include those FDOT traffic signals within BUNNELL city limits; and

WHEREAS, COPC will be paid by FDOT under the terms of the contract for the maintenance of the traffic signals on FDOT roadways within BUNNELL.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement, the sufficiency of which is acknowledged, the parties mutually agree and covenant as follows:

SECTION 1. CITY OF PALM COAST'S DUTIES: COPC shall maintain FDOT's traffic signals in BUNNELL city limits in accordance with the terms and conditions of the FDOT Traffic Signal Maintenance and Compensation Agreement, as attached hereto and incorporated herein by this reference as Exhibit "A."

SECTION 2. CITY OF BUNNELL'S DUTIES: BUNNELL shall be responsible for all electric charges ~~and costs~~ associated with the BUNNELL traffic signals.

SECTION 3. TERM OF AGREEMENT. This Agreement will terminate when COPC no longer has an agreement with FDOT to maintain FDOT traffic signals within BUNNELL city limits.

SECTION 4. INDEMNIFICATION

(a) Each party to this Agreement assumes any and all risks of personal injury and property damage to the extent attributable to the intentional and negligent acts or omissions of their respective officers and employees in furtherance of their respective performance under this Agreement. The parties agree, however, that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida: or (2) a waiver of each party's right to sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes. The limits of liability on each party as set forth in section 768.08, Florida Statutes are hereby fully incorporated herein by this reference. This Paragraph shall survive termination of this Agreement and shall remain in effect until such time as the statute of limitations has expired to bring a claim under this Agreement.

(b) Each party ("Indemnifying Party") shall indemnify and hold harmless the other party, and their respective officers, employees, and city attorneys (individually and in their official capacity), from liability, losses, damages, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Indemnifying Party, and persons employed or utilized by the Indemnifying Party in the performance of this Agreement.

SECTION 5. 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 shall specify by written notice to the other party delivered in accordance herewith.

(b) Notices shall be given as follows:

CITY OF PALM COAST:

City Manager
City of Palm Coast
160 Lake Avenue
Palm Coast, Florida 32164

Traffic Engineer/Public Works Supervisor
386-986-4758/386-986-2777

BUNNELL:

City Manager
City of Bunnell
P.O. Box 756
Bunnell, FL 32110

SECTION 6. GOVERNING LAW. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida. Venue for any legal proceeding related to this Agreement shall be in the Seventh Judicial Circuit Court in and for Flagler County, Florida.

SECTION 7. NO GENERAL COPC OBLIGATION. In no event shall any obligation of the COPC under this Agreement be or constitute a general obligation or indebtedness of the COPC, a pledge of the *ad valorem* taxing power of the COPC or a general obligation or indebtedness of the COPC within the meaning of the *Constitution of the State of Florida* or any other applicable laws, but shall be payable solely from legally available revenues and funds. Neither COPC nor any other party shall ever have the right to compel the exercise of the *ad valorem* taxing power of the COPC.

SECTION 8. PUBLIC RECORDS.

The parties specifically acknowledge that this Agreement is subject to the laws of the state of Florida, including without limitation Chapter 119, Florida Statutes, which generally make public all records or other writings made or received by the parties.

SECTION 9. DEFAULT.

Each of the parties hereto shall give the other party written notice of any defaults hereunder and shall allow the defaulting party thirty (30) days from the date of receipt to cure such defaults.

SECTION 10. ASSIGNMENT. This Agreement shall be binding on the parties hereto and their representatives and successors. Neither party shall assign this Agreement or the rights and obligation to any other party.

SECTION 11. ATTORNEYS FEES. In the event it becomes necessary to institute legal action to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover all out-of-pocket expenses and costs and all reasonable attorneys fees, paralegal fees and associated fees and costs from the date of filing until the termination of litigation whether incurred at trial, on appeal, or otherwise.

SECTION 12. CONFLICT OF INTEREST. CITY agrees that it shall not engage in any action that would create or cause a conflict of interest in the performance of its obligations pursuant to this Agreement with the BUNNELL or which would violate or cause others to violate the provisions of Part III, Chapter 112, *Florida Statutes*, relating to ethics in government or create or cause a violation of said provisions of law by an officer, employee or agent of the CITY.

SECTION 13. INTERPRETATION. COPC and BUNNELL 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 Agreement. This Agreement is the result of a *bona fide* arms length negotiation between COPC and BUNNELL and all parties have contributed substantially and materially to the preparation of the Agreement. This Agreement shall not be construed more strictly against either party on the basis of being the drafter thereof. All provisions of this Agreement shall be read and applied in *para materia* with all other provisions hereof.

SECTION 14. 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 their obligations herein until the cause or causes thereof have been remedied.

SECTION 15. EFFECTIVE DATE. This Agreement shall take effect when COPC and BUNNELL have fully executed this Agreement by their duly authorized representatives and it is recorded in the Official Records of Flagler County.

SECTION 16. DISCLAIMER OF THIRD PARTY BENEFICIARIES. This 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 to this Agreement.

SECTION 17. SEVERABILITY. Each provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the remainder of this Agreement.

SECTION 18. ENTIRE AGREEMENT. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between parties relating to the subject matter of this Agreement. Amendments to and waivers of the provisions herein shall be made by the parties in writing by formal amendment.

SECTION 19. MODIFICATION. This 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 parties to this Agreement.

SECTION 20. COUNTERPARTS. This 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.

In Witness Whereof, the parties hereto have caused this Agreement to be executed as written above.

CITY OF PALM COAST

ATTEST:

BY: _____
Milissa Holland, Mayor

Virginia A. Smith, City Clerk

Date: _____

Approved as to form and legality for Palm Coast

William E. Reischmann, Jr., City Attorney

CITY OF BUNNELL

ATTEST:

BY: _____
Catherine Robinson, Mayor

Sandi Bolser, City Clerk

Date: _____

Approved as to form and legality for the Bunnell

City Attorney