

Prepared By and after Recording
Return to:

Brown Garganese Weiss & D'Agresta
111 N. Orange Avenue
Suite 2000
Orlando, FL 32801
Attn: Anthony Garganese

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF PALM COAST,
FLORIDA AND TOWN CENTER AT PALM COAST COMMUNITY
DEVELOPMENT DISTRICT REGARDING THE CONSTRUCTION
AND FINANCING OF OLD KINGS ROAD**

THIS AGREEMENT is made by and between the **CITY OF PALM COAST, FLORIDA**, a municipal corporation ("Palm Coast"), and the **TOWN CENTER AT PALM COAST COMMUNITY DEVELOPMENT DISTRICT**, a special purpose unit of local government located in the City of Palm Coast, Florida (the "District") (this Agreement hereinafter referred to as the "Interlocal Agreement"), as of _____, 2008 (the "Effective Date").

RECITALS

WHEREAS, Palm Coast plans to provide certain public infrastructure improvements including roadways, water and sewer utilities, and storm water management improvements associated with the relocation and widening of Old Kings Road (the "Project") within its boundaries; and

WHEREAS, the District is a special purpose unit of local government located entirely within the City of Palm Coast, Florida that has been established for the purpose of planning, financing, constructing, installing, and/or acquiring certain improvements, facilities and services in conjunction with the development of lands located within the District which have included major roadway improvements; and

WHEREAS, Palm Coast has considered an Engineer's Report dated _____, which may be amended and updated from time to time (the "Improvement Plan"), that describes the Project currently contemplated for construction by Palm Coast within rights of way ("ROW") currently owned or to be acquired by Palm Coast; and

WHEREAS, Taking into consideration the projects currently being undertaken by Palm Coast and the limited resources of Palm Coast to undertake another major project such as the Project, Palm Coast desires to delegate to the District a service function to undertake the construction of the Project which will provide an efficient and cost effective means of providing the proposed Project by reducing the administrative burden of Palm Coast for a project with the size and scope as the Project pursuant to Section 163.01(12), Florida Statutes; and

WHEREAS, it is in the mutual interest of Palm Coast and the District to establish intergovernmental relations that encourage, promote and improve the coordination, overall effectiveness and efficiency of governmental activities and services within Palm Coast; and

WHEREAS, Chapter 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 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, Palm Coast and the District find this Interlocal Agreement to be necessary, proper and convenient to the exercise of their powers, duties and purposes authorized by law; and

WHEREAS, Palm Coast and the District desire to exercise jointly their common powers and authority concerning the cost effective financing of the acquisition and construction of the Project and the clarification of responsibilities, obligations, duties, powers, and liabilities of each of the governmental bodies shall be set forth in this Interlocal Agreement, and as more particularly defined in that certain "AIA Document A121 CMc – 2003 Standard Form of Agreement Between Owner and Construction Manager where the Constriction Manager is Also the Constructor" and that certain "AIA Document A201 – 1997 General Conditions of the Contract for Construction" (collectively, the "Construction Management Agreement"), attached hereto as Exhibit "A" and made a part hereof.

WHEREAS, the City desires to expedite construction of the Town Center "Central Park" facilities consistent with the conceptual design submitted by the District on June 26, 2007 ("Central Park Improvements"; Exhibit "B") by having the District construct the Central Park Improvements on behalf of the City.

NOW, THEREFORE, in consideration of the recitals, agreements and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. Recitals and Authority. The foregoing recitals are true and correct and by this reference are incorporated as a material part of this Interlocal Agreement. This Interlocal Agreement is entered into pursuant to the provision of Florida law, including but not limited to Chapters 163, 166, 189, and 190, Florida Statutes, and the Florida Constitution.

SECTION 2. Grant of Easement. Recognizing that in the permitting and construction of the Project within the ROW, it may be necessary for the District, its agents, contractors, employees or staff to enter onto or to utilize property owned by Palm Coast or other land owners, Palm Coast hereby authorizes its City Manager or the City Manager's designee, to enter into such non-exclusive, temporary ingress and egress and construction easements (the "Easements"), as are reasonably necessary to effectuate the purposes of this Interlocal Agreement and complete the Project, subject to the following:

2.1. Conditions. The Easements shall be conveyed subject to all existing governmental and agency permits, approvals and requirements, and the District hereby agrees to comply with all applicable requirements of such permits and approvals, as well as any future permits and approvals that apply to the lands covered by the Easements.

2.2. Reservation of Use. Palm Coast reserves the right to use the lands within the ROW for any and all purposes that do not reasonably interfere with the District's use of and access to the ROW permitted hereunder, including, without limitation, the right to grant further easements on, over, under and across the ROW.

SECTION 3. Construction. In order to ensure the efficient and timely completion of the Project, the parties hereto hereby agree that Palm Coast shall be responsible for the permitting, engineering and production of the drawings, specifications and related documents required for the bidding of the Project. The District shall with assistance from Palm Coast conduct the bidding of the Project and selection of a general contractor as part of its "preconstruction services," as further defined in this Agreement. During the construction of the Project, the District shall enter into a contract for the construction of the Project with one or more general contractors and shall manage the construction of the Project through final acceptance by Palm Coast, in accordance with the terms and conditions of the Construction Management Agreement, attached hereto as Exhibit 'A'.

SECTION 4. Phased Construction. The Project shall be accomplished in two distinct phases as defined in the Contract Documents (hereafter "Phase I" and "Phase II"). Phase I construction is estimated to be completed within 18 months of the District delivering a Notice to Proceed to the selected general contractor. It is anticipated that Phase I and Phase II of the Project will be completed within approximately 36 months from the date the District delivers a Notice to Proceed Phase I of the Project. Phase I will include all construction activities required to bring the alignment of Town Center Boulevard to meet Old Kings Road creating a four-way intersection pursuant to the SR 100 Property First Amended DRI DO (the "Alignment Project"). The property owner of SR 100 Property shall be responsible for the design, all required permits, and construction costs associated with the Alignment Project.

SECTION 5. Financing. The parties agree that while the District shall be responsible for undertaking the construction of the Project, Palm Coast shall be responsible for the financing of the costs of the Project. Palm Coast shall, using its best efforts, timely seek to validate bonds and levy assessments or impose rates, fees or charges as provided in Ordinance _____ to finance the Project.

SECTION 6. Payment of Project Costs. Palm Coast shall cause the proceeds of its Special Assessment Revenue Bonds to be deposited into a trust fund (the "Project Fund") established by the trustee (the "Trustee") under the trust indenture pursuant to which the Bonds were issued. Moneys in the Project Fund shall be disbursed by check, voucher, order, draft, certificate or warrant signed by any one or more officers or employees of the Trustee legally authorized to sign such items, or by wire transfer to an account specified by the payee upon satisfaction of the conditions for disbursement set forth in this subsection. Before any such payment shall be made, Palm Coast shall file with the Trustee a fully-executed requisition signed by the City Manager and, except for payment of costs of issuance, a certificate of the District's consulting engineer signed by a consulting engineer certifying that each disbursement is for a cost included in the Project Cost Budget and is consistent with: (i) the applicable

construction contract; (ii) the plans and specifications for the portion of the Project with respect to which such disbursement is being made; and (iii) the District's fee as construction manager for the Project. Upon receipt of each such requisition and accompanying certificate, the Trustee shall promptly withdraw from the Acquisition and Construction Fund and pay to the person, firm or corporation named in such requisition the amount designated in such requisition. The requisitions shall be prepared by the District and presented to Palm Coast no more frequently than once a month. The requisition shall contain all required invoices and proof of payment as agreed to by the parties hereto.

The parties hereto acknowledge and agree the District shall never be obligated to expend its own funds to pay any costs of the Project.

SECTION 7. Termination/Suspension. Palm Coast may suspend or terminate this Interlocal Agreement for cause or convenience pursuant to the occurrence of events set forth in the Construction Management Agreement. The District may terminate, but not suspend, this Interlocal Agreement for cause or convenience pursuant to the occurrence of events set forth in the Construction Management Agreement. Notwithstanding the provisions of this Section 6, the termination and/or suspension rights set forth in this Interlocal Agreement shall be separate from the termination and/or suspension rights of the parties set forth in the Construction Management Agreement. A termination or suspension of the Construction Management Agreement by the parties, in accordance with their respective rights, shall not constitute a termination and/or suspension of this Interlocal Agreement; nor shall a termination or suspension of the this Interlocal Agreement by the parties, in accordance with their respective rights, constitute a termination and/or suspension of the Construction Management Agreement.

SECTION 8. Insurance. The District shall carry and maintain comprehensive general liability insurance covering claims arising from bodily injury and property damage naming Palm Coast as additional insureds in its performance of the Project's assigned construction responsibilities as with such coverage and deductible amounts, and in such form as reasonably required by Palm Coast the cost of which shall be included in the Project Cost Budget. The District shall require any general contractor selected to construct the Project to maintain liability and property insurance in amounts that, at a minimum, are mutually acceptable to the District and Palm Coast, naming the District and Palm Coast as additional insureds. The District shall deliver to Palm Coast certificates of insurance evidencing such coverage for itself and any general contractor, promptly upon request.

SECTION 9. 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 or the Construction Manager 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.

SECTION 10. Default. A default by either party under this Interlocal Agreement shall entitle the other party to all remedies available at law or in equity, which may include, but not be limited to, damages, injunctive relief and specific performance. Each of the parties hereto shall give the other party written notice of any defaults hereunder and shall allow the defaulting party not less than five (5) days from the date of receipt of such notice to cure monetary defaults and fifteen (15) days to cure other defaults. The default provisions and the parties' remedies under this Interlocal Agreement shall be separate from the default provisions and the parties' remedies under the Construction Management Agreement.

SECTION 11. Disputes/Enforcement. All disputes under this Interlocal Agreement and the Construction Management 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.

SECTION 12. Controlling Law. This Agreement shall be construed and governed in accordance with the laws of the State of Florida.

SECTION 13. 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.

SECTION 14. 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.

SECTION 15. Amendment. This Interlocal Agreement shall not be modified or amended except by written agreement duly executed by the parties hereto.

SECTION 16. Interpretation. This Interlocal Agreement and the Construction Management Agreement have been negotiated fully between the parties as an arms length transaction. Both parties participated fully in the preparation of this Interlocal Agreement. In the case of a dispute concerning the interpretation of any provision of this Interlocal Agreement, both parties are deemed to have drafted, chosen and selected the language, and the doubtful language will not be interpreted or construed against any party.

SECTION 17. Time of the Essence. The parties each agree that time is of the essence of this Interlocal Agreement.

SECTION 18. Notice. Each party shall furnish to the other such notice, as may be required from time to time, pursuant to this Interlocal Agreement, in writing, posted in the U.S. mail or by hand delivery, or by overnight delivery service and addressed as follows:

To Palm Coast: City of Palm Coast
 Office of the City Manager
 2 Commerce Blvd.
 Palm Coast, FL 32164

With copy to: Brown Garganese Weiss &
 D'Agresta
 111 N. Orange Avenue
 Suite 2000
 Orlando, FL 32801
 Attn: Anthony Garganese

To District Chairman of the Board of Supervisors
 The Town Center at Palm Coast Community
 Development District
 One Corporate Drive
 Suite 3A
 Palm Coast, Florida 32137

With copy to: Chiumento & Guntharp, P.A.
 4 Old Kings Road North
 Suite B
 Palm Coast, FL 32137
 Telephone (386) 445-8900 Ext. 22
 Fax (386) 447-1336
 Attn: Michael Chiumento, III Esq.

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

SECTION 19. Effective Date. This Interlocal Agreement and the rights conferred herein shall become effective upon filing with the Clerk of the Circuit Court of Flagler County, Florida, in accordance with the requirements of Chapter 163.01(11), Florida Statutes, which date shall be set forth in the first paragraph of this Interlocal Agreement at recording.

SECTION 20. Term of Interlocal Agreement. The term of this Interlocal Agreement shall commence upon the Effective Date, as defined herein, and shall not terminate prior to upon "Final Completion" and "final payment" of the Project, as such terms are set forth in the Construction Management Agreement. Upon request by Palm Coast, the District shall execute such written instruments as reasonable required to publicly record the termination of this Interlocal Agreement.

SECTION 20. Owner Third Party Beneficiary. The District shall expressly require that Palm Coast be named as a third party beneficiary in all construction contracts entered into by the District in furtherance of this Interlocal Agreement. Upon request by Palm Coast, the District shall execute such written instruments as reasonable required to publicly record the assignment and/or transfer of any contracts to Palm Coast and the conveyance of such rights, privileges and enforcement powers contained therein.

SECTION 22. Imposing Terms and Conditions on General Contractor. The District and Palm Coast acknowledge and agree that the Interlocal Agreement incorporates modified terms and conditions contained in the Construction Management Agreement. The documents comprising the Construction Management Agreement reference responsibilities and obligations that will be imposed on the "General Contractor" (as defined therein), that will ultimately be awarded a contract to perform the construction of the Project. The District shall be responsible for insuring that the General Contractor responsibilities and obligations set forth in the Construction Management Agreement be incorporated into the construction contract entered into between the District and the General Contractor.

SECTION 23. Construction of Central Park. The District shall construct the Central Park Improvements on behalf of the City. The City shall reimburse the District all cost the District incurs as a result of the District's construction of the Central Park Improvements. More specifically, on or before December 31, 2008, the City shall reimburse the District all costs the District incurs as a result of construction activities associated with the Central Park Improvements. Thereafter, reimbursements shall be paid by the City to the District on a monthly basis as costs are incurred by the District.

[END OF TEXT; SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF the undersigned set their hands as of the ___ day _____, 2008.

**TOWN CENTER AT PALM COAST
COMMUNITY DEVELOPMENT DISTRICT**

By: _____
Chairman

Witness:

Print Name

Witness:

Attest: _____
Secretary

Print Name

CITY OF PALM COAST, FLORIDA

By: _____
City Manager

Witness:

Print Name

Witness:

Attest: _____
City Clerk

Print Name

EXHIBIT 'A'

Owner-Construction Manager Agreement

[See attached pages]

EXHIBIT 'B'

CENTRAL PARK IMPROVEMENTS

[See attached pages]