

R2013 0963

INTERLOCAL AGREEMENT  
BETWEEN  
PALM BEACH COUNTY  
AND  
THE CITY OF DELRAY BEACH

THIS AGREEMENT is made and entered into on the 10<sup>th</sup> day of July, 2013 by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, (the "COUNTY"), and the CITY OF DELRAY BEACH, a municipal corporation in the State of Florida, (the "CITY"), each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes, hereinafter referred to collectively as the "parties".

WITNESSETH

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governments 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 that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority that such agencies share in common and that each might exercise separately; and

WHEREAS, pursuant to Chapter 125.01, Florida Statutes, the Board of County Commissioners is empowered to establish administer programs of beach erosion control and to enter into agreements with other governmental agencies within or outside the boundaries of the COUNTY for joint performance, or performance of one unit on behalf of the other, of any of either governmental entity's authorized functions; and

WHEREAS, pursuant to Chapter 166, Florida Statutes, the CITY is empowered to exercise any governmental, corporate, and proprietary power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the CITY and COUNTY intend to make the most efficient use of their powers by cooperating with each other in the maintenance and repair of the Delray Beach Segment of the Palm Beach County, Florida Shore Protection Project (PROJECT) which includes the area described in attached Exhibit "A", within the municipal limits of the City of Delray Beach, Florida; and

WHEREAS, the Department of the Army (Federal Government) and Palm Beach County, acting as the Non-Federal Sponsor, entered into an agreement dated January 23, 1973 pursuant to Section 102 of the Rivers and Harbors Act of 1962, Public Law 87-874, providing for Federal participation in the costs incurred for construction of the PROJECT; and

WHEREAS, the CITY and COUNTY entered into an Intergovernmental Agreement on February 27, 1973, as amended by Addendum Agreement dated August 16, 1977, and supplemented by agreements dated November 8, 1983 and October 13, 1992, and October 4, 1994 which provide for joint funding of the PROJECT; and

WHEREAS, in 1973 the CITY completed the first beach restoration PROJECT for the City of Delray Beach municipal beach. Thereafter, the CITY performed maintenance nourishments in 1978, 1984, 1992, 2002, and 2013; and

WHEREAS, the Federal Government and COUNTY entered into an agreement dated September 23, 1992 pursuant to Section 102 of the Rivers and Harbors Act of 1962, Public Law 87-874 that includes the extension of Federal participation in the PROJECT for a period of 50 years beginning from the date of initiation of construction; and

WHEREAS, the CITY and the COUNTY previously entered into an Interlocal Agreement on October 4, 1994 (R94-1357D) to provide a mechanism for construction, monitoring and funding the PROJECT, and this Agreement replaces said Interlocal Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

1. Purpose of the Agreement. The purpose of this Agreement is to provide a mechanism for construction, monitoring and funding of the PROJECT and to set forth the terms, conditions and obligations of each of the respective parties hereto. The parties agree that this Agreement is contingent on the COUNTY entering into the Project Partnership Agreement (PPA) attached hereto as Exhibit "B", which provides that the Federal Government will construct all iterations of the PROJECT during the term of the PPA and will cost-share with the COUNTY for the PROJECT expenses.

2. The PROJECT. The PROJECT consists of the restoration of the City of Delray Beach municipal beach, which is more particularly described in Exhibit "A".

3. Term. This Agreement shall commence upon execution by both parties and shall expire on June 1, 2023 unless otherwise terminated as provided herein.

4. COUNTY Obligations.

A. The COUNTY shall enter into the PPA attached hereto as Exhibit "B", which provides for Federal construction of the Delray Beach Segment of the PROJECT for the remaining authorized period of periodic nourishment as described in the PPA.

B. The COUNTY shall enter into the Cooperation Agreement (CA) attached hereto as Exhibit "C" with the Federal Government to provide for PROJECT rehabilitation in accordance with 33 U.S.C. 701n.

C. The COUNTY shall serve as the non-federal sponsor under the PPA and public sponsor under the CA and assume the responsibility for local cooperation in the PROJECT.

D. The COUNTY shall appropriate funds and be responsible for the non-Federal costs as detailed in the PPA and CA.

E. The COUNTY shall reimburse the CITY for any expenses incurred by the CITY that are eligible for cost share under the terms of the PPA or CA.

5. CITY Obligations.

A. The CITY shall establish and maintain a dedicated funding source to fulfill its obligations under this Agreement,

B. The CITY shall cooperate with the COUNTY and shall take whatever steps are necessary to ensure that the COUNTY is able to timely and satisfactorily comply with all terms and conditions of the PPA and CA.

C. The CITY shall obtain all state and federal permits necessary for the PROJECT unless notified in writing by the Director of Palm Beach County Department of Environmental Resources Management that the Federal Government will handle permitting for an iteration of the PROJECT and shall fully comply with any permits obtained by the CITY, including but not limited to completing all monitoring, surveys and reporting.

6. Joint Responsibilities. The CITY and the COUNTY shall endeavor to be joint applicants for State funding for the PROJECT. The COUNTY will support CITY's funding requests in the same manner as if the request came from the COUNTY, and the CITY will support the COUNTY's funding requests in the same manner as if the request came from the CITY.

7. Party Representatives. The COUNTY's representative/contract monitor during the term of this Agreement shall be the Director of the Palm Beach County Department of Environmental Resources Management, whose telephone number is (561) 233-2400. The CITY's representative/contract monitor during the term of this Agreement shall be Mr. Paul Dorling, whose telephone number is (561) 243-7040.

8. Notices. All formal notices between the parties shall be hand-delivered or sent by certified mail, return receipt requested, to the following recipients:

Chairperson  
Board of County Commissioners  
Palm Beach County  
301 N. Olive Avenue  
West Palm Beach, FL 33401

City Manager  
City of Delray Beach  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444

And

With a copy to:

Director  
Palm Beach County Department of  
Environmental Resources Management  
2300 N. Jog Road, 4<sup>th</sup> Floor  
West Palm Beach, FL 33411

City Attorney  
City of Delray Beach  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444

With a copy to:

Palm Beach County Attorney's Office

ERM Attorney  
301 N. Olive Ave., 6<sup>th</sup> Floor  
West Palm Beach, FL 33401

All notices required by this Agreement shall be considered delivered upon receipt. Should any Party change its address, written notice of such new address shall promptly be sent to the other Party.

9. Funding Contingency. The County's performance and obligations under this Agreement and any amendment hereto are contingent upon an annual appropriation by the Board of County Commissioners. The City's performance and obligations under this Agreement and any amendment hereto are contingent upon an annual appropriation by the City Council.

10. Termination for convenience. Either party may terminate this Agreement for convenience by giving ninety (90) days prior written notice to the other party. If the CITY terminates this Agreement for convenience, the CITY shall compensate the COUNTY for all costs incurred by the COUNTY as a result of such termination.

11. Default and Opportunity to Cure. If a Party fails to fulfill its obligations under this Agreement in a timely and proper manner, the Party not in default shall have the right to terminate this Agreement and/or to bring an action for breach by giving written notice of any deficiency and its intent to terminate and/or to bring an action for breach. The Party in default shall then have thirty (30) days from receipt of notice to correct the stated deficiency. If the defaulting Party fails to correct the deficiency within such time and unless otherwise agreed by the Parties, the Party not in default may terminate this Agreement and/or bring an action for breach.

12. Indemnification. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, the CITY shall indemnify, defend and hold harmless the COUNTY against any actions, claims or damages arising out of the CITY's negligence in connection with this Agreement, and the COUNTY shall indemnify, defend and hold harmless the CITY against

any actions, claims or damages arising out of the COUNTY's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions.

13. Insurance. Each party shall maintain a fully funded program of self-insurance pursuant to Section 768.28, Florida Statutes.

14. Maintenance of Records. The parties shall maintain, in accordance with generally-accepted governmental auditing standards, all financial and nonfinancial records and reports directly or indirectly related to the negotiation or performance of this Agreement or any amendment hereto, including supporting documentation for any service rates, expenses, research or reports. The parties shall have the right to examine in accordance with generally-accepted governmental auditing standards all records directly or indirectly related to this Agreement or any amendment hereto. Such examination may be made only upon reasonable notice, time and place. In the event the parties should become involved in a legal dispute with a third party arising from performance under this Agreement or any amendment hereto, the parties shall extend the period of maintenance for all records relating to this Agreement or any amendment hereto until the final disposition of the legal dispute, and all such records shall be made readily available to the other party.

15. Enforcement Costs. Except as otherwise provided herein, any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective parties. This provision pertains only to the parties to the Agreement.

16. Delegation. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or city officers.

17. Filing. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

18. Equal Opportunity. The COUNTY and the CITY agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity, or gender expression be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of the Agreement.

19. Severability. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

20. Waiver of Breach. The failure to insist on strict performance of or the waiver of any covenant, condition, or provision of this Agreement by any party shall not relieve the other party from performing any other obligation strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this Agreement specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

21. Legal actions; remedies. Any and all legal actions to enforce this Agreement and any amendment hereto shall be brought in Palm Beach County, Florida. This Agreement and any amendment hereto shall be governed by the laws of the State of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or the City.

22. Independent Contractor. Each party recognizes that it is an independent contractor and not an agent or servant of the other party. No person employed by any party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law, except through and against the entity by whom they are employed.

23. Construction. No party shall be considered the author of this Agreement since the parties hereto have participated in drafting this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

24. Captions. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

25. Palm Beach County Office of the Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County *Code, Section 2-421 - 2-440*, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of any party

contracting with the COUNTY and its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

26. Entirety of Agreement. The CITY and COUNTY agree that this Agreement, together with any attached exhibits, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms or obligations in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

IN WITNESS WHEREOF, the County of Palm Beach, Florida has caused this Agreement to be signed by the Mayor of the Board of County Commissioners and the seal of said Board to be affixed hereto and attested by the Clerk of said Board, pursuant to authority granted by said Board, and the City of Delray Beach has caused this Agreement to be signed in its corporate name by its mayor and its corporate seal to be affixed hereto, attested by its City Clerk, the date and year first above written.

R2013-0963

ATTEST:

PALM BEACH COUNTY, FLORIDA, BY  
ITS BOARD OF COUNTY  
COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

BY: 

Deputy Clerk

DATE: JUL 16 2013

(SEAL)

BY: 

Steven L. Abrams, Mayor

DATE: JUL 16 2013

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

BY: 

Assistant County Attorney

APPROVED AS TO TERMS AND  
CONDITIONS:



Robert Robbins, Director  
Palm Beach County Dept. of

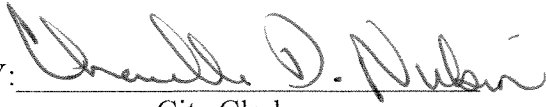
DATE: \_\_\_\_\_

Environmental Resources Management

ATTEST:  
BY ITS COMMISSION

CITY OF DELRAY BEACH, FLORIDA,

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



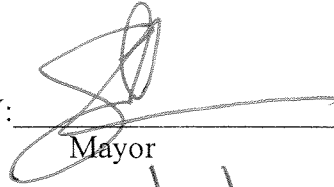
City Clerk

DATE: \_\_\_\_\_

7/10/2013

(SEAL)

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




Mayor

DATE: \_\_\_\_\_

7/10/2013

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

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



City Attorney

DATE: \_\_\_\_\_

7/9/13