

**INTERLOCAL AGREEMENT BETWEEN INDIAN RIVER COUNTY AND
TOWN OF ORCHID FOR BEACH ACCESS FOR BEACH AND DUNE RESTORATION**

THIS INTERLOCAL AGREEMENT for ACCESS FOR DUNE RESTORATION (“Agreement”) is entered into this ____ day of _____, 2023 (“Effective Date”) by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida (“County”) and the TOWN OF ORCHID, a Florida municipal corporation (“Town”).

BACKGROUND RECITALS

A. Indian River County, local municipalities, and private property owners maintain beach and dune systems along the 22 miles of Indian River County Atlantic Ocean shoreline. As a result of adverse weather and tidal effects, Indian River County receives direct impacts to the beach and dune system; and

B. The County and Town wish to cooperate in restoring said beach and dune system from adverse impacts caused by future hurricanes, tropical storms, heavy seas, nor-easters, king tides and general erosion (collectively “Dune Erosion Events”); and

C. In response to future Dune Erosion Events, County and Town wish to establish a process by which the Town can utilize Golden Sands Beach Park (“Park”) for beach and dune restoration efforts; and

D. The County and the Town wish to enter into this Agreement in order to formalize the process for the Town’s use of the Park for future dune restoration activities; and

E. By entering into this Agreement, County and Town wish to terminate and replace the Interlocal Agreement Between Indian River County and Town of Orchid for Emergency Dune Restoration Due to Named Storms dated September 19, 2017, with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, and intending to be legally bound, the County and the Town agree as follows:

1. The background recitals are true and correct and form a material part of this Agreement.

2. County hereby authorizes Town to use the established beach access point at the Park for the limited purpose of delivering beach material and locating certain heavy equipment onto the beach to perform beach and dune restoration activities within the jurisdictional limits of the Town after Dune Erosion Events. Such work shall not occur during sea turtle nesting season, unless approved by the Florida Department of Environmental Protection. The dates of work shall be mutually determined by Town and County, and shall be subject to the following terms and conditions:

- a) Town shall operate all equipment, or cause all equipment to be operated, in a safe and prudent manner, and in accordance with any measures deemed necessary for public safety by County staff.
- b) When Town is utilizing the Park for dune restoration activities and County officials or staff are not present performing dune restoration activities, Town shall (1) keep the gates to the Park securely locked at all times except when opened for the passage of Town's equipment, (2) manage in a timely and efficient manner any traffic issues that arise as a result of Town's use of the Park, and (3) prohibit any public vehicular or pedestrian use of the Park during Town's dune restoration activities. Town shall post "Beach Closed" signs at the Park entrance during Town's dune restoration activities.
- c) To the extent the County is not utilizing the Park for dune restoration activities, Town shall provide any sand needed to establish a "sand ramp" for equipment to access the beach by Town while Town is utilizing the Park for dune restoration activities, or for Town to perform the beach restoration activities. No use of existing sand from the Park or beach shall be allowed. Any damage by Town to the Park shall be repaired to the satisfaction of the County and at no cost to the County. The agreed upon access route shall be inspected/videoed by County staff with the Town present, prior to the equipment mobilization to the Park. The Town shall restore any pavement striping, signage, vegetation (includes dune vegetation), and improvements that may have been damaged as a direct or indirect result of the Town's construction activities to an equal or better condition upon completion of the work and demobilization of equipment, facilities, vehicles, and crew from the work area.
- d) The County assumes no liability for loss of or damage to Town's equipment or personal property staged or stored at the Park. Any such equipment or property shall be staged or stored at the sole risk of Town.
- e) Between the northern boundary of the Town and the Park there is located a residential community. As such, to the extent the County is not utilizing the Park for dune restoration activities, Town shall minimize construction impacts to the residential community (i.e. work hours 7:30 AM – 5:30 PM, construction noise, equipment vibration, etc.) to the greatest extent practical. Town shall provide notice to the homeowners' association of the adjacent residential community or to the property owners directly prior to commencing access activity through the Park whenever practicable. County shall be provided a copy of the notice to the homeowner's association or property owners upon request.
- f) Town shall indemnify the County for any damage to Park structures, roads, vegetation or other Park features or County property resulting from Town's performance of the dune restoration activities, or this Agreement. Any such damage shall be repaired to the satisfaction of the County, or Town shall pay to the County the reasonable cost to repair any such damage. Town shall also indemnify and hold harmless the County, and its officers and employees, from liabilities, damages, losses 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 Town and persons employed or utilized by the Town in the performance of the dune restoration activities, or this Agreement.

3. At all times in which the Town is utilizing the Park for dune restoration, Town shall maintain, or cause to be maintained the insurance policies and coverage limits set forth:

Insurance:

- **Town and Subcontractors Insurance:** The Town shall not commence work until it has obtained all the insurance required under this section, nor shall the Town allow any subcontractor to commence work until the subcontractor has obtained the insurance required for a contractor herein and such insurance has been approved unless the subcontractor’s work is covered by the protections afforded by the Town’s insurance.
- **Worker’s Compensation Insurance:** The Town shall procure and maintain worker’s compensation insurance to the extent required by law for all their employees to be engaged in work under this contract. In case any employees are to be engaged in hazardous work under this contract and are not protected under the worker’s compensation statute, the Town shall provide adequate coverage for the protection of such employees. Such insurance shall also be required of any Town contractors and subcontractors.
- **Public Liability Insurance:** The Town shall procure and maintain broad form commercial general liability insurance (including contractual coverage) and shall ensure that the contractor/subcontractor performing work in connection with dune restoration activities has commercial general liability insurance (including contractual coverage) and commercial automobile liability insurance in amounts not less than shown below. The County shall be an additional insured on this insurance with respect to all claims arising out of the operations or work to be performed.

<p>Commercial General (Public) Liability, other than Automobile</p> <p>\$1,000,000.00 Combined single limit for Bodily Injury and Property Damage</p>	<p>Commercial General</p> <p>A. Premises / Operations</p> <p>B. Independent Contractors</p> <p>C. Products / Completed Operations</p> <p>D. Personal Injury</p> <p>E. Contractual Liability</p> <p>F. Explosion, Collapse, and Underground Property Damage</p>
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<p>Automobile</p> <p>\$1,000,000.00 Combined single limit Bodily Injury and Damage Liability</p>	<p>A. Leased Automobiles</p> <p>B. Non-Owned Automobiles</p> <p>C. Hired Automobiles</p> <p>D. Owned Automobiles</p>
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- **Proof of Insurance:** Prior to commencement of any work, the Town shall furnish the County Risk Manager a certificate of insurance in a form acceptable to the County for the insurance required. Such certificate or an

endorsement provided by the contractor must state that the County will be given thirty (30) days written notice prior to cancellation or material change in coverage. Copies of an endorsement-naming County as Additional Insured must accompany the Certificate of Insurance.

- g) At the completion of any of the Town's dune restoration activities or expiration of the license, whichever occurs first, Town shall return the Park to substantially the same condition as it was at the beginning of such dune restoration activities, to the County's reasonable satisfaction.
- h) Town shall perform its work in strict compliance with any permit issued for dune restoration activities. If at any time Town does not adhere to the permit conditions or above conditions, the County may order the work to immediately cease until Town brings the work into compliance. Violation of permit conditions and/or the terms of this Agreement may result in termination of the Agreement by the County forthwith and at no cost to the County.

4. Upon the effective date of this Agreement, the Interlocal Agreement Between Indian River County and Town of Orchid for Emergency Dune Restoration Due to Named Storms dated September 19, 2017, shall be terminated in its entirety, except that claims for reimbursement for expenses incurred by Town for dune restoration activities in response to Hurricanes Matthew, Irma and Dorian during the effective dates of that Agreement having cooperated fully with County as required by section 2 of that Agreement, are not relinquished.

5. Parties agree to comply with the Indian River County Beach Preservation Plan, dated February 2015, or as subsequently amended.

6. The term of this Agreement shall be for three (3) years from the Effective Date and shall automatically renew for successive three (3) year terms except either party may terminate the Agreement with one-hundred twenty (120) days' written notice.

7. Any notice, request, demand, consent, approval or other communication required or permitted by this Agreement shall be given or made in writing and shall be served, as elected by the party giving such notice, by any of the following methods: (1) Hand delivery to the other party; or (2) Delivery by commercial overnight courier service; or (3) Mailed by registered or certified mail (postage prepaid), return receipt requested at the addresses of the parties shown below:

Indian River County:

Indian River County Public Works Department
Attn: Public Works Director
1801 27th Street, Building A
Vero Beach, Florida 32960

Indian River County Risk Manager
1800 27th Street

Vero Beach, Florida 32960

Indian River County Parks & Recreation Director
iG Recreation Center
1590 9th St SW
Vero Beach, Florida 32962

Town of Orchid:
Attn: Town Manager
7707-1 US Highway 1
Vero Beach, Florida 32967

8. The validity, interpretation, construction, and effect of this Agreement shall be in accordance with and governed by the laws of the State of Florida only. The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, as well as any litigation between the parties, shall be Indian River County, Florida for claims brought in state court, and the Southern District of Florida for those claims justiciable in federal court.

9. This Agreement incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms and conditions contained herein shall be effective unless contained in a written document signed by all parties. In addition, notwithstanding any other provision set forth herein, it is agreed that this Agreement shall not constitute a third-party beneficiary contract and no third party, even if referenced or mentioned hereunder, shall have any rights or privileges hereunder including, but not limited to, standing to enforce any term or condition of this Agreement or make any claim based on this Agreement.

10. Construction/Interpretation of Agreement. Each party has participated equally in the negotiation and drafting of this Agreement. In the event that an arbitration panel or court is required to interpret any provision of this Agreement, the provision shall not be interpreted for or against either party upon the basis that such party was or was not the preparer of this Agreement.

11. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this Agreement, then the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

12. Captions in this Agreement are included for convenience only and are not to be considered in any construction or interpretation of this Agreement or any of its provisions. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

ATTEST: Jeffrey R. Smith, Clerk of Courts,
and Comptroller

**BOARD OF COUNTY COMMISSIONERS OF
INDIAN RIVER COUNTY ("County")**

By: _____
Deputy Clerk

By: _____
Joseph H. Earman, Chairman

Approved by BCC: _____, 2023.

Approved:

Approved as to form and legal sufficiency:

_____, County Administrator

Dylan Reingold, County Attorney

Approved:

TOWN OF ORCHID ("Town")

Cherry Stowe, Town Manager

By: _____
Robert J. Gibbons, Mayor

Approved by Town: _____, 2023.

Approved as to form and legal sufficiency:

Warren W. Dill, Town Attorney