

**INTERLOCAL AGREEMENT BETWEEN INDIAN RIVER COUNTY AND
TOWN OF ORCHID FOR EMERGENCY DUNE RESTORATION DUE TO
NAMED STORMS**

THIS INTERLOCAL AGREEMENT for EMERGENCY DUNE RESTORATION DUE TO NAMED STORMS ("Agreement") is entered into this _____ day of _____, 2017 ("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 dune systems along the 22 miles of Indian River County Atlantic Ocean shoreline. As a result of Hurricane Matthew in October 2016, Indian River County received direct impacts to the beach and dune system; and

B. The County will be seeking reimbursement from the federal government and the State of Florida for impacts from Hurricane Matthew on the beach dune system; and

C. In order to streamline the reimbursement for impacts to the beach dune system, County will be applying for reimbursement for both impacts to County beaches and Town beaches; and

D. As part of seeking such reimbursement, County will reimburse Town for any funds received from any federal agencies and the State of Florida relating to Town restoration work; and

E. The County and Town wish to cooperate in a similar manner for emergency dune restoration due to future named storms; and

F. In response to future storms, County and Town wish to establish a process by which the Town can utilize Golden Sands Beach Park for beach dune restoration efforts; and

G. The County and the Town wish to enter into this Interlocal Agreement in order to formalize the process for reimbursement of federal and State of Florida funds and use of Golden Sands Beach Park for potential future emergency dune restoration efforts.

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 and the Town will cooperate on seeking reimbursement from federal agencies and the State of Florida for work performed by the Town, its affiliates, agents, representatives and contractors (collectively "Licensee") for emergency dune restoration due to named storms. The County will serve as the applicant for such reimbursement. The Town will be required to provide the local match for any local match required for reimbursement.

3. County hereby authorizes Licensee to use the established beach access point at Golden Sands Beach Park ("Park") for the limited purpose of delivering beach material and locating certain heavy equipment onto the beach to perform emergency beach dune restoration projects for the nearby residential development after named storms. Such work shall not occur during turtle nesting season. The dates of work shall be mutually determined by the Town Manager and County Administrator, and shall be subject to the following terms and conditions:

- a) Licensee 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 Licensee is utilizing the Park for dune restoration activities and County officials or staff are not present performing dune restoration activities, Licensee shall (1) keep the gates to the Park securely locked at all times except when opened for the passage of Licensee's equipment, (2) manage in a timely and efficient manner any traffic issues that arise as a result of Licensee's use of the Park, and (3) prohibit any public vehicular or pedestrian use of the Park during Licensee's dune restoration activities. Licensee shall post "Beach Closed" signs at the Park entrance during Licensee's dune restoration activities.
- c) To the extent the County is not utilizing the Park for dune restoration activities, Licensee shall provide any sand needed to establish a "sand ramp" for equipment to access the beach by Licensee while Licensee is utilizing the Park for dune restoration activities, or for Licensee to perform the beach restoration projects for the nearby residential developments. No use of existing sand from the Park or beach shall be allowed. Any damage by Licensee 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 Licensee present, prior to the equipment mobilization to the identified Beach Park. The Licensee 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 Licensee'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 Licensee'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 Licensee.
- e) The Park is located between two residential communities. As such, to the extent the County is not utilizing the Park for dune restoration activities, Licensee shall minimize construction impacts to the residential communities (i.e. work hours 7:30 AM – 5:30 PM, construction noise, equipment vibration, etc.) to the greatest extent practical. Licensee shall provide 48 hour notice to the homeowners' associations of the adjacent

residents and the County prior to commencing access activity through County property. County shall be copied on the notice to the homeowners' associations.

- f) Licensee shall indemnify the County for any damage to Park structures, roads, vegetation or other Park features or County property resulting from Licensee's performance of the dune stabilization projects, or this License Agreement. Any such damage shall be repaired to the satisfaction of the County, or Licensee shall pay to the County the reasonable cost to repair any such damage. Licensee 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 Licensee and persons employed or utilized by the Licensee in the performance of the dune stabilization projects, or this License Agreement.
4. At all times in which the Licensee is utilizing the Park for dune restoration, Licensee shall maintain, or cause to be maintained the insurance policies and coverage limits set forth:

Insurance:

- **County and Subcontractors Insurance:** The Licensee shall not commence work until they have obtained all the insurance required under this section, and until such insurance has been approved by the County, nor shall the Licensee 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 Licensee's insurance.
- **Worker's Compensation Insurance:** The Licensee 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 Licensee shall provide adequate coverage for the protection of such employees.
- **Public Liability Insurance:** The Licensee shall procure and maintain broad form 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.

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| <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</p> |
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| | Property Damage |
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| Automobile \$1,000,000.00 Combined single limit Bodily Injury and Damage Liability | A. County Leased Automobiles B. Non-Owned Automobiles C. Hired Automobiles D. Owned Automobiles |
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- **Proof of Insurance:** Prior to commencement of any work, the Licensee shall furnish the County 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 Licensee's project or expiration of the license, whichever occurs first, Licensee shall return the Park to substantially the same condition as it was at the beginning of the lease, to the County's sole satisfaction.
- h) Licensee shall perform its work in strict compliance with any permit issued for the project. If at any time Licensee does not adhere to the permit conditions or above conditions, the County may order the work to immediately cease until Licensee brings the project into compliance. Violation of permit conditions and/or the terms of this License Agreement may result in termination of the License Agreement by the County forthwith and at no cost to the County.

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 one (1) year terms except either party may give written notice to terminate the Agreement at least one-hundred twenty (120) days prior to the end of the then current term.

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

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 E. Flescher, Chairman

Approved by BCC: _____, 2017.

Approved:

Approved as to form and legal sufficiency:

Jason E. Brown, County Administrator

Dylan Reingold, County Attorney

Approved:

TOWN OF ORCHID ("Town")

Noah Powers, Town Manager

By: _____
Harold Ogstie, Mayor

Approved by Town: September 6, 2017.

Approved as to form and legal sufficiency:

Warren Dill, Town Attorney