

**INTERLOCAL AGREEMENT BETWEEN INDIAN RIVER COUNTY AND
CITY OF VERO BEACH FOR EMERGENCY BERMS/DUNES ON BEACHES /BEACH
RENOURISHMENT DUE TO NAMED STORMS**

THIS INTERLOCAL AGREEMENT for EMERGENCY BERMS ON BEACHES /BEACH RENOURISHMENT 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 CITY OF VERO BEACH, a Florida municipal corporation (“City”).

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 and Hurricane Irma in September 2017, 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 Hurricanes Matthew and Irma on the beach dune system, specifically the 3 miles of shoreline between The Florida Department of Environmental Protection (FDEP) Reference Monuments R-70 – R-86, herein referred to as the Sector 5 Project Area ; and

C. In order to qualify for reimbursement from the federal and state governments for the beach dune system, the City and County must delineate which entity is the legally responsible claimant for construction, maintenance and operation of the dune and beach system; and

D. The County and City wish to cooperate in a similar manner for emergency berms on beaches /beach renourishment due to future named storms; and

E. The County and the City wish to enter into this Interlocal Agreement in order to formalize the process for reimbursement of federal and State of Florida funds.

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 City agree as follows:

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

2. The City shall be responsible to perform eligible emergency protective measures (FEMA Category "B" Projects) to protect improved property along City owned properties resulting from future named storms (i.e. emergency berms/dunes). The City shall also be responsible for permanent public infrastructure repairs (i.e. dune crosswalks, boardwalks and stormwater outfalls) which may be FEMA Category 'C' or Category 'G' projects as determined by FEMA based on the scope of work. The City shall also be responsible for providing construction access to the beach dune system within the City limits.

3. The County shall be responsible to perform eligible work on engineered and maintained beaches (FEMA Category "G" Projects), within the Sector 5 Project Area. The City shall assist project construction by providing adequate access to the beach dune system within the City limits. The timing and scope of any such work and whether such work is to be performed shall be determined by the County in its sole discretion.

4. Each entity shall be responsible for seeking reimbursement from federal agencies and the State of Florida for work that it performs in accordance with its responsibilities as stated above. Each entity will be required to provide the local match for its own projects.

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

City of Vero Beach:

Attn: City Manager
1053 20th Place
Vero Beach, FL 32960

7. 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.

8. 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.

9. 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.

10. 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.

11. 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

ATTEST:

CITY OF VERO BEACH ("City")

Tammy K. Bursick
City Clerk

By: _____
Laura Moss
Mayor

SEAL

Approved by City Council: _____, 2017.

Approved as to form and legal sufficiency:

Approved as conforming to municipal policy:

Wayne R. Coment
City Attorney

James R. O'Connor
City Manager

Approved as to technical requirements:

Approved as to technical requirements:

Monte K. Falls, P.E.
Public Works Director

Cynthia D. Lawson
Finance Director