

**MEMORANDUM OF AGREEMENT
FOR CONTRIBUTED FUNDS FOR THE
JUPITER ISLAND BEACH RE-NOURISHMENT PROJECT**

This MEMORANDUM OF AGREEMENT ("Agreement"), dated _____, 2018 is made by and between MARTIN COUNTY, Florida, political subdivision of the State of Florida, 2401 S.E. Monterey Road, Stuart, FL 34996 ("COUNTY") and the TOWN OF JUPITER ISLAND, a municipal corporation in the State of Florida, 2 Bridge Road, Hobe Sound, FL 33455 ("TOWN").

WITNESSETH:

WHEREAS, the TOWN, utilizing budgeted funds to match storm recovery funds awarded by the Federal Emergency Management Agency for damages from hurricanes Matthew and Irma, intends to begin a beach restoration project within its municipal boundaries ("Project"); and,

WHEREAS, the COUNTY and the TOWN entered into an Interlocal Agreement dated October 28, 2014 pertaining to the St. Lucie Inlet (Inlet Interlocal); and,

WHEREAS, Section 2.3 of the Inlet Interlocal provides that the COUNTY and the TOWN will participate in joint sand placement projects to save on mobilizations and other costs in bypassing sand to the beaches on Jupiter Island; and,

WHEREAS, the COUNTY and the TOWN desire to cooperate by the COUNTY contributing funds to the TOWN to be expended to increase the amount of sand placed on the beaches within the TOWN's boundaries in connection with the above-described beach re-nourishment and storm recovery project.

NOW, THEREFORE, in consideration of the mutual benefits, the parties do hereby agree as follows:

1. The Project's boundaries are more particularly described in Exhibit "A" which is attached hereto and incorporated herein.
2. The Project shall consist of dredging and placement of 1,133,000 cubic yards of sand, removed from the Town's offshore borrow site and placed in accordance with the Town's permitted fill template. The Project shall be contracted such that the selected contractor will complete the full project volume during the November 2018 to April 2019 regulatory window. If the full project volume is not achieved by the contractor during that time period, the contractor will be obligated to re-mobilize during the next regulatory window to complete the project at no additional cost.
3. The Town has obtained bids in accordance with all applicable Florida Statutes and TOWN requirements. Based on the lowest qualified bid received, the total Project unit price, as reflected in Exhibit "B" of this Agreement, is \$16.82 per cubic yard.
4. The COUNTY agrees to pay to the TOWN on or before October 1, 2018 the amount of \$8,941,498 which is a total Project equivalent of 531,593 cubic yards being dredged and placed on the TOWN's beaches as part of the Project at the adopted Agreement costs reflected in Exhibit "B". The TOWN agrees to place such COUNTY funds in a separate account from which invoices for the COUNTY's contributed portion of the Project shall

be paid ("Project Fund"). If the Project is not completed in full, any remaining portion of the Project Fund will be returned to the County within 60 days.

5. The TOWN shall promptly review any and all invoices submitted by the Project contractor in connection with the additional alternative position of the Project and either approve or disapprove same. If the invoices are approved, TOWN shall promptly send such approved invoices to the COUNTY's representative designated below. TOWN shall promptly pay such approved invoices from the Project Fund.
6. The Town shall be responsible for and shall comply with all permit conditions and obligations associated with the Project. TOWN agrees it shall be solely responsible for maintenance, replacement, and repair of the Project, and COUNTY shall have no responsibility for such maintenance, replacement, and repair of the Project.
7. In consideration of the COUNTY's contributed funds to TOWN's Project, TOWN agrees:
 - a. TOWN will acknowledge bypass credits to the COUNTY and the State of Florida for the total volume of sand (cubic yards) placed on TOWN beaches paid for with COUNTY funds as part of the Project pursuant to this Agreement.
 - b. As set forth in Section 2.1 of the Inlet Interlocal, the TOWN will jointly and actively advocate for State, Federal and Florida Inlet Navigation District grants related to the Inlet.
 - c. TOWN and COUNTY will acknowledge COUNTY's use of sand from the St. Lucie Inlet shoal system, Federal Channel, Impoundment Basin, and Transition zone documenting full bypassing credit for all sand transfer volumes from the inlet north and/or south.
8. In consideration of the cost savings afforded to the COUNTY by participating in the TOWN's Project, COUNTY agrees:
 - a. COUNTY will not remove any sand (existing or deposited) from the TOWN's offshore borrow site for any other purpose or projects except for nourishment of the TOWN's beaches and only after receiving written approval from the TOWN.
9. Disputes under this Agreement may be resolved by the COUNTY's Authorized Representative and the TOWN's Authorized Representative. If such Authorized Representatives are unable to reach a resolution and the parties agree that the issue is of sufficient merit, the parties shall select a mediator mutually acceptable to both parties to conduct a non-binding mediation of the issues involved and make a recommendation to both parties in order to settle the dispute. The parties agree to be responsible for their respective costs and fees incurred during the mediation and that the mediator's fees and costs shall be paid in equal amounts by each party.
10. COUNTY and TOWN agree to jointly hold construction meetings, if needed, with the contractor engaged to construct the Project. The parties agree to designate in writing their representatives for such meetings.
11. This Agreement may be amended only by a written document duly executed by both parties.

12. 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 in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior contemporaneous representations or agreements, whether oral or written.
13. 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 person 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.
14. 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 one of the following methods: (i) hand delivery to the other party; (ii) delivery by commercial overnight courier service; or (iii) mailed by registered or certified mail (postage prepaid), return receipt requested. For purposes of notice the addresses are:

COUNTY

County Administrator
Martin County Board of County Commissioners
2401 Monterey Road
Stuart, FL 34996

Required Copy to:

County Attorney
Martin County Board of County Commissioners
2401 SE Monterey Road
Stuart, FL 34996

TOWN:

Town Manager
Town of Jupiter Island
2 Bridge Road
Hobe Sound, FL 33455

Notice given in accordance with the provision of this paragraph shall be deemed to be delivered and effective on the date of hand delivery or on the second day after the date of the deposit with an overnight courier or on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not delivered if mailed.

15. The Project Manager for the TOWN is John Duchock, P.E., Beach District Director (772-545-0187).
16. This Agreement shall remain in effect during the construction of the Project and for the useful life of the Project. The useful life of the Project is defined as the period of time between the Town's re-nourishment projects.

17. Except as otherwise provided in this Agreement, neither party shall be deemed in default or in breach of the Agreement to the extent it shall be unable to perform due to an event of Force Majeure. For the purpose of this Agreement, Force Majeure shall mean and include any act of God, accident, fire, lockout, strike or other labor dispute, riot or civil commotion, act of a public enemy, failure of transportation facilities, enactment, rule, order, or act of government or governmental instrumentality (whether domestic or international and whether federal, state or local, or the international equivalent thereof), failure of technical facilities, or any other cause of any nature whatsoever beyond the control of either party which was not avoidable in the exercise of reasonable care and foresight.
18. To the extent permitted by Florida Law, and as limited in accordance with Section 768.28 Florida Statutes, the parties agree to be responsible for all claims, actions, demands, suits, losses, expenses (including attorney's fees), judgments and liabilities arising out of or from the acts, negligence or misconduct of themselves and their agents, officers, directors, employees, members, or managers occurring in connection with this Agreement. Provided however, nothing herein shall be construed as a waiver of the sovereign immunity afforded either party by the Florida Constitution, a waiver of the provisions of Section 768.28, Fla. Stat. or a consent to be sued by third parties.
19. The parties expressly agree that each party will bear its own attorney's fees and court costs incurred in connection with this Agreement.
20. The parties expressly and specifically hereby waive the right to a jury trial as to any issue in any way connected with this Agreement.
21. This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Martin County, Florida.
22. This Agreement may not be assigned by either party.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day, month and year aforesaid.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

CAROLYN TIMMANN
CLERK OF THE CIRCUIT COURT
AND COMPTROLLER

EDWARD V. CIAMPI, CHAIRMAN

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

SARAH W. WOODS
COUNTY ATTORNEY

ATTEST:

TOWN OF JUPITER ISLAND

VANESSA MUTCHNIK, TOWN CLERK

WHITNEY D. PIDOT, MAYOR

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

JOHN RANDOLPH
TOWN ATTORNEY