

MAY - 5 2015

CITY OF FT. PIERCE
CITY MANAGER'S OFFICE

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Robert J. Bradshaw, City Manager

FROM: Robert V. Schwerer, City Attorney

SUBJECT: Porpoise Beach Interlocal Agreement County Donation

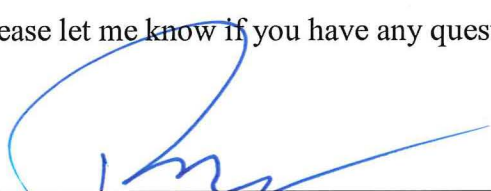
DATE: May 4, 2015

The Interlocal Agreement between the City and the County providing for the donation of property for inclusion with Porpoise Beach parcel has been finalized and is approved as to form and correctness, a copy attached. Please have your Staff agenda this item for Commission consideration and approval on the next available agenda. It is our understanding the County will do likewise.

The terms and conditions of the Interlocal Agreement were negotiated between the respective Staffs who are recommending approval.

As noted in the Agreement, the City will be receiving a Phase I Environmental Report and a Survey from the County during the due diligence period.

Please let me know if you have any questions concerning the above.



Robert V. Schwerer, City Attorney

/mlp

Attachment

cc: Fort Pierce Mayor and Commissioners (*via email*)
Nicholas Mimms, Deputy City Manager (*via email*)
Linda Cox, City Clerk (*via email*)
John R. Andrews, City Engineer (*via email*)
Mike Reals, Public Works Manager (*via email*)
Karen Emerson, Assistant City Attorney (*via email*)

**AGREEMENT BETWEEN THE CITY OF FORT PIERCE AND
ST. LUCIE COUNTY TO DONATE REAL PROPERTY**

THIS DONATION AGREEMENT (hereinafter "**Agreement**") is entered into by and between **THE CITY OF FORT PIERCE, FLORIDA**, a municipal corporation, whose address is 100 North U.S. Highway 1, Fort Pierce, Florida 34950 (hereinafter "**City**"), and **ST. LUCIE COUNTY**, a political subdivision of the State of Florida (hereinafter "**County**"), whose address is 2300 Virginia Avenue, Fort Pierce, Florida 34982.

WITNESSETH:

WHEREAS, the **County** is an owner of two parcels of real property (henceforth "**Russ Parcel**") situate and being in St. Lucie County, Florida, more particularly described as follows:

Parcel ID 2401-502-0008-000-4 and 2401-502-0009-000-1 - Lots 8 and 9, Block 1 of REVISED PLAT OF PALM HAVEN SUBDIVISION, according to the Plat thereof as recorded in Plat Book 8, Page(s) 44, of the Public Records of St. Lucie County, Florida, LESS that portion lying East of line described in Plat Book 14, Page 48 of the Public Records of St. Lucie County, Florida.

WHEREAS, the **City** is the owner of a parcel of real property (hereinafter "**Porpoise Beach**") situate and being in St. Lucie County, Florida. Such property is more particularly described as follows:

A 60' right-of-way in Block 1 labeled Palma Avenue, REVISED PLAT OF PALM HAVEN SUBDIVISION, according to the Plat thereof as recorded in Plat Book 8, Page(s) 44, of the Public Records of St. Lucie County, Florida now known as Porpoise Beach Access.

WHEREAS, the **County** wishes to donate the **Russ** parcel to the **City**.

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

1. **PROPERTY AND APPURTENANCES:** The **Russ Parcel**, as more particularly described herein, will be conveyed together with all tenements, hereditaments and appurtenances thereunto belonging, all of which shall be deemed part and parcel of the **Russ Parcel**.

2. **FEASIBILITY DETERMINATION:** The **City** shall have 20 days from the **City's** receipt of the Boundary Survey and the Phase I Assessment to determine the feasibility of the donation (hereinafter "**Feasibility Determination**"). During the **Feasibility Determination** Period, the **City** may undertake at its respective expense, such physical inspections, tests and

other investigations as may be deemed necessary in order to evaluate the feasibility of the donation. For purposes of undertaking physical inspections, tests or investigations of the properties, the **County** grants to the **City**, its agents, and professionals engaged by such parties, the right to enter upon the **Russ** Parcel and any part thereof during the **Feasibility Determination**. The presence on the party of such personnel shall be only for the purpose of conducting such inspections, tests or investigations as are necessary to make the assessments which are within the scope of this **Agreement**, and no other personnel activity shall be permitted. Any alternations or changes to the properties that are a direct result of the inspecting, testing and investigations will be repaired and replaced if a closing does not occur. Each party indemnifies the other against any loss or damages to the other party's parcel(s) arising out of, or in connection with, any inspection, testing or investigation of the property. The indemnification shall not cover any loss or damage due to preexisting conditions, problems or deficiencies of the property that are discovered through the inspection, testing and investigation authorized herein. The decision as to whether it is feasible to accept the donation of the **Russ** Parcel shall be at the sole discretion of the **City**. If the **City** determines that it is not feasible to accept the donation of the **Russ** Parcel then this **Agreement** will be terminated.

3. **TITLE EVIDENCE:** Within 10 days of the effective date, as hereinafter defined, the **County** shall cause a thirty (30) year title search and a commitment for title insurance to be issued for the **Russ** Parcel. The **City** shall have until the expiration of the **Feasibility Determination** Period to examine the search and commitment delivered to them and to notify the other party in writing specifying any objections which would render title unmarketable in accordance with current Uniform Title Standards adopted by the Florida Bar (hereinafter "**Title Defect**"). The **County** shall have until the closing date to remove such **Title Defect**, but without obligation to bring suits therefore, or to expend any funds in the removal of such **Title Defect**, and if the **County** is unsuccessful in removing same, the other party shall have only the options of (a) waiving such **Title Defect** and accepting title as it is, or (b) terminating the **Agreement**, or (c) entering into any resolution which may be mutually acceptable to the parties.

4. **RESTRICTIONS, EASEMENTS, AND LIMITATIONS:** The **City** shall take title subject to: zoning, restrictions, prohibitions and other agreements imposed by governmental authority, restrictions and matters appearing on the plat or otherwise common to the subdivision, public utility easements of record, zoning classifications and such other provisions of governmental regulation as are applicable. But any other provision herein notwithstanding, it is nevertheless agreed by the respective parties as follows:

(a) **Reverter:** The **Russ** Parcel to be donated must be used henceforth by the **City** solely for public purposes. In addition, the **City** agrees to incorporate the **Russ** Parcel as part of the **City's Porpoise Beach Park** and construct parking and access improvements on the **Russ** property within five (5) years from the date of the Deed. In the event the substantial, predominant use to be made of such property is for a use other than a public purpose, or in the event the **City** fails to construct access and parking on the **Russ** Parcel within the five (5) year period, then, in that event, such property shall revert to the **County**.

(b) **Easement in Favor of County:** The **County** shall retain a 20' easement along the northern parcel boundary for access for beach renourishment purposes, which easement is to allow the **County** to use such property for beach renourishment activities such as beach and dune restoration. The easement will contain a clause that the City will endeavor not to build any improvements or structures within the easement area. The easement will also provide that the County will restore landscaping within the easement area if access is required.

Except as otherwise disclosed in this **Agreement**, the **County**, with respect to the parcel(s) it is conveying, represents and warrants to the other as follows, which representations and warranties survive closing:

(a) That it has good, marketable fee simple title to, and is in possession of, the parcel(s) free and clear of all liens, security interest and encumbrances, excluding only those:

- (i) Which will be satisfied or released at closing; and
- (ii) To which the other party's title shall be subject as otherwise provided in this **Agreement**.

(b) That there is ingress and egress to the parcel(s).

(c) That there is no litigation or proceeding pending or threatened against or relating to the parcel(s).

(d) That it has full power and authority to enter into and perform this **Agreement** in accordance with its terms and the completion of this transaction will not violate any law, regulation or agreement affecting it or the parcel(s) it is conveying.

5. **POSSESSION:** Possession of the property shall be delivered at the time of closing.

6. **AS IS:** Subject to the specific representations, warranties and disclosures contained in this **Agreement**, the property is conveyed "As-Is", "Where-Is" and "With All Faults" as of the closing date. Each party has, or will inspect the parcel(s) being acquired and is familiar, or will become familiar with, the physical condition thereof.

7. **CLOSING:**

(a) **Closing Date:** The closing of this **Agreement** and the transfer of title and possession of the property, shall occur within 30 days after the expiration of the **Feasibility Determination** Period (hereinafter "**Closing Date**") unless otherwise extended by the terms herein. Closing shall be held within the County at a site agreeable to the parties or by mail.

(b) **Conveyance:** Conveyance of the parcel shall be by County Deed in accordance with Section 125.411, Florida Statutes from the **County**.

(c) **Documents for Closing:** The closing agent designated by the **County** shall prepare the closing documents including, but not limited to, the Deed, the Ownership and Lien Affidavit, the Certificate of Non-Foreign Status, and the Closing Statement.

(d) **Allocation of Expenses:** The **County** shall pay the cost of recording the Deed. Each party shall pay its respective attorney's fees.

8. **DEFAULTS:**

(a) **Notice of Default:** No default as to any provision of this **Agreement** shall be claimed or charged by either party hereto against the other until notice thereof has been given to the defaulting party in writing, and such default remains uncured for a period of five (5) business days after the defaulting party's receipt of such notice.

(b) **Remedy for Default:** If either party defaults on its obligations under this **Agreement**, without fault on the part of the other party, the non-defaulting party may terminate this **Agreement**, or alternatively, may seek specific performance against the defaulting party. Both parties agree that any action for specific performance shall be commenced within ninety (90) days of the occurrence of default or be forever barred. Under no circumstances shall either party have any claim or right of claim against the other party for monetary damages, including attorney's fees.

9. **MISCELLANEOUS:**

(a) **Binding Effect; Successors and Assigns:** This **Agreement** shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns, if any.

(b) **Assignment:** This **Agreement** may not be assigned except upon the prior written consent of the other party.

(c) **Captions:** The caption for each paragraph or subparagraph of this **Agreement** is for convenience and reference only and in no way defines, describes, extends or limits the scope or intent of this **Agreement**, or the intent of any provision hereof.

(d) **Severability:** If any provision of this **Agreement**, the deletion of which would not materially adversely affect the material benefits receivable by any party hereunder or substantially increase the burden of any party hereto, shall be held to be invalid or unenforceable to any extent, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this **Agreement**.

(e) **Execution of Documents:** Each party hereto covenants and agrees that such party will at any time and from to time do such acts and execute, acknowledge and deliver such documents, including corrective instruments, reasonably requested by one part of the other party, or their counsel, necessary to carry out fully and effectuate the exchange contemplated and to convey good, marketable and insurable title to the property and all parts thereof.

(f) **Duplicate Execution:** The parties shall execute two (2) copies of this **Agreement**, so that each may retain an original copy thereof in its official records.

(g) **Conflict Resolution:** In the event it shall be necessary for either party to this **Agreement** to bring suit to enforce any provision hereof (before or after closing), the parties shall first avail themselves of such pre-suit remedies as are provided by law and as are applicable, including but not limited to the Florida Governmental Conflict Resolution Act.

(h) **Entire Agreement; Amendments:** This **Agreement** contains the entire and sole understanding between the parties hereto relative to the exchange of parcels and it may only be amended or modified by an agreement in writing executed by all parties with the same formalities as this **Agreement**.

(i) **Notices:** All notices and correspondence shall be (i) hand delivered (with signed acknowledgement of receipt or affidavit of delivery), (ii) delivered by registered or certified mail, return receipt requested, (iii) delivered by overnight carrier with signed acknowledgement of receipt, or (iv) delivered by telephonically transmitted facsimile with confirmation of transmission. All such notices and correspondence shall be sent to the respective parties, with copies forwarded to their agents or attorneys, at the address set forth below or at such other addresses as the parties hereto shall designate to each other in writing:

(i) if to County, to: St. Lucie County
Attn: Howard Tipton
County Administrator
2300 Virginia Avenue
Fort Pierce, Florida 34982

with copies to: St. Lucie County
County Attorney
2300 Virginia Avenue
Fort Pierce, Florida 34982

(ii) If to City, to: City of Fort Pierce
Attn: Robert Bradshaw
City Manager
100 North U.S. Highway 1
Fort Pierce, Florida 34950

with copies to: City of Fort Pierce
Attn: Robert V. Schwerer, Esq.
City Attorney
100 North U.S. Highway 1
Fort Pierce, Florida 34950

Any notice or demand so given, delivered or made by United States Mail, shall be deemed so given, delivered or made three (3) days (excluding Sundays and holidays) after the same is deposited in the United States Mail, registered or certified, return receipt requested, addressed as above provided, with postage thereon prepaid. Any such notice, demand or document hand-delivered or made by overnight carrier shall be deemed to be given, delivered or made upon delivery (or attempted delivery if delivery is not accepted) of the same at the address where the same is to be given, delivered or made. Any such notice, demand or document delivered by means of telephonically transmitted facsimile shall be deemed to be given, delivered or made upon receipt provided that any such receipt occurring on a Saturday, Sunday, holiday or after 5:00 p.m. on any business day shall be deemed to have occurred the next following business day.

(j) **Interpretation:** This **Agreement** has been submitted to the scrutiny of each party hereto and each party has had opportunity to have it reviewed by legal counsel. This **Agreement** shall be given fair and reasonable interpretation in accordance with the words used herein without consideration or weight being given to its having been drafted by either party hereto or their respective counsel.

(k) **Non-Waiver:** No covenant, term, or condition (or the breach thereof), shall be deemed waived, except by written consent of the party against whom the waiver is claimed. A waiver of any covenant, term, or condition (or breach thereof) shall not be deemed to be a waiver of any other covenant, term or condition (or breach thereof).

(l) **Effective Date:** This **Agreement** shall be effective ("**Effective Date**") upon approval of both parties.

IN WITNESS WHEREOF, the parties hereto have caused this **Agreement** to be executed on the dates accompanied by their respective executions.

CITY OF FORT PIERCE, FLORIDA,
a Florida Municipal Corporation


Linda Hudson, Mayor

Date: _____

ATTEST:

Linda Cox, City Clerk

APPROVED AS TO FORM AND CORRECTNESS



Robert V. Schwerer, Esq.
City Attorney

ST. LUCIE COUNTY,
a Political Subdivision of the State of Florida

By: _____
Chair

Date: _____

ATTEST:

Deputy Clerk

APPROVED AS TO FORM AND CORRECTNESS

County Attorney