
INTERLOCAL AGREEMENT
regarding
JOINT USE OF SURPLUS CONCESSION FUNDS

MANATEE COUNTY, FLORIDA CITY
OF BRADENTON BEACH, FLORIDA

This Interlocal Agreement (“Interlocal Agreement” or “Agreement”) is made and entered into as of the __ day of October, 2018, by and between **Manatee County**, a political subdivision of the State of Florida, hereinafter referred to as the “County”, and the **City of Bradenton Beach**, a municipal corporation created and existing under the laws of the State of Florida, hereinafter referred to as the “City”.

RECITALS

WHEREAS, pursuant to and in accordance with Section 125.01, *Florida Statutes*, the County has adopted Resolution No. R-14-119 (the “Resolution”), providing guidelines for the expenditure of “Surplus Concession Revenues”, as defined in the Resolution, which are generated by the County’s operation of food, beverage and beach shop concessions on Anna Maria Island; and

WHEREAS, the Resolution authorizes the use of Surplus Concession Revenues for capital projects that serve a valid public purpose and benefit the entire Anna Maria Island, to be constructed by one or more municipalities on Anna Maria Island and funded in part by Surplus Concession Revenues through an interlocal agreement with the County; and

WHEREAS, the municipalities on Anna Maria Island have jointly created an itemized list of projects qualifying under the Resolution, including the projects (the “Projects”) to be completed by the City and described on Exhibit “A” attached hereto and incorporated herein by reference; and

WHEREAS, the Projects constitute an “Intergovernmental Project” within the meaning set forth in the Resolution, and are eligible for funding with Surplus Concession Revenues in accordance with the guidelines in the Resolution; and

WHEREAS, Section 163.01, *Florida Statutes*, the “Florida Interlocal Cooperation Act”, permits the County and the City to enter into this Interlocal Agreement to exercise the powers, privileges and authority which they share in common and which each might exercise separately, in order to make the most efficient use of their powers; and

WHEREAS, the County and the City wish to enter into this Interlocal Agreement to establish their mutual rights and obligations with respect to joint participation in the funding of the Projects with Surplus Concession Revenues.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the County and the City agree as follows:

Article I
AUTHORITY

This Interlocal Agreement is entered into pursuant to the powers and authority granted to the parties hereto under the Constitution and laws of the State of Florida, including expressly (but not limited to) Sections 1 and 2 of Article VIII of the Constitution of the State of Florida, Chapters 125 and 166 of Florida Statutes and Section 163.01 of Florida Statutes.

Article II
COUNTY CONTRIBUTION TOWARD PROJECT FUNDING

2.1 The City shall design, permit and construct the Projects, either with its own forces or through contracted service providers, substantially in accordance with the description of the Projects set forth in Exhibit “A”.

2.2 County Contribution Toward Project Funding. The County shall reimburse the City for actual costs incurred in the design, permitting and construction of the Projects (such eligible costs to be referred to herein as “Project Costs”), in an amount not to exceed two hundred ninety eight thousand two hundred and thirty dollars (\$298,230), subject to:

- (i) Throughout the course of the Projects, the City paying at least fifty percent (50%) of such Project Costs as they are incurred, up to a total reimbursement by the County of two hundred ninety eight thousand two hundred and thirty dollars (\$298,230), with a match by the City of two hundred ninety eight thousand two hundred and thirty dollars (\$298,230) as a 50% / 50% match of City and County funding of the Projects.

The City shall also be responsible for paying one hundred percent (100%) of such Project Costs in excess of aggregate City and County funded Project Costs of five hundred ninety six thousand four hundred and sixty dollars (\$596,460), as may be necessary to complete construction of the Projects.

2.3 Invoice and Payment. The County shall reimburse the City for fifty percent (50%) of the Project Costs up to a total of two hundred ninety eight thousand two hundred and thirty dollars (\$298,230) described in Section 2.2, within ninety (90) days of receipt of an application for payment that meets the requirements of this Section. The City’s applications for payment shall be submitted as written requests to the County Administrator and shall: (i) identify all Project Costs funded by the City for which a 50% / 50% matching fund reimbursement is requested; and (ii) include detailed invoices (indicated as paid with reference to date of payment and check number), copies of cancelled

checks (front & back) and a completed W-9, and any other documentation acceptable to the County reasonably necessary to identify the Project Costs incurred and funded by the City. The City shall apportion reimbursable costs on a monthly basis, and shall submit applications for payment no more frequently than once every three (3) months.

2.4 Use of County Payments. The City shall use the funds paid by the County to the City hereunder solely for the purpose of paying Project Costs.

Article III
TERM AND TERMINATION.

3.1 Effective Date. This Interlocal Agreement shall take effect as of its date set forth above.

3.2 Termination. Unless terminated for cause in accordance with applicable law, this Interlocal Agreement shall terminate on September 30, 2019.

Article IV
AMENDMENTS; ENFORCEMENT

4.1 Amendments Generally. This Interlocal Agreement may be amended, and its material provisions may be waived, only by written instrument expressly approved for the County by the Board of County Commissioners and for the City by the City Council, and only if properly executed by all the parties hereto.

4.2. Enforcement. The parties to this Interlocal Agreement shall have all legal and equitable remedies provided by Florida law for enforcement hereof.

Article V
MISCELLANEOUS PROVISIONS

5.1 Validity. After consultation with their respective legal counsel, the County and the City each represents and warrants to the other its respective authority and power under Florida law to enter into this Interlocal Agreement, acknowledges the validity and enforceability of this Interlocal Agreement, and waives any future right of defense based on claim of illegality, invalidity or unenforceability of any nature. The City and the County each hereby represents, warrants and covenants to and with the other (i) that this Interlocal Agreement has been validly approved by its respective governing body at a duly held public meeting, and (ii) that this Interlocal Agreement constitutes a legal, valid and binding contract enforceable against the respective party in accordance with the terms hereof (assuming the due authorization, execution and delivery hereof by the other party hereto).

5.2 No General Obligation; Availability of Funds.

A. Notwithstanding any other provisions of this Interlocal Agreement, the obligations undertaken by the parties hereto shall not be construed to be or constitute general obligations, debts or liabilities of the City, the County or the State of Florida or any political subdivision thereof within the meaning of the Constitution and laws of the State of Florida, but shall be payable solely in the manner and to the extent provided in or contemplated by the respective authorizing instruments and this Interlocal Agreement.

B. The County intends to fund the reimbursements to be made hereunder with legally available Surplus Concession Revenues. The obligations of the County to reimburse the City for Reimbursable Costs hereunder is subject to the discretion of the Board of County Commissioners to budget legally available funds, including without limitation Surplus Concession Revenues, as well as other revenues, in amounts sufficient to fund on a year-by-year basis such reimbursements. To the

extent of any conflict between this subsection and any other provision of this Interlocal Agreement, this subsection shall control.

5.3 Indemnification. To the extent permitted by law, including without limitation Section 768.28, Florida Statutes and the dollar limitations set forth therein, and from legally available funds, each of the parties hereto (in such context, an “indemnifying party”) shall defend, indemnify and save harmless the other, its officers, agents, employees and assigns, from and against any and all liabilities, claims, damages, losses and expenses, including costs and attorneys fees, arising out of or resulting from the negligent or wrongful acts or omissions of such indemnifying party, its officers, agents or employees, made in connection with the performance of the acts, duties, covenants and obligations contemplated in, or imposed pursuant to, this Interlocal Agreement.

5.4 Force Majeure. No party shall be liable for any failure to perform, or delay in the performance of, any obligation under this Interlocal Agreement if such failure is caused directly by hurricane, tornado, fire, earthquake, civil commotion or failure or disruption of utility services, or other like cause beyond the reasonable control of the party obliged to perform.

5.5 Ambiguities. Both parties have been allowed equal input regarding the terms and wording of this Interlocal Agreement and have had the benefit of consultation with legal counsel prior to its execution, such that all language herein shall be construed equally against the parties, and no language shall be construed strictly against its drafter.

5.6 Headings; Construction. The headings or captions of sections or paragraphs used in this Interlocal Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Interlocal Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine and neuter, singular or plural, as the identities of the party or parties, personal representatives, subcontractors, successors or assigns may require.

5.7 Severability. The provisions of this Interlocal Agreement are declared by the parties to be severable.

5.8 Governing Law; Venue. This Interlocal Agreement shall be governed by and construed in accordance with laws of the State of Florida, and venue for any action arising out of or related to this Interlocal Agreement shall be in the Circuit Court for the Twelfth Judicial Circuit in Manatee County, Florida.

5.9 Full Agreement; Filing with Clerk of Circuit Court. This Interlocal Agreement contains the entire agreement of the parties with respect to the matters addressed herein. Previous agreements and understandings of the parties with respect to such matters are null and void and of no effect. As required by Subsection 163.01(11) of Florida Statutes, this Interlocal Agreement and all amendments thereto shall be filed with the Clerk to the Circuit Court for Manatee County.

5.10 Notices. All notices, elections, requests and other communications hereunder shall be in writing and shall be deemed given in the following circumstances: when personally delivered; or three (3) business days after being deposited in the United States Mail, postage prepaid, certified or registered; or the next business day after being deposited with a recognized overnight mail or courier delivery service; or when transmitted by facsimile or telecopy transmission, with receipt acknowledged upon transmission; and addressed as follows (or to such other person or at such other address, of which any party hereto shall give written notice as provided herein):

If to County: Manatee County Administrator
Manatee County Administration Center
1112 Manatee Avenue, Suite 920
Bradenton, Florida 34205
Facsimile: (941)745-3790

With copies to: Manatee County Clerk of the Circuit Court
Angelina Colonnese, Clerk
1115 Manatee Avenue West
Bradenton, Florida 34205
Facsimile: (941)741-4082

And

Manatee County Attorney's Office
1112 Manatee Avenue West, Suite 969
Bradenton, Florida 34205
Attention: County Attorney
Facsimile: (941)749-3089

If to City: City of Bradenton Beach
107 Gulf Drive North
Bradenton Beach, FL 34217
Attention: Mayor
Facsimile: (941) 778-7585

In all cases, notices shall be deemed delivered to a party only upon delivery of copies to the persons indicated above in the same manner as for the party being notified.

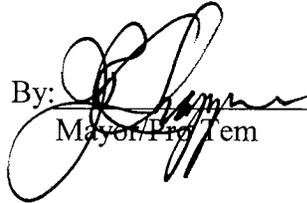
[signature page to follow]

WHEREFORE, the County and the City have executed this Interlocal Agreement as of the date and year first above written.

MANATEE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
County Administrator

CITY OF BRADENTON BEACH, FLORIDA

By:  _____
Mayor/Pro Tem

ATTEST: _____, City Clerk



EXHIBIT "A"
to
Interlocal Agreement
Description of Project