

INTERLOCAL AGREEMENT

This Interlocal Agreement is made the ____ day of _____, 2018, by and between the Port of Palm Beach District, a district created and existing pursuant to 1915 Fla. Laws 7081, as amended from time (hereinafter "PORT"), and the Town of Palm Beach, a Florida Municipal Corporation (hereinafter "TOWN"), each constituting a public agency as defined in Part I of Chapter 163, Florida Statutes.

WITNESSETH:

WHEREAS, the Port is undertaking certain improvements involving its Berth 1, located immediately eastward of the Port of Palm Beach Maritime Office Complex. ("Berth 1"); and

WHEREAS, in connection with those improvements, the Port desires to relocate 300 corals having a size equal to or greater than 10cm ("Primary Coral"), and has additional corals smaller than the Primary Corals ("Secondary Corals");

WHEREAS, the TOWN desires to obtain all of the Primary Corals and may wish to relocate some of the Secondary Corals;

WHEREAS, the relocation of the Corals will benefit both the TOWN and the Port; and

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein to be kept and performed by the parties hereto, and for the mutual welfare of the Port and the TOWN, it is agreed as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein by reference.
2. Term. Unless agreed by both parties in writing, and approved by their respective Boards, this Interlocal Agreement shall expire at the end of three years from the Effective Date. The Effective Date of this Interlocal Agreement shall be that date on which the last party has executed this Interlocal Agreement.
3. TOWN Responsibilities and Functions. TOWN shall relocate all of the Primary Corals in accordance with the DRAFT Coral Relocation Plan attached as EXHIBIT A (a part of ACOE Permit SAJ-1990-03372 (NW-LCK)), as set forth below, time being of the essence so as not to interfere with construction. Upon completion of relocation of the Primary Corals, Port shall pay the sum of TWENTY NINE THOUSAND FOUR HUNDRED FORTY TWO DOLLARS (\$29,442.00) to the TOWN. Upon completion of the relocation of the Primary Corals, TOWN shall have right to relocate Secondary Corals until Port gives notice that such relocation must cease due to construction, which notice shall terminate the Town's right to relocate Secondary Corals. Relocation of Secondary Corals shall be at Town's sole cost and expense.

The Port of Palm Beach will control all actual scheduling (due to cargo vessel coordination, contractor vessel coordination and construction coordination) and the parties acknowledge and agree that, in the event that conditions or circumstances are not safe or convenient or efficient, or interfere with tenant use, either party can terminate this agreement, however, if a majority of the Primary Corals have been removed, then both parties shall continue with the coral relocation and have their continuing obligations under Sections 4, 5 and 6 provided that construction and Port operations shall not be impacted.

4. Continuing Monitoring and Reporting. TOWN acknowledges that there will be certain monitoring and reporting obligations in connection with the Primary Corals. TOWN will be responsible for all such monitoring and reporting, but Port shall reimburse TOWN for the cost of each monitoring event required under the License (defined in Section 5), not to exceed \$5,000 per event.
5. Florida Fish and Wildlife Conservation Commission, Division of Marine Fisheries Management License. All work shall be done in accordance with Florida Fish and Wildlife Conservation Commission, Division of Marine Fisheries Management License SAJ-1990-03372(AP-LCK), showing a date stamp of December 8, 2017, a copy of which is attached as EXHIBIT B (“License”).
6. Miscellaneous Provisions.
 - A. Nothing contained in this Interlocal Agreement shall be construed to constitute a transfer of powers in any way whatsoever. This Interlocal Agreement is solely an Interlocal Agreement to provide services as authorized by Chapter 163, Florida Statutes. The TOWN’s and the Port’s governing bodies shall each retain all legislative authority with regard to their respective governing body. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, and pensions and relief, disability, worker’s compensation and other benefits which apply to the activity of officers, agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents or employees extraterritorially under the provisions of any such Interlocal Agreement.
 - B. Nothing contained herein shall be deemed a limitation of the jurisdiction or law enforcement responsibilities of the TOWN with respect to the Port of Palm Beach property.
 - C. All required notices under this agreement shall be sent to the parties at the following addresses, by certified mail, facsimile or hand delivery:

If to Port: Port of Palm Beach District
One East Eleventh Street, Suite 600
Riviera Beach, FL 33404
Attn: Executive Director
Facsimile: (561) 842-4240

With a copy to: John W. Gary, III, Esq.
Gary, Dytrych & Ryan, P.A.
701 U.S. Highway One, Suite 402
North Palm Beach, FL 33408
Facsimile: (561) 844-2388

If to TOWN: Attn: Town Manager
360 South County Road
Palm Beach, FL 33480

With a copy to: John Randolph, Esq.
Jones & Foster
505 South Flagler Drive, Suite 1100
West Palm Beach, FL 33401

- D. This Interlocal Agreement and any dispute, disagreement, or issue of construction, declaration or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Any and all action necessary to enforce the Interlocal Agreement will be held in Palm Beach County, Florida. If any action whether in law, equity or otherwise is brought for the interpretation or enforcement of this Interlocal Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Interlocal Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court cost (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.
- E. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party or any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
- F. To the extent permitted by law, the TOWN shall indemnify and hold the Port harmless for any liability or causes of action for damages which may arise from the negligent acts or omissions of Riviera Beach's employees in the performance of this Interlocal Agreement. Likewise, to the extent permitted by law, the Port shall indemnify and hold the TOWN harmless for any liability or causes of action for damages which may arise from the negligent acts or omissions of the Port employees in the performance of this Interlocal Agreement. Nothing in this provision shall be construed as consent by the TOWN or by the Port to be sued, nor as a waiver of sovereign immunity beyond the limits provided for in Section 768.28, Florida Statutes.
- G. Should any provision of this Interlocal Agreement be declared invalid by a court of competent jurisdiction, same shall be deemed stricken here from and all other terms and

conditions of this Interlocal Agreement shall continue in full force and effect as if such invalid provision had never been made a part thereof.

- H. No delay by either party in enforcing any covenant or right hereunder shall be deemed a waiver of such covenant or right, and no waiver of any particular provision hereof shall be deemed a waiver of any other provision or a continuing waiver of such particular provision, and except as so expressly waived, all provisions hereof shall continue in full force and effect.
- I. This Interlocal Agreement constitutes the entire understanding of the parties with respect to the provision of law enforcement personnel and equipment. It may not be modified, nor any of its provisions waived unless such modification and/or waiver is in writing and is agreed to and signed by both parties.
- J. Upon execution by the parties, the Port agrees to file a copy of this Interlocal Agreement with the Clerk of the Circuit Court in and for Palm Beach County pursuant to Section 163.01 (11), Florida Statutes.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this _____ day of _____, 2018.

WITNESSES:

DISTRICT:
PORT OF PALM BEACH DISTRICT

By: _____
_____, Chairman
Date: _____, 2018

Printed Name of Witness: _____

Printed Name of Witness: _____

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

PORT ATTORNEY

TOWN OF PALM BEACH

By: _____, Title
Date: _____, 2018

Printed Name of Witness: _____

Printed Name of Witness: _____

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

TOWN ATTORNEY