

INTERLOCAL AGREEMENT
BETWEEN
CITY OF POMPANO BEACH
AND HILLSBORO INLET DISTRICT
PROVIDING FOR
HILLSBORO INLET DISTRICT'S
USE OF A PUBLIC PARK

THIS IS AN INTERLOCAL AGREEMENT in accordance with the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, providing for joint operation and maintenance of a public park, between the City of Pompano Beach, a municipal corporation organized and existing under the laws of the State of Florida, its successors and assigns, hereinafter referred to as "POMPANO BEACH," and the Hillsboro Inlet District, a special taxing district organized and existing under the laws of the State of Florida, its successors and assigns, hereinafter referred to as "HILLSBORO INLET DISTRICT."

WHEREAS, HILLSBORO INLET DISTRICT is undertaking a project to rehabilitate the South Jetty at the Hillsboro Inlet, and desires to use Exchange Club Park for transferring the wooden cribbage from the construction barge to the upland property at Exchange Club Park for temporary storage until it can be hauled away for permanent and proper disposal, and for delivery and staging of construction materials for temporary storage until they will be placed at the South Jetty; and,

WHEREAS, the Florida Inland Navigation District (F.I.N.D.) has conceptually approved HILLSBORO INLET DISTRICT's request to use Exchange Club Park for temporary storage and staging of construction materials for the Hillsboro Inlet District South Jetty Rehabilitation Project,

and requires POMPANO BEACH and HILLSBORO INLET DISTRICT to enter into a Interlocal Agreement for HILLSBORO INLET DISTRICT's use of the Exchange Club Park for temporary storage and staging of construction materials; and,

WHEREAS, the parties agree that entering into this Interlocal Agreement serves a municipal and public purpose, and is in the best interest of the public's health, safety, and welfare.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants and undertakings hereinafter set forth, said cities hereby agree as follows:

1. DESCRIPTION OF SITE.

POMPANO BEACH operates and maintains a public park on the site known as the Northeast 24th Street F.I.N.D. property and currently referred to as "Exchange Club Park", owned by the Florida Inland Navigation District (F.I.N.D.) and designated by said District as MSA 726, which site is particularly described as follows:

**SEE EXHIBIT "A" ATTACHED HERETO
MADE A PART HEREOF**

2. F.I.N.D. LEASE AGREEMENT.

POMPANO BEACH shall maintain its Lease Agreement with Florida Inland Navigation District (F.I.N.D.), owner of the aforesaid property, providing for lease of said property to POMPANO BEACH upon the usual terms and conditions established by F.I.N.D. for leases of its spoils areas. HILLSBORO INLET DISTRICT agrees to reimburse POMPANO BEACH in the amount of one-half of any rental which may be charged for the property by F.I.N.D. It is understood and agreed that this Interlocal Agreement is subject to and subordinate to any applicable terms of the F.I.N.D. Lease Agreement, and that in the event of any conflict between

the terms of this Agreement and the terms of the F.I.N.D. Lease, the F.I.N.D. Lease shall be controlling.

3. EFFECTIVE DATE; TERMS; TERMINATION.

A. Term: This Agreement shall become effective upon the execution of the Agreement by POMPANO BEACH and HILLSBORO INLET DISTRICT. The term of this Agreement shall be for an initial term of one (1) year, with three one (1) year renewals at the option of the parties, provided that the term of this Agreement shall not extend beyond the term of the Lease Agreement between POMPANO BEACH and F.I.N.D, as may be renewed or extended by POMPANO BEACH and F.I.N.D,. Renewals of this Agreement shall be approved by the governing bodies of the parties.

B. Termination. This Agreement may be terminated as follows:

(1) Upon termination or expiration of the said F.I.N.D. Lease, this Interlocal Agreement shall automatically terminate and neither party hereto shall have any further obligations hereunder.

(2) Both Parties may terminate this Agreement upon one hundred twenty (120) days written notice to the other Party.

4. PARK FACILITIES.

Facilities to be maintained at the park shall include, but are not limited to, a picnic area, playfield, walking/jogging path, parking area, restrooms and nature trail and beach area. Additional or substitute facilities may be provided upon approval by the governing bodies of the respective cities.

During the use of Exchange Club Park for the temporary storage and staging of construction materials for their South Jetty Rehabilitation Project (project), Exchange Club Park

shall not be open to the general public. The party using the Exchange Club Park pursuant to this paragraph shall be responsible for securing the park so that it is not used by the public, including the posting of appropriate signage and enforcement.

5. REPAIR AND REPLACEMENT OF FACILITIES.

HILLSBORO INLET DISTRICT undertakes, assumes and agrees to provide all costs involved in repair or replacement of any park facilities or equipment to restore the site to the condition that it was in prior to that HILLSBORO INLET DISTRICT's use of Exchange Club Park for the Project.

6. LAW ENFORCEMENT.

Inasmuch as the entire park site is located within the corporate limits of POMPANO BEACH, law enforcement within the park shall be the responsibility of the Broward County Sheriff for POMPANO BEACH.

7. INDEMNIFICATION.

A. The HILLSBORO INLET DISTRICT is a state agency under Section 768.28, Florida Statutes, and shall be fully responsible for acts and omissions of its agents or employees to the extent permitted by law.

B. In the event the HILLSBORO INLET DISTRICT contracts with a contractor to perform any of the work or activities that will occur on the Exchange Club Park site, any contract with such contractor shall include the following provisions, in substantially the form provided below:

(1) To the fullest extent permitted by law, Contractor shall at all times hereafter indemnify, hold harmless and defend the City of Pompano Beach from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind,

including attorney fees, court costs, and expenses (collectively, a "Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of, contractor, its current or former officers, employees, agents, or servants, arising from, resulting to, or in connection with this Agreement. In the event any Claim is brought against the City of Pompano Beach, contractor shall, upon written notice from the City of Pompano Beach, defend the City of Pompano Beach against each such Claim by counsel satisfactory to the City of Pompano Beach, or at the City of Pompano Beach's option, pay for an attorney selected by the City Attorney to defend the City of Pompano Beach. The obligations of this Section shall survive the expiration or earlier termination of this Agreement.

C. In the event the HILLSBORO INLET DISTRICT contracts with a contractor to provide any of the services related to the use of the Exchange Club Park, the HILLSBORO INLET DISTRICT shall require that each contractor procure and maintain insurance coverage as follows:

CONTRACTOR shall not commence services under the terms of this Agreement until certification or proof of insurance detailing terms and provisions has been received and approved in writing by the CITY's Risk Manager. If you are responding to a bid and have questions regarding the insurance requirements hereunder, please contact the City's Purchasing Department at (954) 786-4098. If the contract has already been awarded, please direct any queries and proof of the requisite insurance coverage to City staff responsible for oversight of the subject project/contract.

CONTRACTOR is responsible to deliver to the CITY for timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the CITY as an additional insured on all such coverage. **Such policy or policies shall be issued by United States Treasury approved companies authorized to do business in the State of Florida. The policies shall be written on forms acceptable to the City's Risk Manager, meet a minimum financial A.M. Best and Company rating of no less than Excellent, and be part of the Florida Insurance Guarantee Association Act. No changes are to be made to these specifications without prior written approval of the City's Risk Manager.**

Throughout the term of this Agreement, CITY, by and through its Risk Manager, reserve the right to review, modify, reject or accept any insurance policies required by this Agreement, including limits, coverages or endorsements. CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as CITY's review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by CONTRACTOR under this Agreement.

Throughout the term of this Agreement, CONTRACTOR and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and limits described herein, including endorsements.

8. INSURANCE.

A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees) or the state in which the work is to be performed or of the state in which Contractor is obligated to pay compensation to employees engaged in the performance of the work. Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

B. Liability Insurance.

(1) Naming the City of Pompano Beach as an additional insured as City's interests may appear, on General Liability Insurance only, relative to claims which arise from Contractor's negligent acts or omissions in connection with Contractor's performance under this Agreement.

(2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

Type of Insurance

Limits of Liability

GENERAL LIABILITY:	Minimum \$1,000,000 Per Occurrence and \$2,000,000 Per Aggregate
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* Policy to be written on a claims incurred basis

XX	comprehensive form	bodily injury and property damage
XX	premises - operations	bodily injury and property damage
—	explosion & collapse	
	Hazard	

___	underground hazard	
___	products/completed operations hazard	bodily injury and property damage combined
XX	contractual insurance	bodily injury and property damage combined
XX	broad form property damage	bodily injury and property damage combined
XX	independent contractors	personal injury
XX	personal injury	
___	sexual abuse/molestation	Minimum \$1,000,000 Per Occurrence and Aggregate

AUTOMOBILE LIABILITY: Minimum \$1,000,000 Per Occurrence and Aggregate. Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined.

- XX comprehensive form
- XX owned
- XX hired
- XX non-owned

REAL & PERSONAL PROPERTY

___ comprehensive form Agent must show proof they have this coverage.

EXCESS LIABILITY

		Per Occurrence	Aggregate
___	other than umbrella	bodily injury and property damage combined	\$1,000,000 \$1,000,000

PROFESSIONAL LIABILITY

		Per Occurrence	Aggregate
___	* Policy to be written on a claims made basis	\$1,000,000	\$1,000,000

(3) If Professional Liability insurance is required, Contractor agrees the indemnification and hold harmless provisions of Section 12 of the Agreement shall survive the termination or expiration of the Agreement for a period of three (3) years unless terminated sooner by the applicable statute of limitations.

C. Employer's Liability. CONTRACTOR and all subcontractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) per employee, Five Hundred Thousand Dollars (\$500,000) per aggregate.

D. Policies: Whenever, under the provisions of this Agreement, insurance is required of the CONTRACTOR, the CONTRACTOR shall promptly provide the following:

- (1) Certificates of Insurance evidencing the required coverage;
- (2) Names and addresses of companies providing coverage;
- (3) Effective and expiration dates of policies; and
- (4) A provision in all policies affording CITY thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

E. Insurance Cancellation or Modification. Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company shall provide thirty (30) days written notice to the CITY.

F. Waiver of Subrogation. CONTRACTOR hereby waives any and all right of subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.

The HILLSBORO INLET DISTRICT shall not permit any contractor to provide services until the insurance requirements of the contractor under this Section are met. If requested by The City of Pompano Beach, the HILLSBORO INLET DISTRICT shall furnish evidence of insurance of all such contractors.

9. STATUS OF EMPLOYEES.

It is expressly understood and agreed that no employee of either POMPANO BEACH or the HILLSBORO INLET DISTRICT shall ever be considered the employee of the other party for any purpose whatsoever, notwithstanding the fact that, at times, employees of both parties may be engaged in construction or other activities at the park site under the supervision and control of a supervising employee of one of the parties.

10. NOTICES.

Unless otherwise specifically provided herein, all notices shall be in writing and sent to the city official designated below at the address designated, postage prepaid, and shall be deemed effective when deposited in the United States Mail.

POMPAÑO BEACH:

City Manager
City of Pompano Beach
100 W. Atlantic Boulevard
Pompano Beach, Florida 33060

HILLSBORO INLET DISTRICT:

General Counsel
Goren, Cherof, Doody & Ezrol, P.A.
3099 E. Commercial Blvd. Ste. 200
Ft. Lauderdale Florida 33308

11. SOLE AGREEMENT.

It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or 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 Interlocal Agreement which are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

12. MODIFICATION.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

13. ASSIGNMENT.

Neither this Agreement nor any right or interest herein will be assigned, transferred, or encumbered without the written consent of the other Party. Notwithstanding the Termination

provisions of Section 3 of this Agreement, either party may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by the other party of this Agreement or any right or interest herein without the advance written consent of the non-assigning party.

14. BINDING.

Both Parties agree that this Agreement will be binding upon any successors and assigns of the parties hereto and may be enforced by appropriate action in court, or courts, of competent jurisdiction.

15. GOVERNMENTAL IMMUNITY.

Nothing herein is intended to serve as a waiver of sovereign immunity by any Party nor will anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract.

16. WAIVER OF BREACH.

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. POMPANO BEACH or HILLSBORO INLET DISTRICT's failure to enforce any provision of this Agreement will not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement will not be deemed a waiver of any subsequent breach and will not be construed to be a modification of the terms of this Agreement.

17. COMPLIANCE WITH LAWS/PERMITS.

POMPANO BEACH and HILLSBORO INLET DISTRICT will comply with all applicable federal, state, and local laws, codes, ordinances, rules, regulations, and permits in performing its duties, responsibilities, and obligations pursuant to this Agreement.

18. SEVERANCE.

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions will continue to be effective.

19. JOINT PREPARATION.

The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document will not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement will be interpreted as to its fair meaning and not strictly for or against any Party.

20. PRIORITY OF PROVISIONS.

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any exhibit incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in the exhibit will prevail and be given effect.

21. JURISDICTION, VENUE, WAIVER OF JURY TRIAL.

This Agreement will be interpreted and construed in accordance with and governed by the laws of the State of Florida. The Parties acknowledge that jurisdiction of any controversies or legal disputes arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder, will be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement will be exclusively in such state courts, forsaking any other jurisdiction which either Party

may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, HILLSBORO INLET DISTRICT AND POMPANO BEACH HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, ARISING FROM, OR IN CONNECTION WITH THIS AGREEMENT.**

22. PRIOR AGREEMENTS.

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof will be predicated upon any prior representation or agreement, whether oral or written.

23. INCORPORATION BY REFERENCE.

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. The attached Exhibit "A" is incorporated into and made part of this Agreement.

24. REPRESENTATION OF AUTHORITY.

Each individual executing this Agreement on behalf of a Party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full legal authority.

25. EXECUTION.

This document shall be executed in three (3) counterparts, each of which shall be deemed to be a duplicate original. One such duplicate original shall be retained by each of the parties and

the third shall be filed with the Clerk of the Circuit Court of Broward County in accordance with the requirements of Section 163.01, Florida Statutes.

26. PUBLIC RECORDS.

Each party agrees to comply with the Florida Public Records Law as provided in Chapter 119, Florida Statutes.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved as to Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

"HILLSBORO INLET DISTRICT":

Witnesses:

Michelle Morrell

Michelle Morrell
Print Name

Abigail Osborne
Print Name

HILLSBORO INLET DISTRICT

By: John H. Holland
JOHN H. HOLLAND, CHAIR

Attest:
Kimberly Longo
KIMBERLY LONGO, SECRETARY

(SEAL)



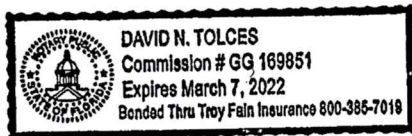
Approved as to Form:

David N. Tolces
DAVID N. TOLCES, ASSISTANT
GENERAL COUNSEL

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 3RD day of April, 2019, by JOHN H. HOLLAND as Chair and KIMBERLY LONGO as Secretary of the Hillsboro Inlet District, Florida, a special taxing district, on behalf of the special taxing district, who are personally known to me.

NOTARY'S SEAL:



David N. Tolces
NOTARY PUBLIC, STATE OF FLORIDA

DAVID N. TOLCES
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

MEB:jrm
4/3/19
l:agr/recr/2019-692

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