

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF PUNTA GORDA AND
CHARLOTTE COUNTY
BUCKLEY'S PASS HARBOR ACCESS PROJECT**

THIS INTERLOCAL AGREEMENT is made and entered into this 12th day of March, 2019, by and between Charlotte County, Florida (the "COUNTY") and the City of Punta Gorda, Florida (the "CITY" and together with the County the "Parties").

W I T N E S S E T H:

WHEREAS, CITY has approved the Buckley's Pass Navigational Access Channel Project (the "Project") that will provide an additional navigational access channel connecting the Punta Gorda Isles canal system to Charlotte Harbor through a shorter, more convenient, and direct route than is currently available through the existing Ponce de Leon Inlet harbor access point; and

WHEREAS, the proposed access channel is approximately 1,446 feet long and 60 feet wide and will be cut through an existing mixed wetland and upland area to connect the CITY's canal system to Alligator Creek, which then connects directly to Charlotte Harbor; and

WHEREAS, the additional harbor access is envisioned in the Punta Gorda Waterfront Development Master Plan and the TEAM Punta Gorda Citizens Master Plan; and

WHEREAS, the CITY is proceeding with the Project and plans to fund the cost of the Project by imposing special assessments against all benefitted properties; and

WHEREAS, the CITY has identified several properties along the northwest side of River Bay Drive that will receive a special benefit from the Project but said properties are in unincorporated Charlotte County and cannot legally be assessed by the CITY; and

WHEREAS, the CITY has requested that the benefitted properties located in unincorporated Charlotte County be assessed by the COUNTY utilizing the same methodology as the CITY and that the proceeds of the assessment collected by COUNTY be transferred to the City on an annual basis; and

WHEREAS, Part I of Chapter 163, Florida Statutes (the "Act"), permits the CITY and the COUNTY, as public agencies under the Act, to enter into interlocal agreements with each other to jointly exercise any power, privilege or authority which they share in common and which each might exercise separately, permitting the CITY and the COUNTY to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual benefit and thereby provide services and facilities in a manner and pursuant to forms of government organization that will best serve geographic, economic, population and other factors influencing the needs and development of the CITY and the COUNTY; and

WHEREAS, this Interlocal Agreement is intended to set forth the COUNTY's commitment to create an MSBU to assess the benefitted properties located in

unincorporated Charlotte County, and set forth the CITY's commitment to complete construction of the Project.

NOW THEREFORE, in consideration of the mutual promises, covenants, obligations, duties and benefits herein set forth, and other valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, the parties hereto agree as follows:

SECTION 1. AUTHORITY FOR INTERLOCAL AGREEMENT. This Interlocal Agreement is adopted pursuant to the provisions of the Act and other applicable provisions of law.

SECTION 2. DEFINITIONS. The following definitions shall govern the interpretation of this Interlocal Agreement:

"Act" means Part I of Chapter 163, Florida Statutes, as amended.

"Capital Cost" means all or any portion of the expenses that are properly attributable to the acquisition, design, engineering, and construction of the Project.

"County" means Charlotte County, a political subdivision of the State of Florida.

"Fiscal Year" shall mean the period commencing on October 1 of each year and continuing through the next succeeding September 30, or such other period as may be determined by mutual agreement of the County and the City.

"County Unincorporated Parcels" means the properties described in Exhibit A, which is attached hereto.

"Interlocal Agreement" means this Interlocal Agreement, including any amendments or supplements hereto, executed and delivered in accordance with the terms hereof.

"City" means the City of Punta Gorda, a municipal corporation of the State of Florida.

"Water Access Units (WAUs)" means the standard unit to be used in calculating the Assessments, as defined in the City's Initial Assessment Resolution.

SECTION 3. INTERPRETATION. Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Agreement; the term "heretofore" shall mean before the effective date of this Agreement; and the term "hereafter" shall mean after the effective date of this Agreement. This Agreement shall not be construed more strongly against any party regardless that such party, or its counsel, drafted this Agreement.

SECTION 4. CITY'S OBLIGATIONS.

(A) The CITY agrees to design and construct the Project and shall obtain all necessary approvals from any and all governmental agencies requisite to the construction of the Project. CITY further agrees to impose special assessments against all benefitted property located in the corporate limits of the City of Punta Gorda.

SECTION 5. COUNTY'S OBLIGATIONS. The COUNTY shall establish and govern a municipal service benefit unit (MSBU) and shall impose special assessments against benefitted County Unincorporated Parcels utilizing the same methodology as the CITY. COUNTY shall, on an annual basis, transfer the proceeds of the special assessments imposed by the COUNTY to the CITY until the Capital Costs of the Project are fully paid.

SECTION 6. TERM OF INTERLOCAL AGREEMENT. This Interlocal Agreement shall terminate when all assessments have been paid.

SECTION 7. FILING. A copy of this Interlocal Agreement shall be filed for record with the Clerk of the Circuit Court in and for Charlotte County, Florida.

SECTION 8. LIMITED LIABILITY. Neither the COUNTY nor the CITY, or any agent, officer, official or employee of the COUNTY or the CITY shall be liable for any action taken pursuant to this Interlocal Agreement in good faith or for any omission, except gross negligence, or for any act of omission or commission by the other party hereto and its agents, officers, officials or employees. The terms of this Section 8 shall survive termination or expiration of this Agreement.

SECTION 9. DISPUTE RESOLUTION.

(A) The parties agree to resolve any dispute related to the interpretation or performance of this Interlocal Agreement in the manner described in this Section 9 prior to filing suit against the other party. Any party may initiate the dispute resolution process

by providing written notice to the other party. This Section 9 is intended to provide a dispute resolution process in lieu of the process provided in Chapter 164, Florida Statutes.

(B) After transmittal and receipt of a notice specifying the area or areas of disagreement, the parties agree to meet at reasonable times and places, as mutually agreed upon, to discuss the issues.

(C) If discussions between the parties fail to resolve the dispute within 60 days of the notice described in subsection (A) above, the parties shall appoint a mutually acceptable neutral third party to act as a mediator. If the parties are unable to agree upon a mediator, the County will request appointment of a mediator by the American Arbitration Association. The mediation contemplated by this subsection (C) is intended to be an informal and non-adversarial process with the objective of helping the parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the parties. The mediator shall assist the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives.

(D) If the parties are unable to reach a mediated settlement within 120 days of the mediator's appointment, any party may terminate the settlement discussions by written notice to the other party. In such event, any party may initiate litigation within 120 days of the notice terminating the settlement discussions. Failure by the party initiating the dispute resolution procedure to commence litigation within the 120 day period shall be deemed to constitute an acceptance of the interpretation or performance of the other party.

(E) In any dispute, each party shall pay the fees, charges and expenses of its own counsel, experts and witnesses.

(F) The terms of this Section 9 shall survive termination or expiration of this Agreement.

SECTION 10. AMENDMENTS. This Interlocal Agreement may be amended in writing at any time by the concurrence of the COUNTY and the CITY and subsequent ratification by each party's respective governing body.

SECTION 11. PROFESSIONAL FEES AND COSTS. Each party shall pay the fees, charges and expenses of its own counsel and professionals in connection with the preparation and implementation of this Agreement.

SECTION 12. ASSIGNMENT. This Interlocal Agreement may be assigned, in whole or in part, by any party at any time with the prior written consent of the other party hereto, which consent shall not unreasonably be withheld.

SECTION 13. NON-WAIVER. The failure of either party to insist upon the other party's compliance with its obligations under this Interlocal Agreement in any one or more instances shall not operate to release such other party from its duties to comply with such obligations in all other instances.

SECTION 14. NOTICES. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given on the date such notice is

delivered by courier or facsimile transmission or three days after the date mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

County: Charlotte County
18500 Murdock Circle
Port Charlotte, Florida 33948
ATTENTION: County Administrator
Phone: (941) 743-1318
Facsimile: (941) 743-1554

City: City of Punta Gorda
326 W. Marion Avenue
Punta Gorda, Florida 33950
ATTENTION: City Manager
Phone: (941) 575-3302
Facsimile: (941) 575-3310

SECTION 15. EXECUTION IN COUNTERPARTS. This Interlocal Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 16. SEVERABILITY. In the event that any provision of this Interlocal Agreement shall, for any reason, be determined invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the other provisions of this Interlocal Agreement shall remain in full force and effect.

SECTION 17. ENTIRE AGREEMENT. This Interlocal Agreement and the exhibit attached hereto constitute the entire agreement between the parties pertaining to the

Project and the subject matter hereof and may not be modified orally or otherwise except by written amendments executed by each party hereto.

SECTION 18. BINDING EFFECT. The obligations and covenants of this Interlocal Agreement shall bind and benefit the successors, personal representatives, heirs and permitted assigns of the parties hereto.

SECTION 19. APPLICABLE LAW. This Interlocal Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

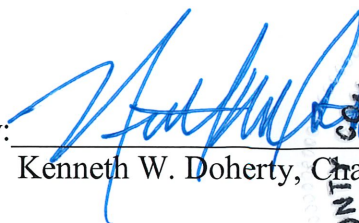
SECTION 20. EFFECTIVE DATE. This Interlocal Agreement shall become effective on the later of (A) the dated date hereof, or (B) the date the last party hereto executes this Interlocal Agreement and the filing requirements of Section 7 hereof are satisfied.

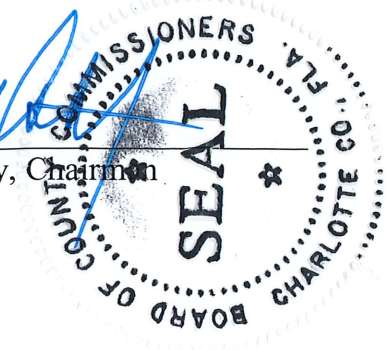
IN WITNESS WHEREOF, this Interlocal Agreement has been executed by and on behalf of the County by its Chairman, its seal affixed hereto, as attested by its Clerk as of the 12 day of March, 2019.

**BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA**

(SEAL)

ATTEST:

By: 
Kenneth W. Doherty, Chairman



By: 
Clerk *AGR2019-014*

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

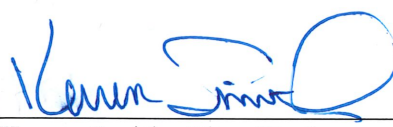
By: 
Janette S. Knowlton, County Attorney
LR 2018-0732 *nwm*

CITY OF PUNTA GORDA, FLORIDA

(SEAL)

ATTEST:

By: 
Nancy Prafke, Mayor

By: 
Karen Smith, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY


By: 
David M. Levin, City Attorney

EXHIBIT A

**DESCRIPTION OF BUCKLEY'S PASS
COUNTY UNINCORPORATED PARCELS**

Tract A and Lots 1 through 3, Block A, RIVERIA LAGOONS – FIFTH ADDITION, a subdivision according to the plat thereof, as recorded in Plat Book 15 at Page 55, of the Public Records of Charlotte County, Florida

And

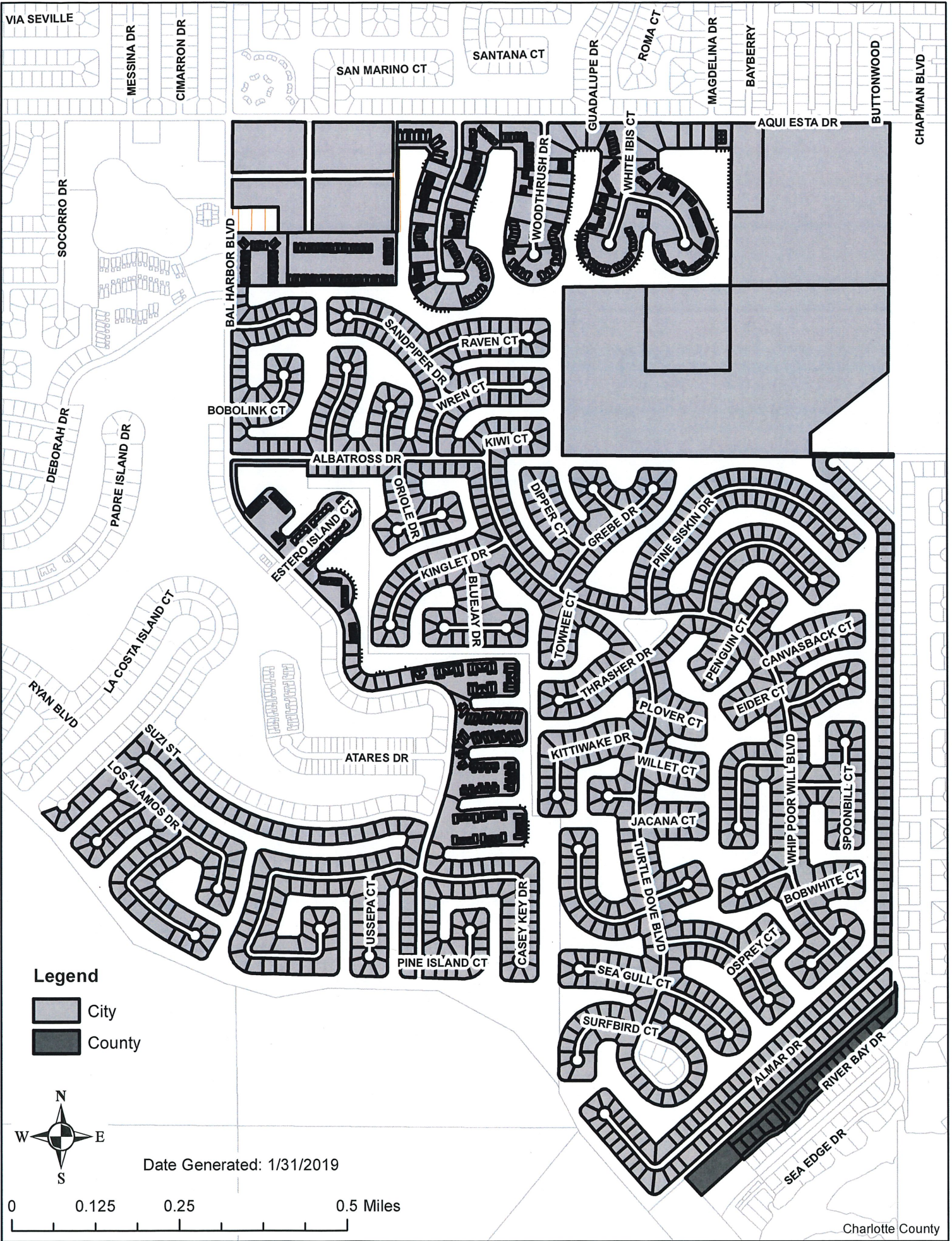
Lots 1 through 10, Tract I, BY THE SEA – phase I, a subdivision according to the plat thereof, as recorded in Plat Book 16, at Pages 31A-31B, of the Public Records of Charlotte County, Florida

And

Lots 23 through 27, Tract III, BY THE SEA – phase II, a subdivision according to the plat thereof, as recorded in Plat Book 16, at Pages 36A-36B, of the Public Records of Charlotte County, Florida

And

An unplatted parcel, Short Legal ZZZ 254122 P1-1-1



VIA SEVILLE

MESSINA DR

CIMARRON DR

SAN MARINO CT

SANTANA CT

GUADALUPE DR

ROMA CT

MAGDELINA DR

BAYBERRY

BUTTONWOOD

CHAPMAN BLVD

AQUI ESTA DR

SOCORRO DR

BAL HARBOR BLVD

WOODTHRUSH DR

WHITE IBIS CT

DEBORAH DR

PADRE ISLAND DR

BOBOLINK CT

SANDPIPER DR

RAVEN CT

WREN CT

KIWI CT

ALBATROSS DR

ORIOLE DR

ESTERO ISLAND CT

KINGLET DR

BLUEJAY DR

DIPPER CT

GREBE DR

PINE SISKIN DR

RYAN BLVD

LA COSTA ISLAND CT

ATARES DR

TOWHEE CT

THRASHER DR

PENGUIN CT

CANVASBACK CT

SUZI ST

LOS ALAMOS DR

PLOVER CT

EIDER CT

KITTIWAKE DR

WILLET CT

WHIP POOR WILL BLVD

SPOONBILL CT

JACANA CT

TURTLE DOVE BLVD

BOBWHITE CT

USSEPA CT

PINE ISLAND CT

CASEY KEY DR

SEA GULL CT

OSPREY CT

SURFBIRD CT

ALMAR DR

RIVER BAY DR



Date Generated: 1/31/2019

