

MEMORANDUM OF AGREEMENT  
BETWEEN  
SAILFISH POINT PROPERTY OWNERS AND  
COUNTRY CLUB ASSOCIATION, INC.  
AND  
MARTIN COUNTY, FLORIDA  
FOR BEACH RESTORATION AT BATHTUB BEACH

This MEMORANDUM OF AGREEMENT (hereinafter the "MOA") is entered into this 21st day of May, 2019, by and between Sailfish Point Property Owners and Country Club Association, Inc. (hereinafter the "SPPOA"), a Florida non-profit corporation, 2201 SE Sailfish Point Blvd, Stuart, FL 34996 and Martin County, Florida (hereinafter the "County"), 2401 SE Monterey Rd., Stuart, FL 34996.

WITNESSETH:

WHEREAS, the County intends to apply for grant funds for the beach restoration projects planned for the County's beach property located on Hutchison Island, known as "Bathtub Beach" and for the beach property located immediately to the south of Bathtub Beach (hereinafter the "Sailfish Point Beach"); and

WHEREAS, the County, when impacted by hurricanes, tropical storms and other acts of nature, will apply for storm damage recovery assistance from all available local state and federal sources; and

WHEREAS, the County, utilizing budgeted funds, plans for periodic beach restoration projects at Bathtub Beach ("Bathtub Beach Restoration"); and

WHEREAS, the SPPOA owns property contiguous to Bathtub Beach and Sailfish Point Beach and recognizes that the Sailfish Point Beach, which is contiguous to SPPOA property, requires periodic restoration work similar to the Bathtub Beach Restoration ("Sailfish Beach Restoration"); and

WHEREAS, Bathtub Beach and Sailfish Point Beach constitute a distinct shoreline zone contained within Bathtub Reef, which intersects the shore at the northernmost end of Bathtub Beach and runs continuously along the nearshore to the south to the north jetty of the St. Lucie Inlet; and

WHEREAS, the Bathtub Beach and Sailfish Point Beach shoreline zone have a common geomorphology and nearshore current system, and have a common history of critical erosion due to avulsive events; and

WHEREAS, the County and SPPOA recognize that there is a clear reciprocity of benefit, protection, and advantage in jointly planning on a long term basis for the periodic restoration of their respective shores and thereafter maintaining the restored beach; and

WHEREAS, the County and the SPPOA have a long-standing, cooperative, collaborative relationship in responding to emergency repair and reconstruction needs of their beaches; and

WHEREAS, this MOA is intended to provide a framework to facilitate such project planning and cooperation between the County and SPPOA.



NOW THEREFORE, the County and the SPPOA desire to cooperate by consolidating the planning and implementation of their contiguous beach restoration projects by combining the Sailfish Beach Restoration with the Bathtub Beach Restoration (hereinafter collectively referred to as the "Consolidated Project"), on terms and conditions set forth herein:

1. Consolidated Project.
  - a. The parties agree that for purposes of this MOA, the Consolidated Project is the overall planning and implementation of a series of smaller projects to restore the Sailfish Point Beach and Bathtub Beach area in Martin County, Florida.
  - b. The parties agree that for purposes of this MOA, the Consolidated Project does not include: 1) sand bypassing projects that the Florida Department of Environmental Protection ("FDEP") determines to be necessary as part of the St. Lucie Inlet Management Plan; or 2) any portion of a project which is determined to be eligible as a Federal Emergency Management Agency ("FEMA") project.
2. SPPOA agrees to pay County an amount not to exceed 31.51 percent of total costs ("SPPOA's Share") for each project within the overall Consolidated Project as SPPOA's proportionate cost share in accordance with paragraph 3 below. The parties' intent is that the percentage be applied to all Consolidated Project costs, including the costs of construction, labor, environmental compliance and permitting, supervision and administration, engineering and design, and any restoration for staging areas during the term of the Consolidated Project which begins on the date of execution of this MOA and ending ten years hence ("Project Term") unless the parties agree in writing to extend the Project Term.
3. SPPOA shall collaborate in planning and funding in accordance with the following provisions:

**For Fiscal Year 2020:**

- a. Upon execution of this MOA, the County and SPPOA shall develop expeditiously a 10 year plan for the work to be performed (the "Work Plan") beginning with the County's Fiscal Year 2020. The Work Plan, which, as the standard process, is coordinated between and approved by both parties, shall identify whether beach restoration is required for County Fiscal Year 2020. If it is determined through the Work Plan that a restoration project is required for County Fiscal Year 2020, then the Work Plan shall also identify the scope of the proposed work; the schedules for completion of compliance with applicable environmental laws and regulations and initiation of dredging; and the County's estimate for the work. While the County will endeavor to limit Consolidated Project costs, the SPPOA acknowledges that the actual costs for the restoration projects may exceed estimated amounts due to claims or other unforeseen circumstances and that the SPPOA is responsible for SPPOA's Share, which the County agrees shall not exceed 31.51 percent of total costs of the Consolidated Project.
- b. Within fifteen (15) calendar days of receipt of the County's cost estimate for the work to be performed during Fiscal Year 2020, SPPOA shall provide County with any objections or comments concerning such estimate or provide written agreement to publish requests for bids ("RFB"). Following the parties agreement in writing to the County's cost estimate and to publish RFBs, SPPOA shall provide to the County SPPOA's Share of all funds estimated to be necessary for the contract no later than thirty (30) calendar days

prior to solicitation of that contract; provided however, this thirty (30) day time period may be extended upon written agreement of the parties' authorized representatives to provide sufficient time for approval by SPPOA's membership. County agrees to place SPPOA funds in a separate account that is not commingled with any other County account ("Project Fund"), from which all invoices for the SPPOA portion of the Consolidated Project shall be paid.

**For Fiscal Year 2021 and Each Subsequent Year:**

- c. No later than April 30<sup>th</sup> 2020 (planning for fiscal year 2021) and no later than April 30<sup>th</sup> of each subsequent year during the Project Term, the County and SPPOA shall update the Work Plan for the restoration projects proposed to be performed during each upcoming fiscal year. If no restoration project is needed, the parties agree to discuss proposed restoration projects for subsequent years. The Work Plan shall identify the amount of funds the SPPOA plans to provide; any potential grant funding and the amount of funds to be paid by the County; the portion of the beach to be restored; the schedules for completion of compliance with applicable environmental laws and regulations and initiation of the project; and the County's total cost estimate for the project(s). Following the parties agreement in writing to the County's cost estimate and to publish RFBs, the SPPOA shall provide to the County all funds estimated to be contributed by SPPOA no later than thirty (30) calendar days prior to solicitation of any RFB for work under the Consolidated Project; provided however, this thirty (30) day time period may be extended upon written agreement of the parties' authorized representatives to provide sufficient time for approval by SPPOA's membership. County agrees to place such funds in the Project Fund, from which all invoices for the SPPOA portion of the Consolidated Project shall be paid. The County and SPPOA shall review and update, as necessary, the Work Plan.
4. Sailfish Point Navigation Channel Dredging:
    - a. The County agrees that SPPOA may modify the Sailfish Point navigation channel maintenance permit #0274046-008-JC to allow dredged material from the Sailfish Point navigation channel (the "Channel") to be placed in the St. Lucie Impoundment Basin as more particularly described in Exhibit A attached hereto. The County agrees there will be no additional charge to SPPOA for the County's subsequent removal of such dredged material.
    - b. The County agrees that navigation hazards due to shoaling sand exist in the Channel. Material from the Channel will be given priority consideration when identifying sand sources for placement within the Consolidated Project area. Any sand dredged from the Channel will be placed within the beach template, south of the Bathtub Beach/Sailfish Point property line (Exhibit B) and in no case will be placed on the beach at Bathtub Beach Park.
    - c. This MOA will be reviewed and updated as necessary every 5 years or in the year subsequent to any amendment or modification to the St. Lucie Inlet Management Plan, whichever occurs first. Elements of revision will include any changes to state grant terms or other regulatory or statutory changes.
  5. In accordance with all applicable Florida Statutes and County requirements, the County will obtain bids, utilizing a unit price and quantity contract, for the goods and services required for

the construction of each project that is part of the Consolidated Project. The SPPOA agrees the County has the sole right to award the bid to the lowest responsible bidder. The County agrees the total amount payable by SPPOA for any project pursuant to this MOA shall be SPPOA's Share as detailed in paragraph 3 above.

6. County acknowledges and agrees that nothing in this MOA shall be construed to limit the ability of SPPOA to undertake any beach restoration project not within the contiguous shoreline of Bathtub Beach and Sailfish Point Beach at its own expense and on its own, in its sole discretion. Any such work undertaken by SPPOA or the County shall not interfere with any projects performed as part of the Consolidated Project.
7. If SPPOA objects to the County proceeding with the Sailfish Beach Restoration portion of the Consolidated Project, the objection must be in writing and must be received by the County prior to execution of any contract for the specific project. Such objection in writing shall operate as a notice of a mutually agreed upon termination of the specific project.
8. Invoice Reviews, Approvals, Payments from Project Funds, and Change Orders.
  - a. If SPPOA gives written authorization to the County to proceed with the project, then SPPOA acknowledges and agrees that it will be liable to the County for the SPPOA's Share. .
  - b. The County shall promptly review any and all invoices submitted by the project contractor in connection with the project and either approve or disapprove same. If the invoices are approved, County shall promptly send such approved invoices to the SPPOA representative designated in paragraph 12 below. SPPOA shall have 5 working days to object to County's invoice approval. If SPPOA does not object timely, County shall thereupon promptly pay the invoice from the Project Fund.
  - c. If the SPPOA does not agree with the County's invoice approval, the parties agree to comply with the dispute resolution procedure outlined in Paragraph 10 below.
  - d. If there are any change orders to a project contract specific to the interests of SPPOA and not under the original bid documents or executed contract for that project, then SPPOA shall agree in writing to pay all costs associated with such change order that are specific to the interests of SPPOA and shall agree in writing to assume any and all liabilities, claims, delay damages and other damages associated with that particular change order. Any change order to the project contract which will affect the amount to be paid by SPPOA in connection with the project cost shall be submitted to SPPOA for its review and be subject to its written approval.
  - e. If there are any change orders to a project contract specific to the interests of the County and not under the original bid documents or executed contract for that project, then the County shall agree in writing to pay all costs associated with such change order that are specific to the interests of the County and shall agree in writing to assume any and all liabilities, claims, delay damages and other damages associated with that particular change order. Any change order to the project contract which will affect the amount to be paid by the County in connection with the project cost shall be submitted to the County for its review and be subject to its written approval.

- f. Upon the completion of each project, the parties agree to meet and review all invoices, plans and other project documents except for those change orders specific to the interests of SPPOA or the County, as described in paragraphs 8.d and 8.e. above. For all costs and payments for the Consolidated Project, the County shall provide SPPOA a full accounting detailing the expenditure of all SPPOA funds. Following such accounting:
1. Any unused portion of SPPOA funds shall be reimbursed to the SPPOA by the County within ninety (90) days of the conclusion of the Consolidated Project.
  2. If there are additional funds owed by SPPOA to County for the SPPOA portion of the project, County shall issue an invoice for such additional funds owed to the County and SPPOA shall remit full payment within ninety (90) days of the issuance of such invoice.
9. SPPOA agrees it shall be solely responsible for maintenance, replacement, repair, and any associated delay damages, damage claims or claims of injury of the Sailfish Beach Restoration portion of the Consolidated Project after the completion of work in that section, and the County shall have no responsibility for such maintenance, replacement, and repair; however, this shall not restrict the County from seeking Federal or State funding to maintain, repair, or reconstruct all or any portion of the Consolidated Project. Likewise, the County agrees it shall be solely responsible for maintenance, replacement, and repair of the Bathtub Beach portion of the Consolidated Project after completion of work in that section, and SPPOA shall have no responsibility for such maintenance, replacement, repair, and any associated delay damages, damage claims or claims of injury.
10. Disputes under this MOA may be resolved by the County's Authorized Representative and the SPPOA's Authorized Representative. If such Authorized Representatives are unable to reach a resolution and the parties agree that the issue is of sufficient merit, the parties shall select a mediator mutually acceptable to both parties to conduct a mediation of the issues involved and make a recommendation to both parties in order to settle the dispute. The parties agree to be responsible for their respective attorney's fees and costs incurred for mediation and that the mediator's fees and costs shall be paid in equal amounts by each party. The parties agree that good faith mediation is a condition precedent prior to the commencement of any litigation.
11. County agrees to include SPPOA in all weekly construction meetings, if needed, with the contractor engaged to construct the Consolidated Project. The parties agree to designate in writing their representatives for such meetings.
12. This MOA may be amended only by a written document duly executed by both parties. A party requesting amendment of this MOA must propose such amendment in writing to the other party at least ninety (90) days prior to the proposed effective date of the amendment.
13. This MOA incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements, and 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 MOA that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior contemporaneous representations or agreements, whether oral or written.

14. If any term or provision of this MOA or the application thereof to any person or circumstance shall, to any extent be held invalid or unenforceable, then the application of such term or provision to such person or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this MOA shall be deemed valid and enforceable to the extent permitted by law.
15. Any notice, request, demand, consent approval or other communication required or permitted by this MOA shall be given or made in writing and shall be served (as elected by the party giving such notice) by one of the following methods: (i) hand delivery to the other party; (ii) delivery by commercial overnight courier service; or (iii) mailed by registered or certified mail (postage prepaid), return receipt requested. For purposes of notice the addresses are:

**COUNTY**

County Administrator  
Martin County Board of County Commissioners  
2401 Monterey Road  
Stuart, FL 34996

Required Copy to:

County Attorney  
Martin County Board of County Commissioners  
2401 SE Monterey Road  
Stuart, FL 34996

**SPPOA:**

Edward J. Ewing, General Manager  
Sailfish Point Property Owners' and Country Club Association, Inc.  
2201 SE Sailfish Point Blvd.  
Stuart, FL 34996

Notice given in accordance with the provision of this paragraph shall be deemed to be delivered and effective on the date of hand delivery or on the second day after the date of the deposit with an overnight courier or on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not delivered if mailed.

16. The Authorized Representative for the SPPOA: General Manager, Sailfish Point Property Owners' and Country Club Association, Inc., 2201 SE Sailfish Point Blvd., Stuart, FL 34996, telephone number (772) 225-1001. The Authorized Representative for the County is the Coastal Engineer, Public Works Department, 2401 SE Monterey Road, Stuart, FL 34996, telephone number (772) 288-5927.
17. Unless otherwise terminated by mutual agreement as provided herein, this MOA shall continue until completion of the Consolidated Project.
18. Except as otherwise provided in this MOA, neither party shall be deemed in default or in breach of this MOA to the extent it shall be unable to perform due to an event of Force Majeure. For the purpose of this MOA, Force Majeure shall mean and include any act of

God, accident, fire, lockout, strike or other labor dispute, riot or civil commotion, act of a public enemy, failure of transportation facilities, enactment, rule, order, or act of government or governmental instrumentality (whether domestic or international and whether federal, state or local, or the international equivalent thereof), failure of technical facilities, or any other cause of any nature whatsoever beyond the control of either party which was not avoidable in the exercise of reasonable care and foresight.

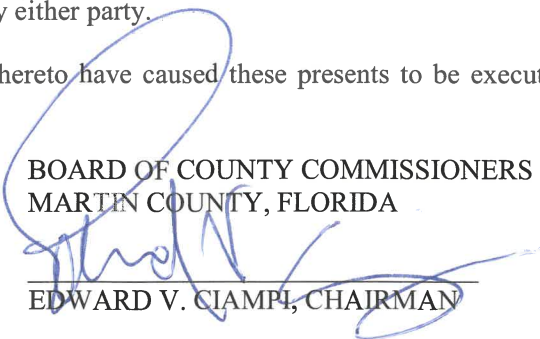
19. To the extent permitted by Florida Law, and as limited in accordance with Section 768.28 Florida Statutes, the parties agree to be responsible for all claims, actions, demands, suits, losses, expenses (including attorney's fees), judgments and liabilities arising out of or from the acts, negligence or misconduct of themselves and their agents, officers, directors, employees, members, or managers occurring in connection with this MOA; provided however, nothing herein shall be construed as a waiver of the sovereign immunity afforded the County by the Florida Constitution, a waiver of the provisions of Section 768.28, Florida Statutes or a consent by the County to be sued by third parties.
20. The parties expressly agree that each party will bear its own attorney's fees and court costs incurred in connection with this MOA.
21. The parties expressly and specifically hereby waive the right to a jury trial as to any issue in any way connected with this MOA.
22. This MOA and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Martin County, Florida.
23. This MOA may not be assigned by either party.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day, month and year aforesaid.

ATTEST:

  
CAROLYN TIMMANN  
CLERK OF THE CIRCUIT COURT  
AND COMPTROLLER

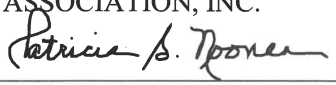
BOARD OF COUNTY COMMISSIONERS  
MARTIN COUNTY, FLORIDA

  
EDWARD V. CIAMPI, CHAIRMAN

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

  
KRISTA A. STOREY,  
ACTING COUNTY ATTORNEY

SAILFISH POINT PROPERTY  
OWNERS' AND COUNTRY  
CLUB ASSOCIATION, INC.

  
PATRICIA NOONAN, PRESIDENT