

## INTERLOCAL FUNDING AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2021 by and between the City of Dunedin, Florida, a Florida municipal corporation ("City") and Pinellas County, a political subdivision of the State of Florida ("County") (collectively, the "Parties").

### WITNESSETH:

**WHEREAS**, the City desires to acquire certain property located at 1900 Virginia Avenue, Dunedin, Florida, as legally described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"), for preservation of open space and public water access, species and habitat protection, and to provide resource-based recreation opportunities; and

**WHEREAS**, the County supports the City's acquisition of the Property for the purposes outlined above and desires to conserve approximately eighteen acres of the Property to protect the rare Sand Pine Scrub and Rosemary Bald plant species; and

**WHEREAS**, the City and County have partnered to negotiate the public acquisition of the Property; and

**WHEREAS**, the firm purchase price of the Property is ten million U.S. dollars (\$10,000,000.00); and

**WHEREAS**, the City has agreed to contribute two million U.S. dollars (\$2,000,000.00) toward the acquisition of the Property; and

**WHEREAS**, the County has agreed to contribute three million five hundred thousand U.S. dollars (\$3,500,000.00) toward the acquisition of the Property (the "County Contribution"); and

**WHEREAS**, the City and County have applied to Florida Communities Trust ("FCT") for a Florida Forever Grant in the amount of up to two million four hundred thousand dollars (\$2,400,000.00) to reimburse and offset the Property acquisition costs, a copy of the application for which is attached hereto and incorporated herein as Exhibit "B," (the "FCT Grant"); and

**WHEREAS**, the City in partnership with local nonprofit entities has raised four million five hundred thousand dollars (\$4,500,000.00) in additional donations for the acquisition of the Property; and

**WHEREAS**, this Agreement is entered into pursuant to §163.01, Florida Statutes, also known as the "Florida Interlocal Cooperation Act of 1969;" and

**WHEREAS**, it is the purpose and intent of the Parties to permit the County and the City to make the most efficient use of their respective powers, resources, and capabilities to accomplish the joint objectives provided for herein.

**NOW, THEREFORE**, for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **RECITALS.** The above recitals are true and correct and are adopted as an integral part of this Agreement.
2. **EFFECTIVE DATE; TERM.** The County shall file this Agreement with the Clerk of the Circuit Court as provided in Section 163.01(11), Florida Statutes. The term of this Agreement shall become effective on the date of such filing (“Effective Date”) and shall remain in effect until either the expiration date of FCT Grant management plan as determined by the Florida Department of Environmental Protection or ten (10) years, whichever is longer, unless terminated sooner pursuant to the terms of this Agreement.
3. **CONDITIONS PRECEDENT.** The County Contribution toward the acquisition of the Property is conditioned upon the satisfaction of the following conditions precedent:
  - A. The City and the current owner of the Property enter into a purchase and sale agreement for the City’s acquisition of the Property (the “Purchase and Sale Agreement”) in an amount not to exceed ten million dollars (\$10,000,000.00) and associated closing costs, upon such terms and conditions as determined appropriate and reasonable by the City and which are consistent with the County’s interest in the Property and terms of this Agreement. The City shall provide a copy of the signed purchase and sale agreement prior to the disbursement of funds to the City.
  - B. The City’s successful acquisition of marketable fee simple title to the Property by general warranty deed pursuant to the terms of the Purchase and Sale agreement, subject only to permitted title exceptions accepted by the City, and paragraph 4A below. Any such exceptions accepted by the City must be consistent with the terms of this Agreement and any applicable FCT grant award. Failure to abide by this paragraph constitutes a material breach of this Agreement.
4. **FUNDING AND OBLIGATIONS.** The County agrees to contribute toward the purchase of the Property in accordance with the following:
  - A. The County shall pay a sum not to exceed three million five hundred thousand dollars (\$3,500,000.00) to and/or for the benefit of the City as local matching funds for the acquisition of the Property. The City will provide notice of the closing of the purchase and sale of the Property as soon as the closing is scheduled, but no later than fifteen (15) days prior to the scheduled closing date. The County shall transfer the County Contribution via wired funds to the Escrow/Closing Agent as defined in and consistent with the terms of the Purchase and Sale Agreement at Closing (as defined in the Purchase and Sale Agreement) for the benefit of and as a credit to the City as purchaser in the Closing. In no event shall the funds be disbursed until they are required to be submitted to the Escrow/Closing Agent for Closing consistent with the terms of the Purchase and Sale Agreement. The County Contribution shall not be used as the earnest money deposit or toward any other fees or costs associated with the City’s due diligence or pre-closing acquisition activities. The City agrees to utilize the County Contribution herein solely for the acquisition of the Property and for no other purpose. The Parties acknowledge that

the County is not a party to the Purchase and Sale Agreement and assumes no responsibility, obligation, or liability of any party relative to the closing effectuating the purchase of the Property. However, the County agrees to cooperate and assist the City with effectuating the purchase of the Property as may be requested by the City.

- B. The Parties acknowledge that the City and County have jointly applied for the FCT Grant in the amount of up to two million four hundred thousand dollars (\$2,400,000.00) for reimbursement of acquisition costs of the Property. The Parties further acknowledge and agree that they will jointly apply for future FCT or other grant funding for reimbursement of acquisition costs of the Property. Neither party will submit any FCT or other grant application to reimburse its costs associated with acquisition of the Property independently without the other. The City further agrees not to submit a competing grant related to the acquisition of another property until the FCT eligibility period for reimbursement of the Property has lapsed pursuant to FCT statutes, rules, and regulations.
- C. The Parties further acknowledge and agree that if any grant funds are received for acquisition costs of the Property, whether pursuant to the current pending FCT Grant application or a future FCT or other acquisition grant application, the County will be reimbursed first in an amount up to a maximum of one million five hundred thousand dollars (\$1,500,000.00), with any funds remaining to be reimbursed to the City. If the City is reimbursed for part of its acquisition costs from a FCT or other acquisition grant, the City agrees to dedicate funding in an amount equal to the reimbursement it receives from the FCT grant toward improvements and maintenance on the Property consistent with the terms of any associated grant and this Agreement. The City and County shall execute any necessary documentation to effectuate the disbursement and allocation of awarded FCT or other grant reimbursement funds in the manner described herein within sixty (60) days of either party receiving any acquisition grant funds.
- D. The Parties acknowledge and agree that upon receipt of FCT grant funds by either party, ownership and operation of the Property shall be subject to all conditions, rules, regulations, and stipulations associated with such grant as set forth in the applicable agreement between FCT and the Parties. As owner of the Property, the City shall be primarily and directly responsible for all FCT grant compliance outside of the Conservation Area (as defined below), including but not limited to the development of management plans and required annual reporting. The County agrees to cooperate and assist the City with development of management plans and other compliance. The City, however, will remain liable for any noncompliance with an applicable FCT grant unless such noncompliance is solely due to actions or omissions of the County. Nothing contained herein is intended to conflict with or negate the provisions of paragraphs 10 and 17 below.
- E. The County shall have no further acquisition funding obligations beyond the County Contribution and any reimbursement of FCT grant funds the County

receives in excess of one million five hundred thousand U.S. dollars (\$1,500,000.00), as outlined in paragraph 4C above, unless otherwise mutually agreed to between the Parties in a subsequent written agreement.

## 5. CONDITIONS SUBSEQUENT (POST-CLOSING)

- A. In addition to any covenants or restrictions imposed by the FCT in connection with any grant related to the use of the Property for preservation, environmental, recreational, open space, educational, or public purposes, the City also hereby covenants and agrees that the Property shall be used for said purposes. The City agrees to apply to annex and designate the Property as recreation/open space on the City's Regulatory Land Use Map and/or to record such use restrictions as covenants running with the land to effectuate the provisions of this paragraph within one year of Closing.
- B. The City further agrees to grant the County a conservation and public access easement within ninety (90) days of Closing conserving approximately 18.8 acres of the Property in its natural state as well as ensuring public access to the shoreline of Jerry Lake all in substantial conformance with the draft conservation easement attached hereto as Exhibit "C," (the "Conservation Easement"). The Conservation Easement shall be recorded by the City, shall run with the land in perpetuity, and shall survive termination or expiration of this Agreement.

## 6. IMPROVEMENTS, OPERATIONS, AND MAINTENANCE

- A. **Initial Improvements.** The Parties agree to cooperate and share in the responsibilities of implementing the initial improvements and project activities which are set forth in the FCT Grant as specifically reflected on Exhibit "D" attached hereto, subject to the Parties' subsequent written mutual agreement of the maximum costs associated therewith. Unless otherwise expressly indicated herein, the County's responsibilities for the initial improvements shall be null and void if the FCT Grant is not awarded.
- B. **Conservation Area.** The County will be solely responsible for the maintenance of the Conservation Area, including but not limited to and any and all fencing or other improvements to the Conservation Area, in its sole and absolute discretion. The County further agrees to be responsible for the removal of invasive vegetation and species within the Conservation Area.
- C. **Ongoing operations and maintenance.** The City will be solely responsible for all costs incurred for the design, construction, operation, maintenance, upkeep, and repair of the Property, and of any improvements and facilities thereon other than as provided in paragraph 6A and 6B above.
- D. **Monitoring.** The County shall have the right but not the obligation to enter upon and monitor the City's construction, operation and management of the Property and

any facilities or improvements constructed thereon to ensure the same are constructed, operated, and managed for in compliance with any FCT grant, this Agreement, and the Conservation Easement.

7. **COMPLIANCE WITH LAWS.** The Parties shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and the orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, "Laws").
8. **DEFAULT.** The failure to abide by any of the terms of this Agreement shall constitute a default, including but not limited to the following non-exhaustive list:
  - A. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statues, regulations, or state guidelines, policies or directives as may become applicable at any time;
  - B. Ineffective or improper use of funds provided under this Agreement;
  - C. Operation, maintenance, alteration, or sale of the Property in a way that does not conform to the use or terms specified in a FCT grant, this Agreement, or the Conservation Easement.

A party found in default shall correct the default within thirty (30) days of receiving notice of a default from the non-defaulting party. If the defaulting party does not cure the default within 30 days, then the non-defaulting party may elect any of the cumulative remedies referenced herein.

9. **REMEDIES** In the event of a default, the non-breaching party shall be entitled, in addition to all other remedies provided in law or equity:
  - A. To compel specific performance by the breaching party of its obligations under this Agreement; and/or
  - B. If such breach would cause loss of title or interest in or to the Property or the Conservation Easement, to require the reimbursement of the County Contribution or City Contribution, as applicable.
10. **INDEMNIFICATION.** The City shall be responsible for all damages, suits, actions or claims of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the acquisition, construction, or operation of the Property except those due to negligent actions or omissions of the County, or on account of any act or omission, neglect or misconduct of the City; or by, or on account of, any claim or amounts received under the Workers' Compensation Laws. Nothing herein shall be construed as a waiver of either party's sovereign immunity or further limitation thereof beyond the limitations set forth in §768.28, Florida Statutes, and is specifically intended to comply with section 768.28(19), Florida Statutes. Further, nothing herein shall be construed as either party's consent to be sued by third parties in any manner arising from this Agreement. This provision shall survive the termination or expiration of this Agreement.

11. **DUE AUTHORITY.** Each party to this Agreement represents and warrants to the other party that (i) it has the full right and authority and has obtained all necessary approvals to enter into this Agreement, and (ii) each person executing this Agreement on behalf of the party is authorized to do so. This Agreement is subject to subsequent ratification by the Pinellas County Board of County Commissioners pursuant to Pinellas County Resolution 21-6, adopted on January 12, 2021.

12. **ASSIGNMENT.** No party to this Agreement may assign any rights or delegate any duties under this Agreement without the prior written consent of the other party.

13. **NOTICES**

A. Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals and other communications which are required to be given by either party shall be in writing and shall be deemed given and delivered on the date delivered in person to the authorized representative of the recipient provided below, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, return receipt requested, to the authorized representative of the recipient provided below, or upon the date delivered by overnight courier (signature required) to the authorized representative of the recipient provided below:

TO THE COUNTY:

County Administrator  
Pinellas County  
315 Court Street  
Clearwater, Florida 33756

TO THE CITY:

City Manager  
City of Dunedin  
524 Main Street  
Dunedin, FL 34697

B. Either party may change its authorized representative or address for receipt of notices by providing the other party with written notice of such change. The change shall become effective 10 days after receipt by the non-changing party of the written notice of change.

14. **WAIVER.** No act of omission or commission of either party, including without limitation, any failure to exercise any right, remedy, or recourse, shall be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or modification is to be affected only through a duly executed written modification to this Agreement.

15. **GOVERNING LAW.** This Agreement shall be construed in accordance with the Laws of the State of Florida. Venue shall be solely in Pinellas County, Florida, or nearest location having proper jurisdiction.

16. **BINDING EFFECT.** This Agreement shall inure to the benefit of and be binding upon the Parties' respective successors and assigns.

17. **NO THIRD-PARTY BENEFICIARY.** Persons not a party to this Agreement may not claim any benefit hereunder or as third-party beneficiaries hereto.

18. **HEADINGS.** The paragraph headings are inserted herein for convenience and reference only and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.
19. **CONSTRUCTION.** This Agreement has been prepared by the County and reviewed by the City and its professional advisors and should not be interpreted in favor of either the City or County or against the City or County merely because of their efforts in preparing it.
20. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties and no change will be valid unless made by supplemental written agreement executed by the Parties.
21. **SEVERABILITY.** Should any paragraph or portion of any paragraph of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other paragraph or portion of this Agreement.
22. **NON-APPROPRIATION.** In the event funds are not budgeted and appropriated by the either party in any fiscal year for purposes described herein, then said party shall notify the other party of such occurrence, and this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to either party.

REMAINDER OF PAGE INTENTIONALLY LEFT  
BLANK; SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative on the date last written below.

**PINELLAS COUNTY, FLORIDA**  
by and through its County Administrator

**CITY OF DUNEDIN, FLORIDA**

By:   
Barry A. Burton, County Administrator

By: \_\_\_\_\_  
Mayor

Date: February 23, 2021

Date: \_\_\_\_\_

**Ratified By:**

**Attest:**

**PINELLAS COUNTY, FLORIDA**  
Board of County Commissioners

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Dave Eggers, Chair

**Approved as to form:**


Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Attorney

KEN BURKE, CLERK OF CIRCUIT COURT

BY: \_\_\_\_\_  
Deputy Clerk

**APPROVED AS TO FORM**  
By:   
Office of the County Attorney



# Exhibit "A"

## LEGAL DESCRIPTION

The land referred to herein below is situated in the County of Pinellas, State of Florida, and described as follows:

**PARCEL 1: (36-28-15-00000-230-0100)**

The SW1/4 of the NW1/4 of Section 36, Township 28 South, Range 15 East less and except that part in the Northeast corner included in Plat of Dunedin Cemetery recorded in Plat Book 20, Page 47, of the Public Records of Pinellas County Florida.

ALSO LESS AND EXCEPT any portion thereof lying within road right of way along the East.

ALSO LESS AND EXCEPT those portions taken by Pinellas County for road right of way as described in Amended Order Taking recorded in Official Records Book 3512, Page 143, of the Public Records of Pinellas County, Florida.

**PARCEL 2 : (36-28-15-00000-240-0100)**

The West 396 feet of the SE1/4 of the NW1/4 of Section 36, Township 28 South, Range 15 East, lying in Pinellas County Florida.

LESS AND EXCEPT any portion thereof lying within road right of way along the West.

ALSO LESS AND EXCEPT those portions taken by Pinellas County for road right of way as described in Amended Order Taking recorded in Official Records Book 3512, Page 143, of the Public Records of Pinellas County, Florida.

ALSO LESS AND EXCEPT any portion thereof lying within those lands conveyed to The Southwest Florida Water Management District conveyed by warranty deed recorded in Official Records Book 6194, Page 2151, of the Public Records of Pinellas County, Florida.

