MEMORANDUM

Date: October 28, 2013

TO: Town Commission

FROM: Dave Bullock, Town Manager

SUBJECT: Interlocal Agreement with University of Florida for Planning Services

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At the October 7, 2013 Regular Meeting the Town Manager reported he was developing a working relationship with the Florida Resilient Communities Initiative (FRCI) through the University of Florida. The agreement would allow the Town to use the resources of the University and the FRCI to assist the Town with planning initiatives such as implementation of the Urban Land Institute (ULI) recommendations, immediate help with general planning tasks, assistance in understanding potential impacts of sea level rise on LBK's future, and other projects to be determined. Following discussion at the October 21, 2013 Regular Workshop Meeting the interlocal agreement was forwarded to the November 4, 2013 Regular Meeting for formal action.

The attached interlocal agreement establishes the general consulting relationship and allows the Town to make specific assignments. Appendix B sets forth specific tasks under the general scope of services. These tasks provide for immediate assistance with planning work, participation in the ULI study and implementation, assistance with work on the Town Comprehensive Plan, Land Development Code, and other work as directed.

Costs for each assignment are negotiated and a fee is determined and captured in Appendix C, to be completed for each assignment.

The interlocal agreement allows the University, with Town approval, to use qualified staff or subcontractors to complete the work assignments.

Currently the only funds available for this agreement are contained in the Planning Department professional services budget ($25,000). The Town Manager will bring forward budget amendments, as required, from Commission Contingency to fund work beyond the budget currently available.

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into this _____ day of_____, 2013, by and between the **University of Florida Board of Trustees,** a public body corporate of the State of Florida ("University"), for the benefit of the Florida Resilient Communities Initiative ("FRCI"), established by the College of Design, Construction and Planning (DCP) in collaboration with the Program for Resource Efficient Communities (PREC) in the Institute of Food and Agricultural Sciences (IFAS), whose address is Post Office Box 115701, Gainesville, Florida 32611-5701 and the **Town of Longboat Key** ("Town"), a municipal corporation, whose address is 501 Bay Isles Road, Longboat Key, Florida 34228, (collectively "the parties").

WITNESSETH

WHEREAS, Section 163.01, Florida Statutes, otherwise known as the Florida Interlocal Cooperation Act of 1969 ("Act"), permits public agencies to make the most efficient use of their powers by enabling them to cooperate with each other on a basis of mutual advantage and provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, The parties are entering into Agreement pursuant to the Act; and

WHEREAS, University through FRCI provides educational and consultation services to the people of the State of Florida on subjects relating to community resiliency, urban and regional design, construction, comprehensive planning, and land development controls to ensure that the findings of research in these areas are communicated to the people in their communities; and

WHEREAS, the research program contemplated by Agreement is of mutual interest and benefit to the parties and will further the instructional and research objectives of University in a manner consistent with its status as a non-profit, tax-exempt, land grant educational institution, and may derive benefits for both Town and University through inventions, improvements, and/or discoveries; and

WHEREAS, the parties desire to memorialize other responsibilities and agreements with respect to providing continuing consultation services for community resiliency, urban and regional design, construction, comprehensive planning, and land development controls.

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions contained herein, it is mutually agreed by and between the parties to this Agreement as follows:

1. Recitals. The recitals contained above are true and correct and form a factual basis for the parties entering into Agreement.

2. Intent and Purpose. The intent and purpose of Agreement is to establish a relationship and responsibilities between the parties for continuing consultation services including, but not limited to, community resiliency, urban and regional design, construction, comprehensive planning, and land development controls.

3. Term. The effective start date of this Agreement is December 1, 2013. The term of this Agreement is for ten (10) years, unless extended by mutual agreement of the parties.

4. Definitions. As used in this Agreement, the following terms have the following meanings:

   a. "Project" means the description of the undertakings in the General Scope of Services provided in Appendix A to this Agreement and Specific Tasks Under the General Scope of Services as provided for in Appendix B to this Agreement, as amended from time to time.

   b. "Principal Investigator" means the University faculty member who has the responsibility of monitoring the technical, scientific, programmatic, and administrative aspects of this Agreement.

   c. "Project Team" means University faculty, staff, students, and professional subcontractors selected by the parties to accomplish the Project.

   d. "Project Coordinator" means the individual selected by University to coordinate the efforts of the parties and subconsultants selected by the parties to accomplish the Project.

   e. "University Intellectual Property" means individually and collectively all inventions, improvements, and/or discoveries conceived and/or made by the Project Team in performance of the Project.

   f. "Project Manager" means the Town Manager or the Town Manager's designee, who shall work with the Project Coordinator and Principal Investigator in overseeing the Project.

5. Research Work.

   a. University will commence the performance of the Project promptly on the effective start date provided in Section 3 of this Agreement. University will use reasonable efforts to perform the Project in accordance with the terms and conditions of this Agreement.

b. In the event Principal Investigator becomes unable or unwilling to continue the Project, and a mutually acceptable substitute is not available, University and/or Town will have the option to terminate the Project.

6. Deliverables. Principal Investigator will deliver written Project progress reports as follows to the Project Manager:

Report Type	**Due No Later than**
Quarterly Narrative Report	February 1, 2014, and the first day of every third month following
Annual Narrative Report	December 1, 2014, and of each subsequent year
Final Narrative Report	45 days from Agreement end date

These narrative reports should provide an assessment of what has been accomplished during the reporting period with the final report covering the entire Agreement period. The Annual Narrative Report will include the contemporaneous Quarterly Narrative Report.

7. Town's Contributions.

a. Town will provide all office space, office supplies, office equipment (desk, chairs, computers, etc.), and communication resources for the Project Coordinator.

b. Town will provide, as calculated in Appendix C to this Agreement, four (4) percent of the full time equivalent (FTE) for the Principal Investigator.

c. It is acknowledged and agreed by the parties that the funding contributions set forth in Appendix C to this Agreement will be subject to adjustment each year to account for foreseeable and normal cost increases, such as increases in salaries and insurance.

d. Upon receipt of each University invoice, Town agrees to pay University for the work to be conducted under this Agreement in accordance with the schedule attached as Appendix C to this Agreement, which may be amended as specific work assignements are directed by the Town.

e. University invoices will be remitted to:

David Bullock, Town Manager

(with copy to Susan Smith, Finance Director)
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228

8. Scoping. Appendix A to this Agreement provides the Project's general scope of services agreed to by the parties. From time to time, the parties may agree to amend the Agreement by adding additional specific tasks to Appendix B to the Agreement in accordance with the procedure provided in Appendix A to the Agreement. *See* Appendix A for General Scope of Services and Appendix B for Specific Tasks.

9. University Contributions.

   a. University will provide leadership for administration and supervision of University employees, students, and professional subcontractors.

   b. University will provide University employees, students, and professional subcontractors with training programs, as appropriate, to maintain effective service delivery.

10. Publicity. Town will not use the name of University, nor of any member of University's Project Team, in any publicity, advertising, or news release without the prior written approval of University. University will not use the name of Town, or any employee of Town, in any publicity without the prior written approval of Town's Project Manager.

11. Publications.

   a. Town recognizes that under University policy, the results of the Project must be publishable and agrees that the Project Team will be permitted to present at symposia, national, or regional professional meetings, and to publish in journals, theses, dissertations, or otherwise of their own choosing, methods and results of the Project, provided, however, that Town will have been furnished copies of any proposed publication or presentation at least thirty (30) days in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party.

   b. Town will have thirty (30) days, after receipt of said copies, to object to such proposed presentation or proposed publication because there is proprietary subject matter that needs protection. In the event that Town makes such an objection, Project Team will refrain from making such publication or presentation for a maximum of three (3) months from date of receipt of such objection in order for the parties to resolve the issues

related to the disclosure of the proprietary subject matter, which may include University preparing and filing application(s) with the United States Patent and Trademark Office and/or foreign patent office(s).

c. If Town does not respond within the thirty (30) days, Project Team will have the right to publish the results without further notification or obligation to the Town.

12. Intellectual Property.

a. All rights and title to University Intellectual Property under the Project will belong to University and will be subject to the terms and conditions of this Agreement.

b. Rights to inventions, improvements, and/or discoveries, whether patentable or copyrightable or not, relating to the Project made solely by employees of Town will belong to the Town. Such inventions, improvements, and/or discoveries will not be subject to the terms and conditions of Agreement.

c. University will promptly notify Town of any University Intellectual Property conceived and/or made during the term of this Agreement under the Project. If Town directs that a patent application or application for other intellectual property protection be filed, University will promptly prepare, file, and prosecute such U.S. and foreign application in University's name. Town will bear all costs incurred in connection with such preparation, filing, prosecution, and maintenance of U.S. and foreign application(s) directed to said University Intellectual Property. Town will cooperate with University to assure that such application(s) will cover, to the best of Town's knowledge, all items of commercial interest and importance. While University will be responsible for making decisions regarding scope and content of application(s) to be filed and prosecution thereof, Town will be given an opportunity to review and provide input thereto. University will keep Town advised as to all developments with respect to such application(s) and will promptly supply to Town copies of all papers received and filed in connection with the prosecution thereof in reasonable time for Town to comment thereon.

d. If Town elects not to exercise its option as set forth in section 13.a., below, or decides to discontinue the financial support of the prosecution or maintenance of the protection, University will be free to file or continue prosecution or maintain any such application(s), and to maintain any protection issuing thereon in the U.S. and in any foreign country at University's sole expense and with no further obligation to Town.

13. Grant of Rights.

a. Pursuant to section 12.d. of this Agreement, University grants Town the first option, for consideration, a non-exclusive license or an exclusive license with a right to sublicense, on terms and conditions upon which the parties mutually agree. The option will extend for a time period of 90 days from the date of disclosure to Town.

b. University's Office of Technology Licensing will be the point of contact for disclosures and University Intellectual Property licensing agreements.

14. Office Policies.

a. The parties will remain separately responsible for compliance with the Americans with Disabilities Act at their respective facilities. Each party remains responsible for providing access to any facility or building owned by such party in compliance with the Americans with Disabilities Act.

b. The Principal Investigator will not be classified under a Town classification system.

c. The parties will cooperate to maintain a safe and comfortable workplace environment consistent with established workplace practices.

15. Subcontractors. From time to time, the continuing consultation services including, but not limited to, community resiliency, urban and regional design, construction, comprehensive planning, and land development controls will require University to contract with professional practitioners for execution of the projects and tasks appended to this Agreement. In those instances, the following will apply:

a. University will establish minimum requirements and qualifications for the professional subcontractors to be selected. University will receive and examine curriculum vitae and other qualifications for the professional subcontractors. University will interview and screen professional subcontractors to determine their qualifications and availability for consultation.

b. University will recommend to Town qualified professional subcontractors.

c. The parties will jointly agree on the professional subcontractors to be hired by University.

16. Independent Contractor. In the performance of all services hereunder:

a. University is an independent contractor and, as such, University will not be entitled to any benefits applicable to employees of Town.

b. Neither party is authorized or empowered to act as agent for the other for any purpose and will not on behalf of the other enter into any agreement, contract, warranty, or representation as to any matter. Neither will be bound by the acts or conduct of the other.

17. Insurance.

a. University warrants and represents that University has adequate liability insurance, such protection being applicable to officers, employees, and agents while acting within the scope of their employment by University, and University has no liability insurance policy as such that can extend protection to any other person.

b. Each party hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees, and agents thereof.

18. Amendments. Agreement will only be amended through written consent of both parties to the Agreement by and through the Principal Investigator and the Project Manager.

19. Termination.

a. Either of the parties may terminate this Agreement upon thirty (30) days prior written notice to the other.

b. In the event that either of the parties commits any breach of or default in any of the terms or conditions of this Agreement, and also fails to remedy such default or breach within sixty (60) days after receipt of written notice thereof from the other party hereto, the party giving notice may, at its option, and in addition to any other remedies that it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other party to such effect, and such termination will be effective as of the date of the receipt of such notice. Agreement will continue in full force and effect unless terminated by Town or University.

c. Subject to Section 13, termination of Agreement by either party for any reason will not affect the rights and obligations of the parties accrued prior to the effective date of termination of Agreement. No termination of Agreement, however effectuated, will affect Town's rights and duties under Section 12 hereof, or release the parties hereto from their rights and obligations under Sections 7, 10, 11, 12, 13, and 16 of this Agreement.

d. Upon any termination hereof, Principal Investigator will issue a final report that summarizes the progress made hereunder. Town will compensate University for the work accomplished through the date of termination.

20. Notice. Any notice or other document required to be given pursuant to Agreement by one party to another will be in writing and will be delivered personally, or by recognized overnight courier or sent by certified mail, postage prepaid, return receipt requested, or by facsimile transmission with written confirmation. Written notice will be sent to the parties to Agreement at the addresses contained herein.

21. Severability. In the event any term or provision of Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision will be given its nearest legal meaning or be construed as deleted, as such authority determines, and the remainder of Agreement will be construed to be in full force and effect.

22. Governing Law. Agreement is governed by, and will be construed and interpreted in accordance with, the laws of the State of Florida. Venue for any litigation will be Sarasota County, Florida.

23. Successors in Interest. Agreement is binding upon and will inure to the benefit of the parties' successors and assigns. No party may assign its rights under this Agreement without the prior written consent of the other party.

24. Public Records. Pursuant to applicable Florida law, the parties's records associated with this Agreement may be subject to Florida's public records laws, Florida Statutes 119.01, et seq, as amended from time to time. The parties shall comply with all public records obligations set for in such laws, including those obligations to keep, maintain, provide access to, and maintain any applicable exemptions to public records, and University shall transfer all such public records in its possession to the Town at the conclusion of this Agreement, as provided for in Florida Statutes 119.0701 (2013).

IN WITNESS WHEREOF, the parties have executed or have caused Agreement to be duly executed in several counterparts, each of which counterpart is considered an original executed copy of Agreement, the day and year first written above.

UNIVERSITY:

University of Florida Board of Trustees for the benefit of the Florida Resilient Communities Initiative established in the College of Design, Construction, and Planning

By:_____

Date: _____

_____
ATTEST:

Date: _____

Seal:

TOWN:

Town of Longboat Key, Florida

By:_____
David Bullock, Town Manager

Date: _____

_____
ATTEST: Trish Granger, Town Clerk

Date: _____

Seal:

Review of AGREEMENT as to form:

By: _____
Maggie Mooney-Portale, Town Attorney

End of Agenda Item