

**INTERLOCAL AGREEMENT
BETWEEN THE COUNTY OF VOLUSIA AND THE CITY OF DEBARY
FOR REIMBURSEMENT OF UTILITY CONSTRUCTION AND A UTILITY SERVICE
AGREEMENT FOR POTABLE WATER**

THIS AGREEMENT is entered into by and between the **County of Volusia**, a political subdivision of the State of Florida, 123 West Indiana Avenue, DeLand, Florida 32720-4613, (**COUNTY**), and the **City of DeBary**, a municipal corporation under the laws of the State of Florida, 16 Colomba Road, DeBary, Florida 32713 (**CITY**).

RECITALS

WHEREAS, the County is authorized by Section 125.01(1)(p), Florida Statutes, to enter into agreements with other governmental agencies within or outside the boundaries of the county for the joint performance, or performance by one unit on behalf of the other, of any of either agency's authorized functions; and

WHEREAS, the County and City are public agencies authorized by the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, and other provisions of law, to enter into this Agreement; and

WHEREAS, certain properties within the City of DeBary in the vicinity of Fort Florida Road, River Drive, Fifteenth Street, and Fort Florida Point Road (the "Properties") are not currently provided potable water services or fire flow water services via water main from any public or private utility provider, instead relying upon well water and river water; and

WHEREAS, at the request of certain owners of the Properties, the City decided to construct a water distribution system consisting of a water main extension and all appropriate appurtenances thereto along, under, over, and through portions of Fort Florida Road, River Drive, Fifteenth Street, and Fort Florida Point Road, as further described in Exhibit "A" (the "Water Distribution System" or "System"), with the understanding that the County would be willing to utilize such System upon attainment of all necessary easements by the City to provide water services to the relevant properties; and

WHEREAS, in order to confirm the right to construct and operate the Water Distribution System within and along Fort Florida Point Road, the City prepared and obtained execution of that certain Easement Agreement for Construction of Water Lines and Appurtenances (the "Fort Florida Point Agreement"), recorded in the Volusia County Public Records, Book 7145, Page 3213, by the owners of certain lots abutting Fort Florida Point Road, which agreement grants the City and County certain easement rights with respect to the construction and operation of the Water Distribution System within and along Fort Florida Point Road; and

WHEREAS, in order to confirm the right to construct and operate the Water Distribution System along River Drive and Fifteenth Street, the City prepared and obtained execution of that certain Easement and License Agreement for Construction of Water Lines and Appurtenances (the "River Drive/Fifteenth Street Agreement"), recorded in the Volusia County Public Records,

Book 7145, Page 2702, by a substantial number of owners of lots abutting River Drive and Fifteenth Street, which agreement grants the City and County certain easement and license rights with respect to the construction and operation of the Water Distribution System within and along River Drive and Fifteenth Street; and

WHEREAS, the River Drive/Fifteenth Street Agreement provides that each lot owner executing such agreement grants the City and County irrevocable license rights over the full length of River Drive and Fifteenth Street for construction and operation of the Water Distribution System, by virtue of each such executing lot owner's private easement rights to receive utility services over the full length of River Drive and Fifteenth Street, which private easement rights are granted by the plat for the St. Johns River Estates Unit Three Subdivision, Plat Book 27, Page 221; and

WHEREAS, Fort Florida Road, also known as County Road 4157, is a public road; and

WHEREAS, the City desires for the County to assume ownership and exclusive control of the Water Distribution System and all rights and responsibilities related thereto after construction is complete, and for the County to provide potable water services to the properties served by the Water Distribution System; and

WHEREAS, the County has requested and the City has agreed that the water main pipe constructed along Fort Florida Road be upsized from the minimum size that would be required to serve the Properties to a size consistent with the County's standards, and agrees to reimburse the City for such upsizing of the water main pipe.

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable considerations contained herein, the parties agree as follows:

Section 1.0 Recitals.

The foregoing representations and recitals are true and correct and are hereby adopted as a material part of this Agreement.

Section 2.0 Construction of Water Distribution System.

2.1 The City shall, at its costs and expense, install the Water Distribution System improvements as detailed in Exhibit "A", including engineering cost, to connect County's potable water plant to the project, and all other facilities necessary to make it possible for the County to provide adequate potable water service.

2.2 The City shall provide the County all "As Built" drawings of the Water Distribution System. "As Built" drawings shall be certified by a registered engineer with the cost being borne by the City. "As Built" drawings shall use the construction drawings as a base, and show revised locations and details of the Water Distribution System. "As Built" drawings shall be provided to the County, two sets of signed and sealed paper plans and the electronic files in dwg and pdf format.

2.3 All water and sewer services and valves shall be marked on the street curb by etching into the concrete or if no curbing is available, a two (2) inch square metal tag is to be nailed to the street's pavement and painted as specified on design drawings.

2.4 Upon completion of the Water Distribution System and acceptance by the County as provided in Section 3.0 of this Agreement, the County shall reimburse the City for upsizing the water main along Fort Florida Road in the amount of \$54,883.00 per Exhibit B, the City's Bid Tabulation. The City's engineer shall incorporate into the City's engineering design, plans, and specifications the applicable standards and specifications of the County. The City's engineer shall be responsible for inspection, testing, and certification of construction.

2.5 The City warrants that it has obtained easements and other rights as required for the installation, construction, operation, and maintenance of the Water Distribution System by the City.

2.6 Upon the terms and conditions herein contained, the County agrees to provide potable water service to the properties served by the Water Distribution System, and the City hereby agrees that the County shall have the exclusive right to furnish potable water service to the properties served by the System.

Section 3.0 Ownership, Maintenance and Operation of the System

3.1 Upon execution of this Agreement and completion of the conditions in Section 3.3 herein, the City shall transfer and the County shall accept ownership of the Water Distribution System. The County agrees to operate and maintain the Water Distribution System in return for ownership of the Water Distribution System and the exclusive right to furnish potable water service to the properties serviced by the Water Distribution System.

3.2 The City has obtained execution of the Fort Florida Point Agreement and the River Drive/Fifteenth Street Agreement.

3.3 Prior to the County providing water services via the Water Distribution System and assuming ownership thereof:

(a) The City shall provide a copy of the certificate from the Volusia County Health Department clearing the water distribution system for use;

(b) The City shall provide certification by the design engineer that the Water Distribution System was constructed as designed; and

(c) The County shall have the right to refuse to provide water services via the Water Distribution System or accept ownership thereof until said Water Distribution System construction has passed certain reasonable and relevant tests, including, without limitation, pressure testing and bacteriological testing, witnessed by a County representative, to determine whether the Water Distribution System is constructed in accordance with the approved engineering plans and specifications. If the Water Distribution System fails to pass such a test, the City may correct the issue in a reasonable time, as confirmed by subsequent testing.

3.4 Once all conditions described in Subsection 3.3 of this Agreement have been either satisfied or waived, the County shall be deemed to have accepted the Water Distribution System, and shall confirm such acceptance in writing. By accepting the Water Distribution System, the County acknowledges and assumes the duty to provide potable water services to the properties serviced by such System in accordance with this Agreement and all relevant provisions of law. The City shall take those steps necessary to transfer ownership of the Water Distribution System, and the County shall accept such ownership.

Section 4.0 Water Rates, Services, and Connection Costs

4.1 The rates charged by the County for potable water services, and/or sewer service shall be in accordance with its rate schedule, which shall be subject to change from time to time. The County shall have the right to determine reasonable meter size and location.

4.2 County agrees that after City has connected to the system of County, and upon acceptance of the Water Distribution System as provided in Section 3.0 of this Agreement, the County shall provide potable water service to the properties connected to the Water Distribution System in a manner conforming to the reasonable requirements of public or governmental agencies having jurisdiction over County's water operations; provided however, that such service shall be in accordance with all other provisions of this Agreement, including County's rules and regulations and rate schedules as amended from time to time.

4.3 Effective on the date of execution of this Agreement, the County shall be solely responsible for administrative and billing responsibilities for the Water Distribution System's service area.

4.4 County does not guarantee an uninterrupted supply of water, or water at any particular pressure, nor does it assume any duty or obligation to furnish water for extinguishing fires. County reserves the right to shut off the water in its main at any time for the purpose of making repairs to or for extensions of or for providing temporary additional capacity to emergency water supply lines. County will not be responsible for any damage caused by low pressure or interruption of service. County shall not be obligated to furnish any water service to any building to which the County does not have access.

4.5 Upon application by owners, builders or their authorized representatives, the County agrees to connect the requested dwellings or structures on the said property upon payment of all charges in accordance with applicable County rules and regulations in effect at the time of application. Such charges shall be subject to revision from time to time by the County so long as any change shall be of general application. Those charges now in effect are as follows:

(a) Water plant Contributions-In-Aid-of Construction and connection fees, due prior to the installation and setting of a water meter, presently a total of \$1,334.17; and

(b) Meter installation fee and water deposit per Resolution No. 86-116, as amended, also known as Volusia County Code of Ordinances, Chapter 122, upon application for water service.

4.6 This Agreement shall not in any manner whatsoever prohibit or prevent County from extending its potable water facilities in, or to an area not referred to herein to service other developers or customers, so long as said extensions and furnishings of said services do not interfere with the furnishing of the services provided for by this Agreement.

Section 5.0 Easements and Access Rights

5.1 The County acknowledges and hereby accepts all rights granted to the County by the Fort Florida Point Road Agreement and the River Drive/Fifteenth Street Agreement.

5.2 The City shall be solely responsible for obtaining all required easements or other rights for the installation, construction, operation, or maintenance of the Water Distribution System along Fort Florida Road, River Drive, or Fifteenth Street and the City shall be responsible for all costs associated with acquiring such easements or rights.

Section 6.0 Sovereign Immunity, Indemnification, and Severability

6.1 The City hereby indemnifies and agrees hold harmless and defend the County and its elected and appointed officials, employees, and agents, from and against any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs and other liabilities (whether legal or equitable in nature including, without limitations, attorney's fees and costs for trial and appeals) claimed or asserted by or on behalf of any person arising from or associated with the Water Distribution System, including but not limited to disputes, lawsuits and challenges for installation and maintenance of the Water Distribution System such as property owners disputing an easement or the existence of an easement for utilities, trespass actions by property owners, inverse condemnation actions by property owners, negligence actions by property owners, or loss of use of the Water Distribution System caused by the negligent or deliberate acts or omissions of property owners except for injuries and damages caused by the sole negligence of the County. Provided, however, in the event the County is named or joined as a party in a suit or proceeding, the County shall give the City timely notice of such suit or proceeding. Upon receipt of such notice, the City shall tender a defense of the County in such action or proceeding. The County shall have the right to reasonably approve the City's selection of counsel for such defense.

6.2 The City covenants to budget and appropriate in each fiscal year such amount of Non-Ad Valorem Revenues sufficient to provide for the timely payment of the obligations due under Section 6.1 hereof and any other amounts required to be paid under this Interlocal Agreement. In such event, subject to the next paragraph, the City covenants and agrees and has a positive and affirmative duty to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues, and to pay to the County amounts sufficient to pay the amounts due hereunder not being paid from other amounts as the same shall become due. Such covenant and agreement on the part of the City to budget, appropriate and pay such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated, and actually paid. No lien upon or pledge of such budgeted Non-Ad Valorem Revenues shall be in effect until such monies are budgeted, and appropriated. The City further acknowledges and agrees that the obligations

of the City to include the amount of such amendments in each of its annual budgets and to budget and pay such amounts from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth hereunder.

The City further covenants that this Interlocal Agreement shall be deemed to be entered into for the benefit of the County and that the obligations of the City to include the amount of any cost of any defense, claim, or adverse judgment arising out of section 6.1 in each of its annual budgets and to requirement to pay such claim from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein. The obligations of the City pursuant to this Interlocal Agreement will not constitute a general indebtedness of the City within the meaning of any constitutional or statutory provision or limitation and the City is not obligated to levy any ad valorem taxes for payment therefor. Neither the full faith and credit nor the taxing power of the City or the County is pledged to such claim or damages arising out of section 6.1.

The City (i) has duly approved this Interlocal Agreement and the covenant to budget and appropriate legally available Non-Ad Valorem Revenues for the payment thereof, (ii) has full power and authority to enter into this Agreement and to comply with its provisions and (iii) shall initiate and prosecute to completion all proceedings necessary to defend, hold harmless and indemnify the County.

6.3 If any portion of this Agreement is for any reason held or declared to be invalid or unenforceable by a court of competent jurisdiction, such court action shall not affect the remaining portions of this Agreement.

6.4 The County and the City each expressly retain all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes and as otherwise provided by law. Notwithstanding anything set forth in any section of this Interlocal Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of any party beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature, or may be adopted by the Florida Legislature, and liability of any party for damages shall not exceed the statutory limits of liability, regardless of the number or nature of any claim which may arise, including, but not limited to, a claim sounding in tort, equity or contract.

Section 7.0 Notices

7.1 All notices required to be given by either party under this Interlocal Agreement shall be in writing, addressed to the other party as follows, and delivered by certified mail, return receipt requested, or in person:

- (a) City of DeBary
ATTN: City Manager
16 Colomba Rd
DeBary, FL 32713

(b) County of Volusia
ATTN: County Manager
123 West Indiana Avenue
DeLand, FL 32720

7.2 Either party may, by written notice to the other party as provided herein above, change the address for any subsequent notice.

Section 8.0 Assignment

This Agreement may not be assigned or transferred in any manner without prior written permission of the other party, absent which consent any purported assignment or transfer of this Agreement shall be void.

Section 9.0 Waiver

Waiver by either party for breach of any covenant or provision of this Agreement shall not be deemed to constitute a waiver of any preceding or subsequent breach of the same or any other covenant or provision. Failure to object to or enforce this Agreement as to a breach of any covenant or provision contained herein shall not constitute waiver of such breach.

Section 10.0 Disputes and Default

In the event of any dispute concerning the interpretation or obligations of either party under this Agreement, the parties shall attempt in good faith to resolve such dispute via discussion between the City and County Managers or their representatives, or via any form of dispute resolution to which the parties may agree. Before initiating an action in court, the parties shall comply with any applicable requirements of the Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes.

Section 11.0 Governing Law

Unless otherwise pre-empted by federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

Section 12.0 Amendment

This Agreement may be amended and modified from time to time as necessary by mutual written agreement of the parties hereto.

Section 13.0 Miscellaneous

13.1 This Agreement shall be binding upon the parties hereto, their successors in interest, grantees, transferees, and assigns.

13.2 It is expressly agreed and understood between City and County that there are no other written or verbal agreements applicable herein between Developer and County.

13.3 This Agreement shall become effective when it is last approved and executed by the County and the City.

13.4 This Agreement is solely for the benefit of the County and the City, and no right or cause of action shall accrue to or for the benefit of any third party that is not a party hereto. Nothing in this Interlocal Agreement, express or implied, is intended or shall be construed to confer upon or give any person or corporation other than the County or the City any right, remedy, or claim under or by reason of this Interlocal Agreement or any provisions or conditions of it, and all of the provisions, covenants, and conditions herein contained shall inure to the sole benefit of and shall be binding upon the County and the City.

13.5 Upon execution, either party may record this Agreement in the public records of Volusia County, Florida.

13.6 The captions or section headings of this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify, or otherwise affect the substance of this Agreement.

13.7 This Agreement may be executed in any number of counterparts, the aggregate of which shall constitute a single document, and electronic and/or facsimile signatures shall be deemed original signatures.

13.8 Each party shall, upon written request from the other party and with no obligation to incur substantial costs, take reasonable steps to aid the other party to obtain any required approval or permit from any relevant governmental entity or to otherwise aid the other party in carrying out its functions and obligations as contemplated by this Agreement.

IN WITNESS WHEREOF, the City and the County have caused these presents to be executed and their respective corporate seals to be hereunto affixed, by their duly authorized officers, the day and year as provided below.

(See Separate Signature Page)

ATTEST:

James T. Dinneen
County Manager

Jason P. Davis
County Chair

DATE: _____

STATE OF FLORIDA }
COUNTY OF VOLUSIA }

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by **Jason P. Davis**, as **County Chair** of the County of Volusia, who is personally known to me and who () did () did not take an oath.

Notary Public, State of Florida
Printed: _____
Commission No.: _____
Expiration: _____

CITY OF DEBARY, FLORIDA

ATTEST:

Ron McLemore
Interim City Manager

Lita Handy-Peters
Interim Mayor

DATE: _____

STATE OF FLORIDA }
COUNTY OF VOLUSIA }

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by **Lita Handy-Peters**, as **Interim Mayor** of the City of DeBary, who is personally known to me and who () did () did not take an oath.

Notary Public, State of Florida
Printed: _____
Commission No.: _____
Expiration: _____

**INTERLOCAL AGREEMENT
COUNTY OF VOLUSIA/DEBARY
FT. FLORIDA ROAD**

