

**INTERLOCAL AGREEMENT  
BY AND BETWEEN  
NASSAU COUNTY, FLORIDA  
AND THE FLORIDA GOVERNMENTAL UTILITY AUTHORITY  
RELATING TO THE PROVISION OF UTILITY SERVICES  
TO THE NASSAU COUNTY AMELIA UTILITY (NAU) WATER AND WASTEWATER  
UTILITY SYSTEM**

**THIS INTERLOCAL AGREEMENT**, dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the “Utility Services Interlocal Agreement”), entered into by and between the **FLORIDA GOVERNMENTAL UTILITY AUTHORITY**, a legal entity and public body created by interlocal agreement pursuant to Section 163.01(7), Florida Statutes (the “FGUA”), and **NASSAU COUNTY, FLORIDA**, a Florida county governmental entity (the “County”) each constituting a “Public Agency” under Part I of Chapter 163, Florida Statutes (the “Interlocal Act”).

**RECITALS**

**WHEREAS**, the Nassau County (the “County”) currently provides water and wastewater utility services to its citizens through its Nassau Amelia Utility (“NAU”); and

**WHEREAS**, Nassau County has previously been a member government of the FGUA and is aware of its unique capabilities; and

**WHEREAS**, the County has need of the utility support services to be provided by the FGUA for at least twelve (12) months to provide management operation and to provide maintenance and system improvements evaluation and recommendations for longer range sustainability; and

**WHEREAS**, the County and the FGUA now desire to enter into and execute this Utility Services Interlocal Agreement setting forth the terms and provisions under which the FGUA may provide utility services to the County; and

**NOW, THEREFORE**, in consideration of the foregoing and the covenants contained herein, it is mutually agreed and understood by the County and the FGUA as follows:

**Section 1 - Incorporation**

(A) The above Recitals are true and correct and are incorporated herein.

(B) The Appendices hereto and each of the documents referred to therein are incorporated and made a part hereof in their entirety by reference.

(C) Any headings preceding the texts of the several Articles, Sections, Appendices, or Exhibits in this Utility Services Interlocal Agreement and any table of contents or marginal notes appended to copies hereof, shall be solely for the convenience of reference and shall neither constitute a part of this Utility Services Interlocal Agreement nor affect its meaning, construction or effect.

## Section 2 - Provision of Utility Services

The FGUA will provide the Utility Services as described in Appendix A attached hereto and incorporated herein and upon the terms and conditions outlined in this Utility Services Interlocal Agreement, commencing upon the date outlined in Section 7(a). It is expressly understood that the FGUA will perform such services through the use of contract providers.

## Section 3 – Vehicles, Personnel, Office Space, Equipment and Supplies

For the duration of this Utility Services Interlocal Agreement, the County will make available to the FGUA and its operations subcontractor, all County personnel, vehicles, equipment and supplies owned by the County and utilized in the operation of the County's water and sewer utility system.

## Section 4 – Renewal and Replacement

The County hereby authorizes and will provide funding to the FGUA on a monthly reimbursement basis to carry out minor renewal and replacements activities, as identified in Appendix A and B attached hereto and incorporated herein. Any renewal and replacement requirements in excess of the funds budgeted as shown in Appendix A & B or in the County budget as of the effective date of this agreement shall remain the responsibility of the County. Additional work may be performed by the FGUA upon authorization by the county.

## Section 5 - Fee for Services

In recognition for the Utility Services to be provided to the County as described in Appendix A, the County shall compensate the FGUA according to the Compensation Schedule outlined in Appendix C attached hereto and incorporated herein. County shall also compensate FGUA for minor renewal and replacement activities on a monthly basis for those activities as identified in Appendix A and Appendix B attached hereto.

## Section 6 - Invoicing and Prompt Payment

- (A) FGUA invoices shall be submitted monthly, and shall be submitted to:  
[Insert name, position, address]  
---Nassau County

- (B) The County shall pay the FGUA the fee for services pursuant to this Utility Services Interlocal Agreement consistent with the Florida Prompt Payment Act.

## Section 7 - Term and Termination

- (A) The term of this Utility Services Interlocal Agreement shall begin on \_\_\_\_\_ and shall remain in effect for no longer than 12 months, or until terminated according to the provisions of Section 7(B) hereof. If the one-year services are required beyond the term, then this Utility Services Interlocal Agreement may be extended as mutually agreed upon by the parties.
- (B) 1. This Utility Services Interlocal Agreement may be terminated by either party by providing written notice to the other party at least sixty (60) days prior to the termination date.

2. In the event of termination, the County shall pay to the FGUA all compensation due, related to services provided under this Utility Services Interlocal Agreement, up to and including the notice period.

#### Section 8 - Right to Subcontract

The FGUA has and shall have the absolute right to subcontract with private providers to provide the services to be performed pursuant to this Utility Services Interlocal Agreement.

#### Section 9 - Access to Records

The FGUA shall maintain adequate records to justify all charges, expenses and costs incurred in estimating and performing any of the services provided under this Utility Services Interlocal Agreement for at least two (2) years after the termination of this Utility Services Interlocal Agreement or as required by Law. The County shall have access to such books, records and documents as required for the purpose of inspection or audit, during normal business hours, and such books, records and documents shall be kept by FGUA at a place of business of the FGUA within the State of Florida.

#### Section 10 - Notice of Claims

Within forty-eight (48) hours of FGUA becoming aware of its occurrence, the FGUA shall notify the County, in writing, of all incidents, events or injuries which the FGUA reasonably believes may result in a claim, arising out of the FGUA's performance under this Utility Services Interlocal Agreement, including, but not limited to, claims relating to workplace injuries or grievances. The FGUA shall notify the County of any claim established and accepted by the FGUA as a liability of the FGUA under its commercial insurance or self-insurance and which claim is paid. The FGUA shall notify the County of any and all events, accidents, injuries, incidents, suits or claims which name or otherwise may involve or create a liability for the County or result from the provision by the FGUA of Utility Services under this Utility Services Interlocal Agreement.

#### Section 11 - Indemnification

- (A) In consideration of Ten Dollars (\$10.00) and other valuable consideration provided between the parties, the receipt of which is hereby acknowledged by each party, each party shall protect, defend, indemnify and hold the other party and its officers, employees and agents harmless from and against any and all liabilities, claims, losses, and expenses, including attorney's fees and all reasonable costs of litigation and judgments arising out of any willful misconduct, negligent act, error, omission, or infringement of a third-party patent, license, or other intellectual property, by that party, its subcontractors, agents or employees, arising out of or incidental to the performance of this Utility Services Interlocal Agreement. Each party's obligation to indemnify pursuant to this Section is limited by the party's right to sovereign immunity, which right is expressly not waived by either party, and to the indemnification limitations provided in §768.28, *Florida Statutes*. The limits set forth in Section 768.28 (5), *Florida Statutes*, as may be amended from time to time by the State legislature, are hereby ratified and adopted herein by reference as a provision of this Utility Services Interlocal Agreement and are expressly made the limits of each party's liability to the other under this Utility Services Interlocal Agreement regardless of whether the claimed cause of action or the claimed source of any indemnification right sounds in tort, contract, product liability, strict liability, negligence, or otherwise. Any

indemnification right of the County is further limited to and payable solely from money of the FGUA which is not derived from any enterprise fund of the FGUA or otherwise in conflict with any financing documents relating to bonds issued by the FGUA or any other indebtedness incurred by the FGUA. Any indemnification right of the FGUA is limited to and payable solely from monies of the County not derived from the collection of impact fees or otherwise in conflict with financing documents relating to bonds issued by the County or any other indebtedness incurred by the County.

All pollution related liability coverage shall remain with the County for purposes of this Agreement.

- (B) Notwithstanding any provision to the contrary contained in this Utility Services Interlocal Agreement, in no event shall the FGUA be liable, either directly or as an indemnitor of the County, for any special, punitive, indirect and/or consequential damages, including damages attributable to loss of use, loss of income or loss of profit even if the FGUA has been advised of the possibility of such damages. Furthermore, notwithstanding any provision to the contrary contained in this Utility Services Interlocal Agreement, in no event shall the County be liable, either directly or as an indemnitor of the FGUA, for any special, punitive, indirect and/or consequential damages, including damages attributable to loss of use, loss of income or loss of profit even if the County has been advised of the possibility of such damages. This limitation contained in this Section herein shall not preclude either party from pursuing its indemnity rights against the other party for special, punitive, indirect and/or consequential damages in the event that the party seeking indemnity is obligated to pay such special, punitive, indirect and/or consequential damages to a third party because of the other party's negligence.

#### Section 12 – Applicable Law; Jurisdiction and Venue

- (A) This Utility Services Interlocal Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- (B) The parties to this Utility Services Interlocal Agreement expressly consent to the jurisdiction of and agree to suit in any court of general jurisdiction in the State, whether state, local or federal, and further agree that venue shall lie in Nassau County, Florida. Notwithstanding any law to the contrary, if FGUA may claim a right of home venue privilege in Leon County, Florida, FGUA specifically waives this right by entering into this Utility Services Interlocal Agreement with the County.
- (C) The FGUA will comply with the State of Florida records retention guidelines and will transmit retained documents to the County for retention or destruction upon request.

#### Section 13 – Public Records

- (A) IF EITHER PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT FLORIDA GOVERNMENTAL UTILITY AUTHORITY, ATTN: GERRI FRANKLIN, AUTHORITY CLERK, 280 WEKIVA SPRINGS ROAD,

SUITE 2070, LONGWOOD, FL 32779, EMAIL: GERRI FRANKLIN  
[GFRANKLIN@GOVMSERV.COM](mailto:GFRANKLIN@GOVMSERV.COM), PHONE (407) 629-6900 AS APPLICABLE.

- (B) The parties shall keep and maintain all public records required and deemed necessary to perform the services purchased under this contract.
- (C) When requested by the Custodian of Public Records of either party, the other party shall provide a copy of those requested public record that are not exempt and relate to the contract for the purpose of allowing the records to be inspected or copied within a reasonable time at a cost that does not exceed those costs provided in Chapter 119, Florida Statutes or as otherwise may be provided by law.
- (D) Both parties shall ensure that all public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed to the public except as authorized by law for the duration of the contract term and following completion of the contract if the public records are not transferred to the other party as provided in this contract.
- (E) Upon completion of the contract, each party shall maintain all of the public records required to perform the contract. Each party shall destroy any duplicate public records that are exempt or confidential and which are also exempt from public records disclosure requirements.
- (F) A request to inspect or copy public records relating to this contract for services must be made directly to the parties. Requests should be directed to the Custodian of Public Records.

If either party does not possess the requested records due to a private contractor or subcontractor maintaining the public records, then the FGUA or the County shall immediately notify the private contractor or subcontractor of the request for records. The contractor or subcontractor must provide the records to the FGUA or the County or allow the records to be inspected or copied within a reasonable time. If the contractor or subcontractor does not comply with the FGUA or the County's request for records, the FGUA shall be entitled to enforce the contract provisions herein for failure to comply with the terms of the contract. Any contractor or subcontractor which fail to provide public records to FGUA or the County within a reasonable time may also be subject to penalties as provided under Section 119.10, Florida Statutes, including punishment by fine or may be guilty of committing a misdemeanor of the first degree for any willful and knowing violation.

#### Section 14 - Notice

- (A) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

To the FGUA:

Florida Governmental Utility Authority c/o  
Government Services Group, Inc.  
280 Wekiva Springs Rd.  
Suite 2070

Longwood, FL 32779-6026  
Attention: Stephen Spratt, System Manager

With a copy to:

Pennington, P.A.  
215 South Monroe Street, 2nd Floor  
Tallahassee, FL 32301-1839  
Attention: John C. Pelham, Esq.

To the County:

With a copy to:

- (B) Any written notice given to one person in Subsection A of this Section shall also be provided to all other persons identified in Subsection A.
- (C) The parties may, by notice in writing given to the others, designate any future or different addresses to which the subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or by facsimile transmission or five (5) days after the date mailed.

#### Section 15 - Assignment

- (A) The FGUA shall not have the right to assign any of its rights, duties or obligations under this Utility Services Interlocal Agreement without the consent of the County upon a demonstration by the proposed assignee of its ability to perform the obligations of the FGUA under this Utility Services Interlocal Agreement, which consent shall not be unreasonably withheld. A consented to assignee shall be required to assume the obligations of the assigning party by written assignment in a form reasonably satisfactory to the County's attorney.
- (B) Any assignment of this Utility Services Interlocal Agreement consented to by the County shall be an assignment of the Utility Services Interlocal Agreement in its entirety; provided, however, this provision shall not apply to an affiliate of the FGUA if such separate assignment shall not, in the judgment of the County, interfere with the performance of the duties and the provision of the services provided in this Utility Services Interlocal Agreement.

## Section 16 - Amendments and Waivers

No amendment, supplement, modification or waiver of this Utility Services Interlocal Agreement shall be binding upon any party hereto unless executed in writing by such party. No waiver of any of the provisions of this Utility Services Interlocal Agreement shall be deemed or shall constitute a waiver of any other provision of this Utility Services Interlocal Agreement, whether or not similar, unless otherwise expressly provided. No waiver of a default or a breach of any provision of this Utility Services Interlocal Agreement shall operate nor be construed to operate as a waiver of any subsequent default or breach.

## Section 17 – Filing

This Utility Services Interlocal Agreement shall be filed with the Clerk of the Circuit Court of Nassau County and with the Clerk of the Circuit Court of Leon County.

## Section 18 - Severability

If any clause, subsection, or section of this Utility Services Interlocal Agreement shall be ruled invalid by any court of competent jurisdiction, then the invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Utility Services Interlocal Agreement shall be construed and enforced as if such invalid portion did not exist.

## Section 19 – Insurance Requirements

The FGUA will require any contract provider utilized to deliver services to the County under this Utility Services Interlocal Agreement to satisfy the insurance requirements outlined in Appendix C. The FGUA will require its contract providers to name the County as a primary additional insured.

## Section 20 - County Employee Actions and Benefits

The County shall remain responsible for the payment for all salaries, benefits, insurance, contributions for retirement benefits and any and all other compensation due and owing to County employees working with FGUA and the operations subcontractor as provided in Section 3 of this interlocal agreement. County, as employer, shall be responsible for compliance and the payment of all fees and taxes associated with County employees and employee benefits under state and federal law, including but not limited to Federal income tax, state income taxes, if any, social security withholding tax, Medicare taxes, compliance with ERISA, compliance with the Affordable Healthcare Act, reemployment assistance taxes, overtime and employment laws, OSHA, or any other required employment rules and regulations.

County shall also remain the designated general employer for purposes of workers compensation of the County employees and agrees that FGUA and County will settle all issues and workplace claims or workers compensation injuries or grievances as provided in Sections 10 and 11 of this interlocal agreement.

Any disciplinary actions, reports, or proceedings necessary for County employees, as a result of any actions of County employees working with FGUA and its operations subcontractor, shall follow and utilize the employment disciplinary procedures of Nassau County as established by its employee or personnel relations office, adopted by the County Commission, any collective bargaining agreements or other procedures as may apply to the County employee.

Section 21 – Effective Date

The Effective Date of this Utility Services Interlocal Agreement shall be \_\_\_\_\_, when the FGUA assumes management and operational responsibility for the Nassau Amelia System.

Section 22 - Entire Agreement

This Utility Services Interlocal Agreement, including the referenced Appendices hereto, is the entire agreement between the parties. Upon execution by all parties, the County shall provide the FGUA three complete, certified copies of this Utility Services Interlocal Agreement, together with all appendices hereto. This Utility Services Interlocal Agreement shall be construed as solely for the benefit of the County and the FGUA, their successors and assigns, and no claim or cause of action shall accrue to or be for the benefit of any third party by reason of the execution of this Utility Services Interlocal Agreement.

**IN WITNESS WHEREOF**, the County and the FGUA have caused this Utility Services Interlocal Agreement to be duly executed and entered into on the date first above written.

FLORIDA GOVERNMENTAL UTILITY AUTHORITY

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

Its: \_\_\_\_\_

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

Attest:

\_\_\_\_\_  
Franklin, Board Clerk

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

NASSAU COUNTY, FLORIDA

By: \_\_\_\_\_  
Chairman

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

Attest:

\_\_\_\_\_  
-----, County Clerk

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