

RESOLUTION NO. 2012 - 172

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS AND REQUIREMENTS OF AN INTERLOCAL AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA AND THE DURBIN CROSSING COMMUNITY DEVELOPMENT DISTRICT FOR SHARING THE USE AND EXPENSE OF RECLAIMED WATER AT DURBIN CREEK PARK; AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE AGREEMENT ON BEHALF OF ST. JOHNS COUNTY.**

**RECITALS**

**WHEREAS**, St. Johns County ("County"), a political subdivision of the State of Florida, and the and Durbin Crossing Community Development District ("District") desire to share the use and the cost of reclaimed water at Durbin Creek Park; and

**WHEREAS**, the Parties jointly established a procedure for determining the responsibilities related to the cost of the reclaimed water used; and

**WHEREAS**, by entering into an interlocal agreement regarding such use and cost of the reclaimed water, the County and District mutually seek to outline individual duties and responsibilities and to provide maximum public benefit; and

**WHEREAS**, the County has reviewed the terms, provisions, conditions and requirements of the proposed Interlocal Recreation Agreement (attached hereto, and incorporated herein); and

**WHEREAS**, entering into said Interlocal Recreation Agreement will serve a public purpose and the interests of the County.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:**

**Section 1.** The above Recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.

**Section 2.** The Board of County Commissioners hereby approves the terms, provisions, conditions and requirements of the Interlocal Recreation Agreement between the County and the District for shared use and cost of reclaimed water, and authorizes the County Administrator, or designee, to execute this Interlocal Recreation Agreement on behalf of St. Johns County.

**Section 3.** To the extent that there are typographical or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval of the board of County Commissioners.

**Section 4.** This Resolution shall be effective upon its execution.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 19 day of June, 2012.

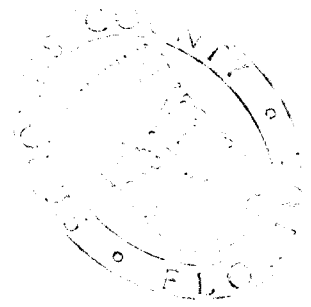
Attest:

By: *Pam Haltem*  
Deputy Clerk

ST. JOHNS COUNTY BOARD  
OF COUNTY COMMISSIONERS

By: *Mark Miner*  
Mark Miner, Chair

RENDITION DATE 6/25/12



**INTERLOCAL AGREEMENT BETWEEN ST. JOHNS COUNTY AND THE  
DURBIN CROSSING COMMUNITY DEVELOPMENT DISTRICT REGARDING THE  
SHARING OF CERTAIN RECLAIMED WATER IRRIGATION SYSTEM  
OPERATION AND MAINTENANCE FEES**

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into this 24<sup>th</sup> day of April, 2012, by and between ST. JOHNS COUNTY, a political subdivision of the State of Florida ("County") and DURBIN CROSSING COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government ("District", together with the County, the "Parties").

**WITNESSETH:**

**WHEREAS**, it is the purpose and intent of this Agreement to permit and authorize the County and the District to make the most efficient use of their respective powers, resources, authority and capabilities by enabling them to cooperate on the basis of mutual advantage and to achieve the results provided for in this Agreement pursuant to Section 163.01, Florida Statutes, known as the Florida Interlocal Cooperation Act of 1969 ("Cooperation Act"); and

**WHEREAS**, it is the purpose of the Cooperation Act to provide a means by which the County and the District may exercise their respective powers, privileges, and authority which they may have separately, but which pursuant to this Agreement and the Cooperation Act they may exercise collectively; and

**WHEREAS**, the District was created pursuant to Chapter 190, Florida Statutes ("Act"), for the purpose of delivering certain community development services and facilities within and outside the boundaries of the District; and

**WHEREAS**, all of the lands contained within the boundaries of the District are located entirely within the boundaries of the County; and

**WHEREAS**, pursuant to its authority under the Act, the District constructed various infrastructure improvements including a reclaimed water irrigation system located at the north end of Islesbrook Parkway (the "Reclaimed Water Irrigation System"); and

**WHEREAS**, the County owns and maintains a 6" meter (the "Meter"), the location of which is set forth on **Exhibit A** hereto, which is read by a JEA representative once per month; and

**WHEREAS**, the Parties have determined that five 3" sub-meters (the "Sub-Meters") together with associated main line, valves, lateral lines, spray heads, etc., feeding from the Meter at the location set forth on **Exhibit A** hereto should be added to the Reclaimed Water Irrigation System (the "Expanded Reclaimed Water Irrigation System"); that monthly readings of the Sub-Meters and Meter shall be conducted by a District representative and a County representative

(the "Representatives") on or about the time of the JEA representative's monthly reading of the Meter; that the Representatives shall together determine and agree upon the amount due from the District for that month's JEA bill for the Meter (including the Service Availability Charge, Volume Charges, Environmental Charge, and any other reclaimed water irrigation related charges) based upon the District's respective usage logged by the Sub-Meters; and that the District shall promptly remit payment in such agreed upon amount to the County to be applied toward that month's JEA bill for the Meter; and

**WHEREAS**, the District has installed and agrees to operate and maintain the Expanded Reclaimed Water Irrigation System; and

**WHEREAS**, the Parties have determined that the Expanded Reclaimed Water Irrigation System benefits both the County and the District; and

**WHEREAS**, the County and the District desire to memorialize and set forth clearly their understanding and agreement with respect to the allocation and payment of costs between the Parties for the monthly JEA bills for the Meter.

**NOW, THEREFORE**, in consideration of the mutual promises and other consideration contained herein, the Parties hereto agree as follows:

**Section 1.** Incorporation of Recitals. The recitals stated above are true and correct and by this reference are incorporated by reference as a material part of this Agreement, and said Recitals are adopted as Findings of Fact.

**Section 2.** Governing Law and Venue. This Agreement shall be construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.

**Section 3.** Effective Date and Term of the Agreement. This Agreement shall be effective as of the date first written above through September 30, 2014, and shall be automatically renewed for additional one (1) year periods commencing October 1, 2014, unless terminated by either party in accordance with section 8 herein.

**Section 4.** Operation and Maintenance of Expanded Reclaimed Water Irrigation System. The District shall operate and maintain the Expanded Reclaimed Water Irrigation System.

**Section 5.** Monthly Reading of Meter and Sub-Meters; Payment of JEA Bill. Approximately once per month, on or about the time that the JEA representative reads the Meter, the Representatives shall read the Sub-Meters and the Meter, and shall together determine and agree upon the amount due from the District for that month's JEA bill for the Meter (including the Service Availability Charge, Volume Charges, Environmental Charge, and any other reclaimed water irrigation related charges) based upon the District's respective usage logged by the Sub-Meters. Thereafter, the District shall promptly remit payment in such agreed upon amount to the County to be applied toward that month's JEA bill for the Meter.

**Section 6.** Assignment. Neither the County nor the District may assign, transfer, and/or sell any of the rights noted in this Agreement, or associated with this Agreement, without the prior express written approval of the other party.

**Section 7.** Amendments to this Agreement. Both the County and District acknowledge that this Agreement constitutes the complete agreement and understanding of the Parties. Further, both the County and the District acknowledge that any change, amendment, modification, revision or extension of this Agreement (other than termination, as noted elsewhere in this Agreement) shall be in writing, and shall be executed by duly authorized representatives of both the County and the District.

**Section 8.** Termination. This Agreement may be terminated without cause upon either the County or the District providing at least one hundred eighty (180) days' advance written notice to the other party of such termination without cause. Such written notification shall indicate that either the County or the District intends to terminate this Agreement one hundred eighty (180) days from the date of notification (unless a date greater than one hundred eighty (180) days is specified). This Agreement may be terminated with cause upon either the County or the District providing at least thirty (30) days' advance written notice to the other party of such termination with cause. Such written notification shall indicate that either the County or the District intends to terminate this Agreement thirty (30) days from the date of notification (unless a date greater than thirty (30) days is specified). Provided, however, that either party shall be provided a reasonable opportunity to cure any failure under this Agreement. Consistent with other provisions of this Agreement, the Parties shall be compensated for any services and/or expenses that are both authorized under this Agreement and that are performed and/or accrue up to the termination of this Agreement.

**Section 9.** Execution in Counterparts. This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 10.** Access to Records. The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable State or Federal law. Access to such public records may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

**Section 11.** Limitation on Governmental Liability. Nothing in this Agreement shall be deemed a waiver of immunity or limits of liability of the County or the District beyond any statutory limited waiver of immunity or limits of liability contained in Section 768.28, Florida Statutes, as amended, or other statute. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

**Section 12. Notices.** All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the Parties, as follows.

If to the County: St. Johns County \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

With a Copy to: \_\_\_\_\_

If to the District: Durbin Crossing Community Development District  
475 West Town Place, Suite 114  
St. Augustine, Florida 32092  
Attention: District Manager

With a Copy to: Hopping, Green & Sams, P.A.  
119 S. Monroe Street, Suite 300  
Tallahassee, Florida 32301  
Attn: Michael C. Eckert

**Section 13. Filing.** After approval of this Agreement by the respective governing bodies of the County and the District, and its execution by the duly qualified and authorized officers of each of the Parties, the District shall cause this Agreement to be filed with the Clerk of the Circuit Court of St. Johns County, Florida, in accordance with the requirements of Section 163.01(11), Florida Statutes.

**Section 14. Severability.** If any part of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable part shall be deemed severable and the remaining parts of this Agreement shall continue in full force and effect provided that the rights and obligations of the Parties are not materially prejudiced and the intentions of the Parties can continue to be effected.

**Section 15. Entire Agreement.** This instrument and the attached exhibit constitute the entire agreement between the Parties and supersede all previous discussions, understandings and agreements between the Parties relating to the subject matter of this Agreement.

[CONTINUED ON NEXT PAGE]

**IN WITNESS WHEREOF**, the County and the District have each caused this Agreement to be executed and delivered as of the date indicated above:

ATTEST:

**BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA**

\_\_\_\_\_  
Clerk of the Board of County  
Commissioners of St. Johns County, Florida

\_\_\_\_\_  
Chair

SEAL

Date:

ATTEST:

DURBIN CROSSING COMMUNITY  
DEVELOPMENT DISTRICT

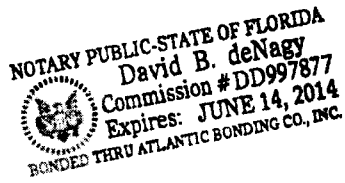
David B. deNagy  
Secretary, Board of Supervisors

[Signature]  
Vice-Chairman, Board of Supervisors

STATE OF FLORIDA     )  
COUNTY OF St. Johns     )

The foregoing instrument was acknowledged before me this 24th day of April, 2012, by Jason Sessions as the Vice-Chairman of the Board of Supervisors for the Durbin Crossing Community Development District, and who has acknowledged that he executed the same on behalf of the Community Development District and that he was authorized to do so. He is personally known to me or has produced \_\_\_\_\_ as identification.

In witness whereof, I have hereunto set my hand and official seal.



David B. deNagy  
Notary Public, State of Florida

David B deNagy  
Printed Name

