

**FIRST AMENDED AND RESTATED INTERLOCAL AGREEMENT
ESTABLISHING THE DEPARTMENT OF PLANNING LAND MANAGEMENT AND
COMMUNITY ENHANCEMENT AND DIRECTOR**

THIS ~~FIRST AMENDED~~ AND RESTATED INTERLOCAL AGREEMENT, is made and entered into on this ¹³~~12~~ day of ^{July}~~June~~, 2016, by and between the CITY OF TALLAHASSEE, Florida, a Florida municipal corporation (hereinafter referred to as “City”) and LEON COUNTY, Florida, a political subdivision of the State of Florida and charter county (hereinafter referred to as “County”), collectively, the (“Parties”).

RECITALS

WHEREAS, on November 7, 2000, the citizens of Leon County approved at referendum the collection (extension) of a one cent sales tax for the purposes of constructing capital projects and other necessary infrastructure which protects sensitive environmental features within the County; and,

WHEREAS, the City and County created, by Interlocal Agreement, the Blueprint 2000 entity to serve as the governing body for the implementation of the referendum ordinance and expenditure of funds in furtherance of the infrastructure projects which were approved by the citizens of Leon County; and,

WHEREAS, on November 4, 2014, a majority of the electors of Leon County voting at a referendum did approve an extension of the Local Government Infrastructure Surtax previously imposed in accordance with Section 212.055, Florida Statutes; and

WHEREAS, the Parties entered into a Second Amended and Restated Interlocal Agreement dated December 9, 2015 (“Blueprint Agreement”), which created the Blueprint Intergovernmental Agency (“Blueprint”), to provide for the ability to issue bonds and other debt obligations and to enter into contracts and otherwise provide services necessary and incidental to

the financing, planning and construction of certain local infrastructure projects and implementation of certain economic development programs to be financed with proceeds of the Local Government Infrastructure Surtax; and

WHEREAS, the position of Blueprint Manager was established by said Second Amended and Restated Interlocal Agreement dated December 9, 2015, which position has been re-titled as “Blueprint Director”; and

WHEREAS, the City and the County have established the Tallahassee-Leon County Planning Department by separate Interlocal Agreement dated September 23, 2009 (“Planning Agreement”); and

WHEREAS, the planning functions for Blueprint infrastructure improvements and the planning functions for the Capital Improvements Element of the Tallahassee-Leon County Comprehensive Plan are inter-related and thus are better supervised by one single individual; and

WHEREAS, the Parties did by the First Addendum to the Second Amended and Restated Interlocal Agreement between Leon County, Florida and City of Tallahassee, Florida, create and establish, within the Blueprint organizational structure, the Tallahassee-Leon County Office of Economic Vitality (“OEV”), through a consolidation of the City and County economic development offices, and did designate Blueprint as the public economic development agency for the City and the County for purposes of Section 288.075, Florida Statutes;

WHEREAS, the City and the County desire to better integrate implementation, administration, and executive oversight of the planning functions, as described above, the Blueprint infrastructure projects, the Blueprint economic development programs, and the OEV under one joint department (the “Department of Planning Land Management and Community Enhancement” or “PLACE”).

NOW, THEREFORE, for and in consideration of the mutual covenants and promises, the receipt and sufficiency of which is being acknowledged, the City and the County hereby agree as follows:

1. Term and Effective Date. The Term of this First Amended and Restated Interlocal Agreement (“Agreement”) shall commence on the date on which this Agreement has been fully executed by the Parties, and shall end on December 31, 2039, unless otherwise terminated or modified by the City and County in accordance with the terms hereof.

2. Department of PLACE and Position of Director Created. The City and the County hereby create a joint Department of Planning, Land Management and Community Enhancement (“PLACE”) and the position of Director of PLACE to manage and direct the Tallahassee-Leon County Planning Department, Blueprint, and the OEV. The Director of PLACE shall be hired by the County Administrator and the City Manager acting in concert, shall serve at-will, and may be terminated by either the County Administrator or the City Manager unilaterally. The County Administrator and the City Manager, or their designee, shall direct the performance of the Director and shall jointly evaluate that performance at least annually.

3. Funding. The Director of PLACE position shall be funded as follows: fifty (50%) percent by Local Government Infrastructure Surtax revenues collected and remitted to Blueprint; and, the remaining balance shall be paid by the City and County consistent with the allocation methodology set forth in the Planning Agreement.

4. Duties and Responsibilities. The duties and responsibilities of the Director of PLACE shall be to direct and supervise the Tallahassee-Leon County Planning Department, Blueprint and the OEV in their day-to-day functions as set forth in the Blueprint Agreement and the Planning Agreement.

5. Benefits. The Director of PLACE may elect benefits as provided for by either the City or the County.

6. Location. The Director of PLACE shall have offices located in such facilities as shall be decided jointly by the City Manager and the County Administrator.

7. Conflict. In the event of a conflict between the provisions set forth herein with any provisions set forth in the Planning Agreement or the Blueprint Agreement, the provisions in this Agreement shall supersede and be binding upon all parties, including Blueprint, to the extent of any such conflict.

8. Termination. If either Party fails to comply with any of the terms or conditions of this Agreement or defaults in any of its obligations under this Agreement and shall fail, within thirty (30) calendar days after written notice from the other Party, to correct such default or non-compliance, the non-defaulting Party may, at its option, forthwith terminate this Agreement after complying with Section 9. Dispute Resolution.

9. Dispute Resolution.

A. The Parties shall attempt to resolve all disputes that arise under this Agreement in good faith and in accordance with this section. The provisions of the “Florida Governmental Conflict Resolution Act” shall not apply to disputes under this Agreement, as an alternative dispute resolution process is hereby set forth in this section. The aggrieved Party shall give notice to the other Party in writing, setting forth the name of the Party involved in the dispute, the nature of the dispute, date of occurrence (if known), and proposed resolution, hereinafter referred to as the “Dispute Notice.”

B. Should the Parties be unable to reconcile any dispute, the City Manager and County Administrator, or their designees, shall meet at the earliest opportunity, but in

any event within ten (10) days from the date that the Dispute Notice is received, to discuss and resolve the dispute. If the dispute is resolved to the mutual satisfaction of the Parties, they shall report their decision, in writing, to the City Commission and Board of County Commissioners. If the City Manager and County Administrator, or their designees, are unable to reconcile the dispute, they shall report their impasse to the City Commission and Board of County Commissioners, who shall then convene a meeting at their earliest appropriate opportunity, but in any event within forty-five (45) days following receipt of a Dispute Notice, to attempt to reconcile the dispute.

C. If a dispute is not resolved by the foregoing steps within forty-five (45) days after receipt of the Dispute Notice, unless such time is extended by mutual agreement of the Parties, then either Party may require the dispute to be submitted to mediation by delivering written notice thereof (the "Mediation Notice") to the other Party. The mediator shall meet the qualifications set forth in Rule 10.100(d), Florida Rules for Mediators, and shall be selected by the Parties within ten (10) days following receipt of the Mediation Notice. The mediator shall also have sufficient knowledge and experience in the subject of the dispute. If agreement on a mediator cannot be reached in that ten (10) day period, then either Party can request that a mediator be selected by an independent conflict resolution organization, and such selection shall be binding on the Parties. The costs of the mediator shall be borne equally by the Parties.

D. If an amicable resolution of a dispute has not been reached within sixty (60) calendar days following selection of the mediator, or by such later date as may be mutually agreed upon by the Parties, then, upon the agreement of both Parties, such dispute may be referred to binding arbitration; otherwise, each Party may pursue

whatever remedies may be available at law, in equity, or otherwise. If the dispute is so referred, such arbitration shall be conducted in accordance with the Florida Arbitration Code (Chapter 682, Florida Statutes).

1. Such arbitration shall be initiated by delivery, from one Party (the “Claimant”) to the other Party (the “Respondent”), of a written demand therefore containing a statement of the nature of the dispute and the amount, if any, involved. The Respondent, within ten (10) days following its receipt of such demand, shall deliver an answering statement to the Claimant. After the delivery of such statements, either Party may make new or different claims by providing the other(s) with written notice thereof specifying the nature of such claims and the amount, if any, involved.

2. Within ten (10) days following the delivery of such demand, each Party shall select an arbitrator and shall deliver written notice of that selection to the other. If either Party fails to select an arbitrator within such time, the other Party may make application to the court for such appointment in accordance with the Florida Arbitration Code. Within ten (10) days following delivery of the last of such written notices, the two arbitrators so selected shall confer and shall select an additional arbitrator.

3. The arbitration hearing shall be commenced in Leon County, Florida within sixty (60) days following selection of the additional arbitrator. Except as may be specifically provided herein, the arbitration shall be conducted in accordance with Rules R-23 – R-48 of the Commercial Arbitration Rules of the American Arbitration Association.

10. Indemnification. To the extent permitted by law and subject to the limitations, conditions, and requirements of Section 768.28, Florida Statutes, which the Parties do not waive, each Party agrees to indemnify, defend and hold harmless the other Party, their officials, officers, and employees, from and against all liabilities, damages, costs and expenses, resulting from or arising out of any acts or omissions by the indemnifying Party, or its officials, officers, or employees, relating in any way to performance under this Agreement.

11. General Provisions.

A. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action to enforce any of the provisions of this Agreement shall be maintained in Tallahassee, Leon County, Florida.

B. Waiver. Failure to insist upon strict compliance with any term, covenant or condition of this Agreement shall not be deemed a waiver of it. No waiver or relinquishment of a right or power under this Agreement shall be deemed a waiver of that right or power at any other time.

C. Modification. This Agreement shall not be extended, changed or modified, except in writing duly executed by the Parties hereto.

D. Binding Effect. This Agreement shall be binding upon the successors and, subject to below, assigns of the Parties hereto.

E. Assignment. Because of the unique nature of the relationship between the Parties and the terms of this Agreement, neither Party hereto shall have the right to assign this Agreement or any of its rights or responsibilities hereunder to any third Party without

the express written consent of the other Party to this Agreement, which consent shall not unreasonably be withheld.

F. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the matters contained herein, and all prior agreements or arrangements between them with respect to such matters are superceded by this Agreement.

G. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

H. Ambiguity. This Agreement has been negotiated by the Parties with the advice of counsel and, in the event of an ambiguity herein, such ambiguity shall not be construed against any Party as the author hereof.

I. Public Bodies. It is expressly understood between the Parties that the City is a public body corporate under the laws of the State of Florida and that the County is a political subdivision of the State of Florida. Nothing contained herein shall be construed as a waiver or relinquishment by either of the Parties to claim such exemptions, privileges or immunities as may be provided to that Party by law.

J. Force Majeure. A Party shall be excused from performance of an obligation under this Agreement to the extent, and only to the extent, that such performance is affected by a "Force Majeure Event" which term shall mean any cause beyond the reasonable control of the Party affected, except where such Party could have reasonably foreseen and reasonably avoided the occurrence, which materially and adversely affects the performance by such Party of its obligation under this Agreement. Such events shall include, but not be limited to, an act of God, disturbance, hostility, war,

or revolution; strike or lockout; epidemic; accident; fire; storm, flood, or other unusually severe weather or act of nature; or any requirements of law.

K. Cost(s) and Attorney Fees. In the event of litigation between the Parties to construe or enforce the terms of this Agreement or otherwise arising out of this Agreement, the prevailing Party in such litigation shall be entitled to recover from the other Party its reasonable costs and attorney's fees incurred in maintaining or defending the subject litigation. The term litigation shall include appellate proceedings.

L. Severability. It is intended that each Section of this Agreement shall be viewed as separate and divisible, and in the event that any Section, shall be held to be invalid, the remaining Sections and parts shall continue to be in full force and effect.

M. Subject to Appropriation. All payment obligations of the Parties, if any, set forth herein shall be subject to appropriation of funding therefore by the applicable legislative bodies; however, failure to appropriate funding adequate to meet such payment obligations shall be deemed a default under this Agreement.

N. Survival of Obligations. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination.

IN WITNESS WHEREOF, the parties cause this First Amended and Restated Interlocal Agreement to be executed by their duly authorized representatives this ^{CFD} 13 day of July, 2016 as of the date first written above.

LEON COUNTY, FLORIDA

CITY OF TALLAHASSEE

BY: Bill Proctor
Bill Proctor
Chairman

BY: Andrew D. Gillum
Andrew D. Gillum
Mayor



ATTEST:

Bob Inzer, Clerk of the Court & Comptroller,
Leon County, Florida

BY: John Stott, Deputy Clerk

Approved as to Form:
Leon County Attorney's Office

BY: Herbert W. A. Thiele, Esq.
County Attorney



ATTEST:

James O. Cooke, IV
City Treasurer-Clerk

BY: James O. Cooke IV

Approved as to Form:

BY: Lewis E. Shelley, Esq.
City Attorney