

**AN INTERLOCAL AGREEMENT
BETWEEN THE CITY OF DAVENPORT, FLORIDA
AND POLK COUNTY, FLORIDA FOR THE
NORTH LAKE FITNESS TRAIL**

This Interlocal Agreement (the "AGREEMENT") is made and entered into by and between the CITY OF DAVENPORT, a municipal corporation of the State of Florida, whose address is 1 South Allapaha Avenue, Davenport, Florida 33837 (the "CITY") and POLK COUNTY, a political subdivision of the State of Florida, whose address is 330 West Church Street, Bartow, Florida 33830 ("POLK COUNTY") (the CITY and POLK COUNTY are referred to herein individually as a "Party" and collectively as the "Parties").

W I T N E S S E T H

WHEREAS, Section 163.01, Florida Statutes, Florida Interlocal Cooperation Act, authorizes local governments to enter into Interlocal Agreements to ensure the most efficient use of their respective powers and to exercise, jointly, any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS, the CITY has received a Local Agency Program (LAP) Grant from the State of Florida for the NORTH LAKE FITNESS TRAIL project ("PROJECT"); and

WHEREAS, the CITY is not LAP Certified to manage this PROJECT; and

WHEREAS, POLK COUNTY is LAP Certified to manage this PROJECT; and

WHEREAS, POLK COUNTY has agreed to manage this PROJECT for the CITY; and

WHEREAS, POLK COUNTY and the CITY have agreed to enter into this AGREEMENT as set forth to establish the respective rights of the CITY and POLK COUNTY in accordance with the terms and conditions of this AGREEMENT.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged the Parties agree as follows:

**ARTICLE I
RECITALS AND DEFINITIONS**

- 1.1 **Recitals.** The foregoing recitals are incorporated herein by reference as if recited in full and serve as a factual stipulation upon which the Parties agree is the basis for this Agreement.
- 1.2 **Definitions.** The capitalized terms contained herein shall be defined as set forth in the above recitals or as specified in the following paragraphs.

**ARTICLE II
AGREEMENT**

- 2.1 **The County's Responsibilities.** POLK COUNTY agrees to manage the PROJECT through construction as required by the LAP Agreement between FDOT and POLK COUNTY (the "LAP Agreement"). This will include the bidding out of the RFP for construction. POLK COUNTY shall have no financial responsibility for this PROJECT.
- 2.2 **The City's Responsibilities.** The CITY shall be responsible for any and all costs associated with this PROJECT that are in excess of the funding provided in the LAP Agreement (the "Excess Costs"). The CITY shall reimburse POLK COUNTY for the Excess Costs no later than 30 days from receiving an invoice from POLK COUNTY. The CITY shall appoint a project manager to coordinate with POLK COUNTY. The CITY will use FDOT's continuing services contract to design the PROJECT.

**ARTICLE III
MISCELLANEOUS PROVISIONS**

- 3.1 **Notice.** Whenever a Party desires to give notice to any other Party, it must be given by written notice delivered: (i) via registered or certified United States mail, postage prepaid with return receipt requested or (ii) via nationally recognized overnight delivery service, and addressed to the Party for whom it is intended at the place last specified by each Party. Notices hereunder may also be delivered by counsel. The place for giving notice shall remain such until it is changed by written notice delivered in compliance with the provisions of this Section. For the present, the Parties designate the following as the respective places for giving of notice:

3.1.1 Notices to POLK COUNTY shall be:

Chairperson
Polk County Board of County Commissioners
P.O. Box 9005
Bartow, Florida 33830

With a copy to:

County Attorney
Polk County Board of County Commissioners
P.O. Box 9005, Drawer AT01
Bartow, Florida 33830

With a copy to:
Division Director
Polk County Roads and Drainage Division
P.O. Box 9005, Drawer TR01
Bartow, Florida 33830

3.1.2 Notices to the CITY shall be:

Mayor
City of Davenport
1 South Allapaha Avenue
Davenport, FL 33837

With a copy to:
City Manager
1 South Allapaha Avenue
Davenport, FL 33837

With a copy to:
Development Services Director
1 South Allapaha Avenue
Davenport, FL 33837

3.2 **Severability**. If any section, phrase, sentence or portion of this Agreement is, for any reason, held to be invalid by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

3.3 **Effective Date**. This Agreement shall become effective on the day in which POLK COUNTY records this Agreement in the public records of Polk County, and this recordation shall occur no later than 10 days after this Agreement is executed by all Parties. If this Agreement is not recorded within 10 days, the Effective Date shall be 10 days after the last Party executes this Agreement.

3.4 **Days**. The term days in this Agreement shall mean calendar days unless otherwise so noted. If a date for performance falls on a Saturday, Sunday or legal State of Florida or federal holiday, the date for performance shall be extended until the next calendar day that is not a Saturday, Sunday or federal holiday.

3.5 **Default and Remedy**. If any Party materially defaults in its obligations under this Agreement and fails to cure the same within thirty (30) days after the date the Party

receives written notice of the default from a non-defaulting Party, then the non-defaulting Party shall have the right to (i) immediately terminate this Agreement by delivering written notice to the materially defaulting Party (after expiration of the foregoing cure period), and (ii) pursue any and all remedies available in law, equity, and under this Agreement (after expiration of the foregoing cure period).

3.6 **Limitation of Liability.** IN NO EVENT, SHALL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS CONTRACT BY THE DEFAULTING PARTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

3.7 **Waiver.** A waiver by any Party of any breach of this Agreement shall not be binding upon the waiving Party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving Party's rights with respect to any other or further breach of this Agreement. The making or acceptance of a payment by any Party with the knowledge of any other Party's existing default or breach of the Agreement shall not waive such default or breach, or any subsequent default or breach of this Agreement, and shall not be construed as doing so.

3.8 **Attorneys' Fees and Costs.** Each Party shall be responsible for its own legal and attorneys' fees, costs and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this Agreement, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

3.9 **Modification or Extension.** This Agreement may only be modified or extended in time by a written amendment properly executed by the Parties. No oral modifications will be effective or binding.

3.10 **Integration.** This Agreement sets-forth the entire agreement between the Parties with respect to its subject matter and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between the Parties pertaining to the PROJECT, whether written or oral.

3.11 **Counter parts.** This Agreement may be executed in multiple counterparts each of which shall be an original, but which collectively shall form a single agreement.

3.12 **Governing Law and Venue**. This Agreement and the rights and obligations of the Parties hereunder shall be interpreted, governed by, construed under, and enforced in accordance with the applicable laws of the State of Florida, and the ordinances, rules and regulations of Polk County including, but not limited to the Polk County Comprehensive Plan, Land Development Code and Utility Code, and any amendments thereto in effect as of the Effective Date of this Agreement. The Parties hereby consent to the sole and exclusive jurisdiction and venue for any action relating to the construction, interpretation, or enforcement of this Agreement to be in or for the Tenth Judicial Circuit, in Polk County, Florida.

3.13 **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of all successors and/or assigns of the Parties hereto.

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


3.15 **Termination**. Prior to start of construction of the PROJECT, any Party may terminate this Agreement, with or without cause, with 30 days written notice to the other Parties. After the start of construction of the PROJECT, this Agreement can only be terminated in accordance with Section 3.5 of this Agreement.

**(Continued on following pages with signatures)
(Remainder of page intentionally left blank)**

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representatives have made and executed this Inter-local Agreement on the date indicated below.

POLK COUNTY, a Political Subdivision of the
State of Florida

ATTEST: Stacy M. Butterfield,
Clerk to the Board

By: 
W.G. Braswell, Chairperson - Vice
T.R. Wilson R.28

By: 

Print Name: Alison Holland

Date: 4/16/2024

Title: Deputy Clerk

(SEAL)



Reviewed
as To Form and Legal Sufficiency.

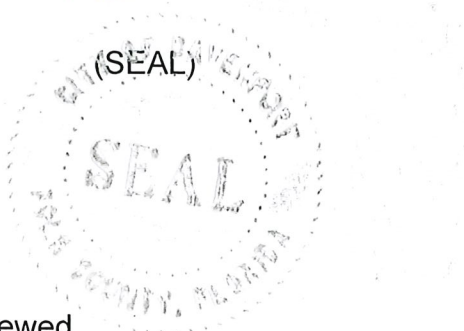
By: 
County Attorney's Office

Signature Page Follows

THE CITY OF DAVENPORT, a Municipal Corporation of the State of Florida

By: Raquel Castillo
Raquel Castillo, City Clerk

By: Brynn Summerlin
Brynn Summerlin, Mayor



Date: 5-6-24

Reviewed
as To Form and Legal Sufficiency

By: Thomas Cloud
Thomas Cloud, City Attorney