

INTERLOCAL AGREEMENT BETWEEN
POLK COUNTY AND CITY OF DAVENPORT
FOR ROAD IMPROVEMENTS FOR THE DAVENPORT / HAINES CITY PHASE 3
RESURFACING GROUP

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

WITNESSETH

WHEREAS, Section 163.01, Florida Statutes, authorizes local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, POLK COUNTY and DAVENPORT are authorized under Chapter 163, Florida Statutes, to enter into an Interlocal Agreement to make the most efficient use of their respective powers, resources, authorities and capabilities by enabling them to cooperate on the basis of mutual advantage and thereby provide the services provided for herein in a manner that will best utilize existing resources, powers and capabilities available to each of them; and

WHEREAS, POLK COUNTY and DAVENPORT desire to resurface Bargain Barn Road as part of the Davenport / Haines City Phase 3 Resurfacing Group and the total costs incurred by POLK COUNTY to resurface the Davenport / Haines City Phase 3 Resurfacing Group will be divided between POLK COUNTY and DAVENPORT as described in Section 2.3.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed 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 **Road Improvements.** DAVENPORT and POLK COUNTY agree that the following improvements are needed on Bargain Barn Road as part of the Davenport / Haines City Phase 3 Resurfacing Group. The Davenport / Haines City Phase 3 Resurfacing Group will continue to be two-lane road segments with the following improvements:

- (1) Mill 1.5" of existing asphalt and pave 1.5" using SP-12.5 asphalt mix (structural course) followed by 1.25" of SP-9.5 asphalt mix (surface course).
- (2) Restripe pavement markings.

(collectively, the "Road Improvements"). The Road Improvements, as described above in this Sub-Section 2.1, are generally depicted in Exhibit "A."

2.2 **Road Improvements Responsibility and Timing.** POLK COUNTY shall obtain any necessary permits and construct and fund the Road Improvements as described in Section 2.1.

2.3 **Road Improvements Reimbursement.** The original estimate for the Road Improvements is ONE MILLION, SIX HUNDRED and TWENTY THOUSAND, FIVE HUNDRED and FORTY-EIGHT DOLLARS, and THIRTY-TWO cents (\$1,620,548.32) ("Estimated Costs"). Actual construction costs incurred for the Road Improvements will differ slightly from that of the Estimated Costs. Of the Actual Costs total, DAVENPORT shall be responsible for an estimated TWENTY-SEVEN THOUSAND, NINE HUNDRED and TWENTY-SEVEN DOLLARS, and EIGHTY-TWO cents (\$27,927.82) (Estimated) and POLK COUNTY shall be responsible for an estimated ONE MILLION, FIVE HUNDRED and NINETY-TWO THOUSAND, SIX HUNDRED and TWENTY DOLLARS, and FIFTY cents (\$1,592,620.50) (Estimated). Final reimbursement by DAVENPORT to POLK COUNTY shall be determined based on the Actual Costs incurred for resurfacing their respective road segment. DAVENPORT shall reimburse POLK COUNTY for its respective share no later than 30 days from receiving an invoice from POLK COUNTY. The invoice shall include written documentation of the Road Improvements.

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:

Chairman
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 DAVENPORT shall be:

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

With a copy to:

Public Services Director
City of Davenport Public Services
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 construction of the Road Improvements, 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 Road Improvements, 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 Road Improvements, this Agreement can only be terminated in accordance with Section 3.5 of this Agreement.

3.16 **Recordation.** POLK COUNTY shall record this Agreement in the public records of Polk County. POLK COUNTY shall pay the initial costs to record this Agreement and any further costs to record subsequent changes or modifications to this Agreement. Any Party may request that a memorandum of this Agreement be recorded, provided that appropriate provisions are included for timely release of record of any such memorandum once this Agreement has expired.

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

CITY OF DAVENPORT
CITY COMMISSIONERS

By: 
Brynn Summerlin, Mayor

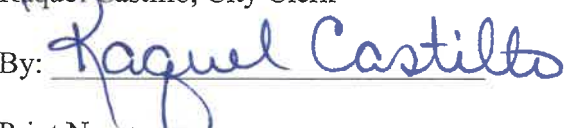
Date: 9-7-23

POLK COUNTY BOARD OF
COUNTY COMMISSIONERS

By: _____
George Lindsey, III, Chairman

Date: _____

ATTEST:
Raquel Castillo, City Clerk

By: 
Print Name:

Title: City Clerk

(SEAL)

ATTEST:
Stacy M. Butterfield, Clerk to the Board

By: _____

Print Name:

Title: _____

(SEAL)

Reviewed as to Form and Legal Sufficiency

By: 
City Attorney Date 09/07/2023

Reviewed as to Form and Legal Sufficiency

By: 
County Attorney's Office

EXHIBIT A

