

**AGREEMENT BETWEEN THE TOWN OF JUPITER AND
PALM BEACH COUNTY, FLORIDA
FOR
THE ASSESSMENT FOR THE CONSTRUCTION OF WATER SERVICE
IMPROVEMENTS IN THE FOX RUN SUBDIVISION SECTION A, FOX RUN
SUBDIVISION SECTION B AND JUPITER LITTLE ACRES SUBDIVISION**

THIS AGREEMENT is made and entered into this _____ day of _____, 2014, by and between the Town of Jupiter, a municipality in the State of Florida, hereinafter called and referred to as the "TOWN", and PALM BEACH COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as the "COUNTY".

WITNESSETH:

WHEREAS, the COUNTY and the TOWN are authorized to enter into this AGREEMENT pursuant to Chapter 163, Florida Statutes, as amended, which permits 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

WHEREAS, the TOWN will cause to be prepared construction plans and specifications for the construction of water service improvements, hereinafter referred to as "PROJECT(S)" within the Fox Run Subdivision Section A, Fox Run Subdivision Section B and Jupiter Little Acres Subdivision, hereinafter referred to as "SUBDIVISION(S)"; and

WHEREAS, the SUBDIVISION(S) will be petitioned separately, however, based on the results of the petitions there will be one PROJECT comprised of the SUBDIVISION(S) receiving adequate positive responses. SUBDIVISION(S) not receiving adequate positive responses may be reconsidered in the future and will be subject to a new agreement; and

WHEREAS, the TOWN is desirous of funding and constructing the PROJECT(S) which will extend TOWN water services into the SUBDIVISION(S) located in the unincorporated area of the COUNTY if the residents agree through special assessment to reimburse the TOWN for the PROJECT(S), connection fees and COUNTY fees; and

WHEREAS, the COUNTY is agreeable to assessing the property owners benefitting from the PROJECT(S) over a twenty (20) year period at an interest rate not to exceed 5.0% per annum, and transferring the collected funds to the TOWN; and

WHEREAS, the TOWN is agreeable to including the PROJECT(S), connection fees and COUNTY fees in the TOWN funding.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

The above recitals are true and correct and hereby adopted and incorporated herein.

1. COUNTY Responsibilities:

- A. The COUNTY will petition the benefitting property owners within the SUBDIVISION(S) and determine for each SUBDIVISION(S) that a majority (51%) of the returned petitions are in favor of being assessed by the COUNTY for the PROJECT(S).
- B. Notify the benefitting property owners, by letter, of their proposed assessment and the Public Hearing date scheduled before the Palm Beach County Board of County Commissioners (BOARD). Benefitting property owners have 90 days from the receipt of the letter to contact the TOWN and sign a water service agreement for their property if the property owner desires to include the connection fee in the assessment. The connection fees will only be added to the final assessment for those property owners requesting it.
- C. Hold a Public Hearing in the COUNTY Commissioner chambers before the BOARD to establish the benefitting property owners' maximum assessment. A connection fee assessment roll that encompasses all properties will be included in order to establish a maximum assessment amount for all properties.
- D. Revise the connection fee assessment roll for the final assessment to reflect information received from the TOWN indicating the name, address and individual connection fees of those property owners who executed a water service agreement for their connections.
- E. Provide the TOWN with a list of benefitting property owners based on the assessment roll approved at the COUNTY Public Hearing.
- F. Transfer the assessments collected to the TOWN on the first work day of each quarter of the calendar year.

2. TOWN Responsibilities:

- A. Design, obtain all necessary permits including COUNTY permits, construct and maintain the PROJECT(S) after completion at the TOWN'S sole cost.
- B. Allow the benefitting property owners within the SUBDIVISION(S) the opportunity to execute a water service agreement for connection fees so that the TOWN can immediately connect their residence to the PROJECT(S) once it is completed.
- C. Participate in the Public Hearing before the BOARD to answer any questions.
- D. Prepare a list of those property owners that have executed the water service agreement and forward it, within 10 days of project completion, to the COUNTY for adjustment of the final assessment roll.
- E. Reimburse the COUNTY for costs incurred during the administration of the Municipal Service Taxing Units (MSTU) assessment program for the SUBDIVISION(S) including but not limited to staff costs and mailing costs, at a predetermined lump sum for each milestone achieved:
Initial Petition Completion: \$2,500, regardless of the outcome of the petitions

Final Petition Completion: \$2,500, regardless of the outcome of the petitions
Construction Project Completion – Final Assessment Roll Filed: \$2,500

The TOWN shall pay to the COUNTY compensation as set forth above within thirty (30) days of receiving written notification from the COUNTY of completion of the above milestones. COUNTY will not proceed with work for the next milestone until payment of the previous milestone is received.

- F. The TOWN shall require each contractor engaged by the TOWN for work associated with the AGREEMENT to maintain:
- a. Commercial General Liability coverage, including vehicle coverage, in combined single limits of not less than ONE MILLIONS DOLLARS (\$1,000,000.00). The COUNTY shall be included in the coverage as an additional insured.
 - b. A payment and performance bond for the total amount of the IMPROVEMENTS in accordance with Florida Statute 255.05.
 - c. Workers' Compensation coverage in accordance with Florida Statutes.

3. PERSONNEL:

All of the services required herein under shall be performed by the TOWN's contractor and will be overseen by TOWN personnel. All personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

As provided in Section 287.132-133, Fla. Stat., by entering into the agreement or performing any work in furtherance hereof, TOWN certifies that its' affiliates, suppliers, contractors, sub-contractors and consultants who perform work hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within 36 months immediately preceding the date hereof. This notice required by 287.133(3)(a), Fla. Stat.

All personnel while on COUNTY ROADS will comply with all COUNTY requirements governing conduct, safety and security.

4. INDEMNIFICATION:

A. The TOWN shall indemnify, defend, and hold harmless the COUNTY against any actions, claims, or damages arising out of TOWN'S negligence in connection with this AGREEMENT to the extent permitted by law. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement to indemnify the COUNTY for the COUNTY'S negligent acts or omissions.

B. The COUNTY shall indemnify, defend, and hold harmless the TOWN against any actions, claims, or damages arising out of COUNTY'S negligence in connection with this AGREEMENT to the extent permitted by law. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in

Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement to indemnify the TOWN for the TOWN'S negligent acts or omissions.

5. NOTICE:

All notices, requests consents and other communications required or permitted under this Agreement shall be in writing and shall be hand delivered by prepaid express overnight courier of messenger services, or mailed by registered or certified mail to the following addresses:

COUNTY Palm Beach County Engineering Department

Attention: Tanya N. McConnell, P.E.
Deputy County Engineer
P.O. Box 21229, W. Palm Beach, FL 33416
tmcconne@pbcgov.org
Phone 561-684-4010

TOWN Town of Jupiter Water Department

Attention: David Brown, Director
210 Military Trail, Jupiter, FL 33458
davidb@jupiter.fl.us
Phone 561-746-5134

If either party changes its mailing address of designated recipient for notices, such change shall be communicated in writing to the other party within thirty (30) days of the change.

6. INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County agreements, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the TOWN, its officers, agents, employees, and lobbyists in order to ensure compliance with agreement requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Fla. Stat., in the same manner as a second degree misdemeanor.

7. MISCELLANEOUS PROVISIONS

A. REMEDIES:

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and

each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

B. THIRD PARTY BENEFICIARIES:

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or TOWN.

C. ARREARS:

The TOWN shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any agreement, debt, obligation, judgment, lien, or any form of indebtedness. The TOWN further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

D. ACCESS AND AUDITS:

The TOWN shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Agreement. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the TOWN's place of business.

E. NONDISCRIMINATION:

The TOWN will include in the construction contract that, the Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression and genetic information.

F. SEVERABILITY:

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

G. ENTIRETY OF AGREEMENT

The COUNTY and the TOWN agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

H. ATTORNEY FEES:

Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties; provided, however, that this clause pertains only to the parties to the Agreement.

I. GOVERNING LAW AND VENUE:

This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to any contrary conflicts of laws principle. Venue of all proceedings in connection herewith shall be exclusively in Palm Beach County, Florida, and each party hereby waives whatever their respective rights may have been in the selection of the venue.

J. LIABILITY:

The parties to this Agreement shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party (or parties). Nothing contained herein shall be construed as a waiver by the parties, of the liability limits established in Section 768.28, Fla. Stat.

K. LAWSUITS:

TOWN shall promptly notify COUNTY of any lawsuit-related complaint, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement.

L. DEFAULT:

The parties expressly covenant and agree that in the event any of the parties is in default of its obligations under this Agreement, the parties not in default shall provide to the defaulting party thirty (30) days written notice before exercising any of their rights.

M. JOINT PREPARATION:

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial constraint, be construed more severely against one of the parties than the other.

N. BINDING EFFECT:

All of the terms and provisions of this Agreement whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors and permitted assigns.

O. HEADINGS:

The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

P. COUNTERPARTS:

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Q. ASSIGNABILITY:

This agreement may not be assigned without prior written consent of all parties to this agreement, provided such consent may not be unreasonably withheld.

R. ENFORCEMENT OF REMEDIES:

The failure of any party to insist on a strict performance of any of the terms and conditions hereof shall be deemed a waiver of any subsequent breach or default in any terms and conditions.

S. FILING:

A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

T. EFFECTIVE DATE:

This agreement shall be effective as of the last date that it is signed by all parties hereto.

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EXECUTED by the TOWN OF JUPITER this _____ day of _____, 2014.

(Authority Seal)

ATTEST:



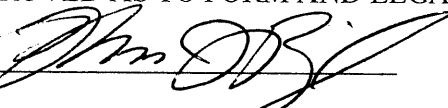
Sally Boylan, Town Clerk





Karen J. Golonka, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY



Thomas J. Baird, Town Attorney

EXECUTED by COUNTY this _____ day of _____, 2014.

(County Seal)

ATTEST:

SHARON R. BOCK,
CLERK AND COMPTROLLER

Deputy Clerk

PALM BEACH COUNTY, FLORIDA

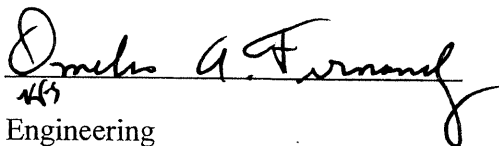
By ITS BOARD OF COUNTY
COMMISSIONERS

Priscilla A. Taylor, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS:


Engineering