

INTERLOCAL AGREEMENT

BETWEEN

CITY OF VENICE AND SARASOTA COUNTY

RELATING TO THE CURRY CREEK UTILITY SERVICE AREA

This Interlocal Agreement (the "Agreement") is made and entered into by and between Sarasota County, Florida, a political subdivision of the State of Florida (the "County") and the City of Venice, Florida, a municipal corporation, organized and existing under the laws of the State of Florida (the "City").

WITNESSETH:

WHEREAS, the County and the City each own and operate a public utility system which provides water and reclaimed water treatment and distribution service and wastewater collection and treatment service to residential and commercial customers within its respective area; and

WHEREAS, the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local governments to cooperate with one another on matters of mutual interest and advantage, and provides for interlocal agreements between local governments on matters such as the provision of potable water and wastewater service; and

WHEREAS, on or about October 5, 1989, the City and County entered into that certain Interlocal Agreement Between the City of Venice and Sarasota County for Wastewater Treatment (the "Wastewater Treatment Interlocal") providing for the County's purchase of 3.0 MGD of wastewater capacity in the City's Eastside Wastewater Treatment Plant, subsequently amended to provide for the transfer of reclaimed water between the respective County and City reuse systems and the interconnection of the reuse systems into a Regional Reuse System; and

WHEREAS, Section 9 of the Wastewater Treatment Interlocal defines the City and County Wastewater Service Areas, and further states that each entity would retain full and complete authority to set, revise and collect utility charges within its respective Wastewater Service Area; and

WHEREAS, Section 9 further provides that property currently within the County service area that is annexed into the City shall be added to the City Wastewater Service Area unless any of four conditions exist at the time of annexation: (1) the property is already being provided wastewater service through the County; (2) the property owner has already paid capital utility charges to the County; (3) it is necessary or more practical to provide wastewater service to the property through the County transmission or collection system; or (4) the City and the County agree otherwise; and

WHEREAS, on October 19, 1993, the Board of County Commissioners (the “Board”) adopted Ordinance No. 93-067, which created the Curry Creek Improvement Area – Phase 1, depicted on Exhibit “A”, attached hereto and incorporated herein, as a municipal services benefit unit within which non ad-valorem assessments were to be assessed to fund the construction of a County wastewater transmission system to provide central wastewater treatment capacity to the properties located within the Improvement Area (the “Curry Creek Assessment District”); and

WHEREAS, on June 6, 1995, the Board adopted Resolution No. 95-119, the Final Assessment Resolution, which adopted the non-ad valorem assessment rates for the Curry Creek Assessment District, to be levied commencing with the 1995 Tax Year; and

WHEREAS, on May 27, 2003, the City adopted Annexation Ordinance No. 2003-15, which annexed that portion of the Curry Creek Assessment District, depicted on Exhibit “B”, attached hereto and incorporated herein; and

WHEREAS, because property owners within the Curry Creek Assessment District had already paid capital utility charges to County for wastewater service, pursuant to Section 9 of the Wastewater Treatment Interlocal, the Curry Creek Assessment District remained a part of the County Wastewater Service Area following annexation, depicted on Exhibit ‘C”, attached hereto and incorporated herein; and

WHEREAS, on October 11, 2011, the City adopted Ordinance No. 2011-11, Rezone Petition 11-1RZ, for rezoning Toscana Isles from a “Commercial General” CG Zoning District to a “Planned Unit Development” PUD Zoning District (the “Toscana Isles PUD”), as depicted on Exhibit “D”, attached hereto and incorporated herein, which lies partially within the City Wastewater Service Area and partially within the County Wastewater Service Area; and

WHEREAS, in an effort to prevent duplicate wastewater infrastructure and to construct a wastewater collection system to service the Toscana Isles PUD that is efficient, feasible and generally respects the service boundaries of the City and the County, the parties desire to amend the Wastewater Service Area boundaries for Phase 1 of the Toscana Isles PUD and establish a protocol for future Wastewater Service Area amendments that may be necessary within the Curry Creek Assessment District.

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

Section 1. Incorporation of Preamble: The Preamble above is true and correct and incorporated into this Agreement as if fully set forth herein.

Section 2. Determination of Service Area Boundaries Related To Toscana Isles:

- 2.1 With respect to lots within the Toscana Isles PUD that straddle the boundary line of the Curry Creek Assessment District, a lot shall be considered to be in the Service Area within which a majority of its area (square footage) lies as depicted on Exhibit “E”, attached hereto and incorporated herein.
- 2.2 Subject to approval by the City Manager and the County Administrator or their designees, lots within the Toscana Isles PUD may be “traded” between the County and City Wastewater Service Areas on a one-for-one Equivalent Dwelling Unit (“EDU”) basis in order to facilitate a more efficient and feasible design, as depicted on Exhibit “F”, attached hereto and incorporated herein.
- 2.3 With respect to lots within the Toscana Isles PUD - Phase 1, twenty-one (21) lots shall be traded from the County’s Service Area and added to the City’s Service Area and in exchange twenty-two (22) lots will be traded from the City’s Service Area and added to the County’s Service Area, as more particularly depicted on Exhibit “G”, attached hereto and incorporated herein. The number of lots may be further adjusted by agreement between the City Manager and the County Administrator as provided herein, but the total variation may not exceed five percent (5%) of the total number of lots within Phase 1.
- 2.4 While every practicable effort shall be made to maintain a one-for-one Equivalent Dwelling Unit (EDU) exchange basis, since field conditions may present design and construction challenges as the Toscana Isles PUD develops, the City Manager and the County Administrator or their designees, are hereby designated to approve any further trading of lots or other units within the Toscana Isles PUD in such a manner that the final design of the wastewater system for the Toscana Isles PUD does not reduce the number of EDU’s in either service area as determined pursuant to 2.1 above by more than a maximum of five percent (5%) of the lots or units.

Section 3. Determination of Service Area Boundaries Related To Remaining Unserved Areas of Curry Creek Assessment District other than Toscana Isles:

- 3.1 With respect to the remaining unserved areas within the Curry Creek Assessment District other than Toscana Isles, depicted on Exhibit “C”, attached hereto and incorporated herein, any residential single-family, residential multi-family, commercial, industrial or other individual parcel that straddle the boundary line

of the Curry Creek Assessment District, shall be considered to be in the Service Area within which a majority of its area (square footage) lies.

- 3.2 Furthermore, in an effort to prevent duplicate wastewater infrastructure and recognizing field conditions may present design and construction challenges as the unserved parcels along the boundary of the Curry Creek Assessment District develop, the City Manager and the County Administrator or their designees, are hereby designated to approve any trading of parcels or other units which develop along the boundary of the Curry Creek Assessment District in such a manner that the final design of the wastewater systems does not reduce the number of EDU's in either service area as determined pursuant to 3.1 above by more than five (5) percent or such other equitable determination as may be agreed to in writing by the County Administrator and City Manager or their designees.

Section 4. Billing Services: The City shall bill and collect sewer charges and sewer capacity fees on behalf of the County from the County's customers located within the Toscana Isles PUD pursuant to that certain Billing Services Interlocal Agreement, dated February 10, 2004, as amended.

Section 5. Force Majeure. The respective duties and obligations of the parties hereunder shall be suspended while and so long as performance thereof is prevented or materially impeded by an act or event of Force Majeure; provided, however, that the party invoking this Force Majeure provision is at all times using its best efforts to overcome the impediment and to mitigate any damages suffered by the other party hereto.

- 5.1 For the purposes of this paragraph, the term "Force Majeure" shall mean any act or event that has had or may reasonably be expected to have the effect of making the performance of any obligations hereunder impracticable, abnormally difficult, or unreasonably costly, if such act or event is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement. Such acts or events shall include, but not be limited to, the following:
- 5.2 An act of God such as an epidemic, landslide, lightning, hurricane, tornado, severe windstorm, earthquake, fire, explosion, flood or any similar occurrence, an act of public enemy, war, blockage, insurrection, riot, general unrest or restraint of government and people, civil disturbance of any similar occurrence;

- 5.3 The order or judgment of any federal, state, or local court, administrative agency or governmental officer or body, if such order or judgment is not also the result of the willful or negligent action or failure to act of the party relying thereon, provided that the contesting in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action of such party;
- 5.4 The suspension, termination, interruption, denial or failure of renewal of any permit, license, consent, authorization or approval essential to the construction, operation or maintenance of the Sarasota County System or the City's Eastside Wastewater Treatment Plant (ESWWTP), provided, however, that such act or event is not also the result of the willful or negligent action or inaction of the party relying thereon, and that neither the contesting in good faith nor the failure to contest any such suspension, termination, interruption, denial or failure to renew shall not be construed as a willful or negligent action of such party.
- 5.5 The party invoking Force Majeure shall notify the other party immediately by verbal communication and in writing of the nature and extent of the contingency within ten (10) days after its occurrence. However, the parties understand and agree that the contingency may not be immediately known or apparent. The party invoking Force Majeure shall be given the notice required above when that party becomes aware, has knowledge of or discovers the event, its nature and/or extent.

Section 6. Notification: All notices or demands given hereunder shall be in writing and shall be deemed to have been duly effective on the first business day after mailing by U.S. Certified Mail, return receipt requested, postage prepaid, addressed as follows:

To City: City of Venice Utilities
Attn: Utilities Director
401 West Venice Avenue
Venice, FL 34285

To County: Sarasota County Utilities
Attn: Utilities Director
1001 Sarasota Center Blvd.
Sarasota, FL 34240

Section 7. Insurance: County and City agree to maintain liability insurance coverage for the duration of this Agreement and the City recognizes that

the County is self insured for all liability claims and related expenses pursuant to the provisions of Section 768.28, Florida Statutes.

Section 8. Indemnification: The County and City agree to indemnify and save harmless the other party, its agents, officials and employees against all injuries, deaths, losses, damage claim suits, liabilities, judgments, costs, attorney fees and expenses which may accrue against the other party as a consequence of the intentional or negligent acts of the indemnifying party's employees, agents up to the maximum limits provided by Section 768.28, Florida Statutes. Nothing contained in this Section shall constitute a waiver of sovereign immunity or of the limitations on liability provided to either party under the Florida Constitution or general law. In the event of any threatened or impending action that may give rise to a claim under the terms of this Section or suit or other proceedings, the party seeking indemnification for such claim must promptly give notice to the other party in writing by Certified Mail. The indemnity provided herein shall not apply to any settlement Agreement entered into by one party without the consent of the indemnifying party. The terms of this Section shall survive the termination of this Agreement.

Section 9. Entire Agreement: This Agreement embodies the entire understanding of the respective parties hereto regarding the subject matter hereof, and there are no further or other Agreements or understandings, written or oral, in effect between parties relating to the subject matter hereof. This Agreement may be amended or modified only by an instrument of equal formality executed by the respective parties.

Section 10. Severability: If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared to be severable.

Section 11. Filing: This Agreement shall be filed with the Clerk of the Circuit Court of Sarasota County.

Section 12. Effective Date: This Agreement shall become effective upon the date of the last signatory hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Interlocal Agreement to be executed by their duly authorized representative as of the dates written below.

ATTEST:

KAREN E. RUSHING, Clerk of Circuit Court and Ex-Officio Clerk of the Board of County Commissioners of Sarasota County, Florida

By: _____
Deputy Clerk

Approved as to form and correctness:

County Attorney
ATTEST:

City Clerk

Approved as to form and correctness:

City Attorney

BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA

By: _____
Chair

Date: _____

CITY OF VENICE, FLORIDA

Mayor

Date: _____