

**INTERLOCAL AGREEMENT BETWEEN ESCAMBIA COUNTY,
FLORIDA AND EMERALD COAST UTILITIES AUTHORITY RELATING
TO A SANITARY SEWER SYSTEM IMPROVEMENT PROJECT ON
INNERARITY ISLAND**

THIS AGREEMENT is made on this 17th day of May, 2018, by and between Escambia County, Florida a political subdivision of the State of Florida (hereinafter "County") with administrative offices located at 221 Palafox Place, Pensacola, Florida 32502, and the Emerald Coast Utilities Authority, a local governmental body, corporate and politic, which was formed by the Florida Legislature as an independent special district (hereinafter "ECUA") with administrative offices located at 9255 Sturdevant Street, Pensacola, Florida 32514 (each at times also being referred to as a "Party" or collectively as "Parties").

WITNESSETH:

WHEREAS, ECUA provides sanitary sewer in certain defined areas in Escambia County, Florida;

WHEREAS, within the confines of Escambia County, Florida, there exists an area known as Innerarity Island;

WHEREAS, Innerarity Island is not and has never been within ECUA's wastewater service area;

WHEREAS, an entity known as the Innerarity Island Development Corporation formerly operated a sanitary sewer system on Innerarity Island;

WHEREAS, the Innerarity Island Development Corporation abandoned its sewer utilities early in the 2014 calendar year;

WHEREAS, the existing sanitary sewer system on Innerarity Island is in need of significant repairs and upgrades;

WHEREAS, ECUA is willing to accept portions of the sanitary sewer system on Innerarity Island and incorporate Innerarity Island into its service area in the event that the existing sanitary sewer system on Innerarity Island is upgraded prior to becoming incorporated into the ECUA utility system;

WHEREAS, the Innerarity Island Development Corporation previously retained the professional engineering firm of Kenneth Horne & Associates, Inc. to evaluate and assess the needed upgrades to Innerarity Island's sewer system;

WHEREAS, the County subsequently retained Kenneth Horne & Associates, Inc. to further evaluate, assess, and partially design the needed upgrades to Innerarity Island's sewer system;

WHEREAS, the Parties agree that it is in the best interest of the public health, safety, and welfare that the sanitary sewer system presently existing on Innerarity Island be repaired and upgraded so that portions which are to become publicly owned may be ultimately accepted by ECUA and that Innerarity Island be incorporated into ECUA's sewer service area;

WHEREAS, ECUA and the County desire to work together to incorporate Innerarity Island into ECUA's sewer service area once certain repairs and upgrades are made;

WHEREAS, the upgrades to Innerarity Island's sewer system have been partially designed by Kenneth Horne & Associates, Inc., but significant additional design is required before those upgrades could be publicly advertised for bid;

WHEREAS, the Florida Legislature has appropriated funding to the County which would facilitate the desired upgrades to the sanitary sewer system on Innerarity Island;

WHEREAS, the County is willing to contribute the difference of those funds in a sufficient quantity to upgrade and repair the sanitary sewer system on Innerarity Island;

WHEREAS, ECUA has agreed to oversee and manage the upgrades to the sanitary sewer system on Innerarity Island at no cost to ECUA or its ratepayers, and thereafter accept Innerarity Island within its sewer service area, and accept ownership of portions of the sanitary sewer system on Innerarity Island; and

WHEREAS, the Parties desire to enter into this Interlocal Agreement to define the respective rights and responsibilities toward completing the design and construction of the upgrades to the sanitary sewer system and incorporating that system into ECUA's service area.

NOW THEREFORE, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1

Purpose

1.1 The recitals contained in the preamble of this Agreement are declared to be true and correct and are hereby incorporated into this Interlocal Agreement solely for the purposes expressed herein and for no other purpose which causes an estoppel to arise against either Party in any litigation. Provided, however, that so long as this Agreement remains in effect, neither Party shall take any action, legal or otherwise, to alter their existing positions regarding the sanitary sewer system on Innerarity Island, as the Parties desire to work together towards a solution to the sanitary sewer issues on Innerarity Island.

1.2 This Interlocal Agreement (hereinafter "Agreement") defines the responsibilities of each Party participating in the Innerarity Island Sanitary Sewer System Improvement Project (hereinafter the "Project"), as set forth herein.

ARTICLE 2

Responsibilities of Parties

2.1 The County agrees to ensure that the portion of the sanitary sewer system on Innerarity Island which is to become publicly owned shall be transferred to ECUA upon successful completion of the Project, as defined in this Agreement. Additionally, upon execution of this Agreement, the County shall transfer to ECUA for incorporation in the Project, possession of 63 previously-purchased grinder pump station units which were obtained for that purpose. ECUA shall not become the owner of those grinder pump stations; instead, the County shall designate the addresses at which they will ultimately be installed, and the ownership of which shall thereafter become the respective property owners.

2.2 ECUA shall promptly retain a professional engineering firm to finalize the design of the needed repairs and upgrades to Innerarity Island's sanitary sewer system, as generally described in Exhibit "A", with sufficient specificity for ECUA to publicly advertise and receive bids for the construction of the Project and shall also retain a professional engineering firm to perform construction engineering inspections and assist in managing the Project.

2.3 Thereafter, ECUA shall issue a contract for the construction of those upgrades and repairs. All such work shall be carried out in a reasonably prompt and diligent manner.

2.4 The County agrees to promptly reimburse to ECUA, in accordance with the terms of this Agreement, all of the Costs of the Project in the amount hereinafter set forth in Section 4.1. Those funds shall solely be used on the Project, generally described in Exhibit "A", which is attached hereto and incorporated by reference herein.

2.5 Moreover, upon completion, the County agrees to convey to ECUA ownership of those portions of the sanitary sewer system which are to be publicly owned, as is generally described in Exhibit "A". Thereafter, ECUA shall own, operate and maintain those publicly owned portions of said system. Additionally, upon ECUA's acceptance, Innerarity Island will also become part of ECUA's sewer service area; and the County will execute all documents necessary or convenient to evidence same.

2.6 ECUA is not agreeing to and is under no obligation to financially participate in the Costs of the Project or otherwise financially contribute to the Project. Indeed, the Parties understand and acknowledge that ECUA's participation in this Agreement is at no cost to either ECUA or its ratepayers. However, the Parties acknowledge that ECUA provides substantial benefit to the Project by advancing the

Costs of the Project prior to and subject to reimbursement from the County; overseeing the public advertising, bidding, awarding, and managing of the contracts for both the design and construction of the Project; and otherwise adding benefit to the Project through its expertise in sanitary sewer systems. Given the above, as well as ECUA's donating limited employee time towards the Project, at no time will the County request financial participation on the part of ECUA on the Project. Change orders shall be approved by ECUA and County. No change orders will be approved for completed work. No scope changes will be added to approved design plans without approval of both Parties.

2.7 This Agreement, after being properly executed by the Parties, shall become effective upon filing with the Clerk of the Circuit Court of Escambia County. The County shall be responsible for such filing.

2.8 Subject to any claim of sovereign immunity, each Party to this Agreement shall be fully liable for the acts and omissions of its respective employees and agents in the performance of this Agreement to the extent permitted by law. Furthermore, nothing in this Agreement nor any act of the Parties shall be deemed or construed by the Parties hereto or by any third party to create a relationship of principal and agent, joint venture, business affiliation, or any association whatsoever between ECUA and the County.

2.9 The Parties are not waiving any legal arguments, claims or defenses by participating in this Agreement.

ARTICLE 3 **Contract Time**

3.1 It is anticipated by the Parties that the time for completion of the Project, as generally described in Exhibit "A", shall be within thirty six (36) months from ECUA's issuance of a Notice to Proceed to a selected contractor, absent rain delays or other unforeseen conditions and/or events.

ARTICLE 4 **Compensation and Method of Payment**

4.1 County agrees to reimburse ECUA for the Costs of the Project as generally described in Exhibit "A", including but not necessarily limited to property and equipment costs, engineering and design services, and construction costs, in an amount not to exceed Four Million, Two Hundred Twenty Thousand Dollars (\$4,220,000).¹ In the event that ECUA determines that the estimated Costs of the Project will exceed \$4,220,000 upon the opening of publicly advertised bids for construction of the Project, then either Party may elect to terminate this Agreement and not proceed with construction of the Project. In the event the Project proceeds post

¹ This agreement to reimburse includes Costs of the Project incurred prior to entry into this Agreement as well as after.

bidding and during the course of construction it is learned that the Costs of the Project will exceed \$4,220,000, then the Parties shall meet and decide how to proceed, if at all. If the decision is made by either the County or ECUA not to proceed with the Project, then ECUA shall promptly bring the Project to a close, with the County responsible for all costs associated with terminating and closing the Project. In the event of termination of the Agreement in accordance with this paragraph, ECUA shall be entitled to compensation as set forth in paragraph 8.2, below.

4.2 ECUA may periodically submit invoices to the County for reimbursement of the Costs of the Project, but requests for payment shall not be made more frequently than once a month. The County will promptly reimburse ECUA for its expenditures on the Costs of the Project. Final payment shall be made at or around the time that the property interests and improvements which are to be publicly owned are conveyed to ECUA.

4.3 Upon request, ECUA shall provide to the County copies of any payment documentation and such other financial documents as the County may reasonably require to verify Project costs.

4.4 Invoices and other requests will be sent to:

Escambia County
Attn: Public Works
3363 West Park Place
Pensacola, FL 32505

4.5 Payments and other requests will be sent to:

Emerald Coast Utilities Authority
Keith Fell, P.E.
Manager of Engineering Projects
P.O. Box 15311
9255 Sturdevant Avenue
Pensacola, Florida 32514

ARTICLE 5

Ownership of Improvements and Property

5.1 Title to the improvements specified in Exhibit "A" to be publicly owned shall pass to ECUA as provided herein upon the Contractor's achieving Final Completion of the underlying Work, ECUA's acceptance of the Work, and the entry of a corresponding Court Order. The County shall, upon reasonable notice, have the right to inspect all such work prior to ECUA's acceptance.

5.2 The Parties acknowledge and understand that some of the improvements

to be constructed as part of this Project will not become publicly owned, namely gravity sewer laterals, grinder pump stations, and low pressure sewer laterals. For those facilities constructed as part of this project which are not to be publicly owned, they shall become the property of and owned by the owner of the corresponding properties served by the lateral and/or grinder pump station serving it. The owner of those facilities shall be responsible for operating and maintaining those facilities, except to the extent otherwise provided by the ECUA Code, as it may be amended from time to time by the ECUA Board.

ARTICLE 6

Real Property

6.1 The real property site on which the lift station in Russell Bayou is located, including any necessary expansions thereto, shall be conveyed by the County to ECUA by way of a Deed.

6.2 The County shall cooperate with ECUA in obtaining such easements and rights of way as may be required for successful completion of this work and/or maintenance of sanitary sewer system thereafter.

ARTICLE 7

Force Majeure

7.1 In the event that performance by the Parties of any of its obligations under this Agreement shall be interrupted, delayed, or prevented by any occurrence not occasioned by the conduct of such party, whether such occurrence be an act of God or any other occurrence whatsoever this is beyond the reasonable control of such party, including a change in environmental law or regulation rendering performance impractical or impossible, then such party shall be excused from such performance for such period of time as is reasonably necessary after the occurrence to remedy the effects thereof, or until such performance is no longer impractical or impossible.

ARTICLE 8

General Provisions

8.1 Ownership of Documents: Drawings, specifications, design, models, photographs, reports, surveys, and other data produced by the County in connection with this Agreement are and shall remain the property of the County in connection with this Agreement are and shall remain the property of the County whether the work for which they were made is completed or not. Moreover, drawings, specifications, design, models, photographs, reports, surveys, and other data produced by ECUA or its agents in connection with this Agreement are and shall remain the property of ECUA or its agents whether the work for which they were made is completed or not.

8.2 Termination: In addition to the termination rights articulated in paragraph 4.1, above, this Agreement may be terminated by either the County or ECUA for cause, upon thirty (30) days written notice by the terminating party to the other parties of such termination, in which event ECUA shall be paid compensation for all work performed by it and its contractor/s prior to the termination date, including all reimbursable expenses then due or incurred prior to the date of termination.

8.3 Records: The Parties acknowledge that this Agreement and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes, as amended. In the event a Party fails to abide by the provisions of Chapter 119, Florida Statutes, another Party may, without prejudice to any right or remedy and after giving that Party, seven (7) calendar days written notice, during which period the Party fails to allow access to such documents, terminate this Agreement. ECUA further agrees to:

a. Keep and maintain public records required by the County to perform services under this Agreement.

b. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

c. Ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law during the term of this Agreement and following completion of the Agreement if ECUA does not transfer the records to the County.

d. Upon completion of the Agreement, transfer, at no cost, to the County all public records in possession of ECUA or keep and maintain public records required by the County to perform the services under this Agreement. If ECUA transfers all public records to the County upon completion of the Agreement, ECUA shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If ECUA keeps and maintains public records upon completion of the Agreement, ECUA shall meet all applicable requirements for retaining the public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

IF ECUA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO ECUA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: ESCAMBIA COUNTY, OFFICE OF THE COUNTY ADMINISTRATOR, 221 PALAFOX PLACE, SUITE 420, PENSACOLA, FLORIDA 32502, (850) 595-4947.

8.4 Assignment: This Agreement or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by any Party, without the prior written consent of all other Parties.

8.5 Headings: Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

8.6 Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and the Parties stipulate that venue for any matter which is the subject of this Agreement shall lie in Escambia County, Florida.

8.7 Interpretation: For the purpose of this Agreement, the singular includes the plural and the plural shall include the singular. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined that have well-known technical or industry meanings are used in accordance with such recognized meanings. References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities.

(a) If any Party discovers any material discrepancy, deficiency, ambiguity, error, or omission in this Agreement, or is otherwise in doubt as to the meaning of any provision of the Agreement, the Party shall immediately notify all other Parties and request clarification of this Agreement.

(b) This Agreement shall not be more strictly construed against any party hereto by reason of the fact that one Party may have drafted or prepared any or all of the terms and provisions hereof.

8.8 Severability: The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed and enforced as if it did not contain such invalid or unenforceable portion or provision.

8.9 Further Documents: The parties shall execute and deliver all documents and perform further actions that may reasonably be necessary to effectuate the provisions of this Agreement.

8.10 No Waiver: The failure of a Party to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of any other provision or of either Party's right to thereafter enforce the same in accordance with this Agreement.

8.11 All Prior Agreements Superseded: This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject

matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or Agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates under each signature: Escambia County through its Board of County Commissioners, signing by and through its Chairman, duly authorized to execute same by Board action on the 17th day of May, 2018 and Emerald Coast Utilities Authority, by and through its Chairman, duly authorized to execute same.

ESCAMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida acting by and through its duly authorized Board of County Commissioners.

By: [Signature]
Jeff Bergosh, Chairman

Date: 5/17/2018

This document approved as to form and legal sufficiency.

By: [Signature]
Title: Asst. County Attorney
Date: May 3, 2018

ATTEST: Pam Childers
Clerk of the Circuit Court

By: [Signature]
Deputy Clerk

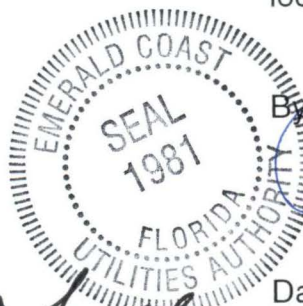


EMERALD COAST UTILITIES AUTHORITY, a local governmental body, corporate and politic.

By: [Signature]
Lois Benson, Chairman

ATTEST:

By: [Signature]
Secretary



Date: 5-24-2018

EXHIBIT "A"
Innerarity Island – Sewer System Improvements

Scope of Work

Project Location: The project is located on Innerarity Island in Escambia County, Florida (hereinafter referred to as the "Island").

General Project Description: Sanitary sewer system improvements would consist primarily of the construction of a low pressure sewer system to replace most of the gravity collection on the Island, leaving in service only the relatively new gravity sewer collection system in the Russell Bayou area. No gravity laterals, grinder pump stations, or small diameter force mains (a/k/a sewer laterals) will become owned by ECUA; instead, they will be owned by the corresponding property owner/s. Other improvements associated with this project, as well as certain existing sewer infrastructure, including utility easements, however, are to become the property of the Emerald Coast Utilities Authority (ECUA), as generally described below.

Anticipated upgrades to the Russell Bayou sewer collection system:

- 1.) Replace electrical control system at the Russell Bayou Lift Station with a panel and wiring system which complies with ECUA's design standards, including but not limited to the installation of a SCADA system with antenna. The bottom of the new panel shall be a minimum elevation of 10' above sea level.
- 2.) Power to the Russell Bayou Lift Station shall be reviewed and upgraded, as necessary, in order to comply with Gulf Power's minimum requirements as well as ECUA's standards.
- 3.) Replace the existing wet well with one of sufficient size to meet ECUA and Florida Department of Environmental Protection requirements, including but not limited to capacity to handle operational flows at full build-out with required and adequate holding times.
- 4.) Raise top of the wet well of the Russell Bayou Lift Station to an elevation of at least 7 feet above sea level.
- 5.) Install guide rails at the Russell Bayou Lift Station for pump removal and such other facilities as may be necessary to facilitate pump removal, such as base plate and elbows.
- 6.) Install water-proof wet well hatch which is compatible with the guide rails and other facilities to be installed to facilitate pump removal.
- 7.) Replace wet well piping at the Russell Bayou Lift Station with stainless steel piping, and install above-grade valve system in accordance with ECUA standards and practices.
- 8.) Replace approximately 450 linear feet of insufficiently sloped gravity sewer in the Russell Bayou area.
- 9.) Install manhole lid inserts to control infiltration in the Russell Bayou area.
- 10.) The lift station site shall be expanded, and site lighting, fencing, access, and the gate to the lift station will be altered/improved as necessary in order to conform to ECUA standards and practices.

Anticipated infrastructure and related installations in the North Shore Drive area:

- 1.) There are properties in the North Shore Drive area (which is hereby defined as 43 lots along North Shore Drive and 10 additional lots fronting Innerarity Point Road) which do not presently have sewer service. Accordingly, as part of this project, a large-diameter low pressure sewer force main shall be designed and installed so as to be capable of serving the properties in the North Shore Drive area in the event the owners of these properties desire to connect at some future time. The sewer force main will either directly or indirectly connect to existing ECUA Lift Station 380.
- 2.) In addition to the installation of this sewer force main, sewer laterals from the force main will be installed to the right-of-way line along the road fronting the parcels in the North Shore Drive area. No parcels in the North Shore Drive area will be connected to the sewer system as part of this project, however. Moreover, no grinder pumps will be provided for any parcel in the North Shore Drive area as part of this project.
- 3.) The design of the low pressure sewer system for the North Shore Drive area will comply with all applicable Florida Department of Environmental Protection regulations and guidelines. Although the sewer force main shall be owned by ECUA, no portion of the sewer laterals from that force main shall be owned by ECUA. Instead, those sewer laterals shall be owned by the corresponding property owner/s.

Anticipated upgrades to the remainder of the Island's sewer system:

For the remainder of the Island, i.e., for those portions of Innerarity Island outside of the Russell Bayou area and outside the North Shore Drive area, the existing gravity sewer system shall be abandoned and replaced by a low pressure sewer system generally described as follows:

- 1.) Approximately 30,000 linear feet of sewer force mains of appropriate size, which shall ultimately become the property of ECUA.
- 2.) Isolation and maintenance valves on the force main, which shall become owned by ECUA, to be installed at the appropriate distances approximately 1,000 feet apart, as determined by ECUA in consultation with its consultant Engineer.
- 3.) Approximately 150 grinder pump stations with associated valves and sewer laterals, which shall be owned by the corresponding property owner/s.
- 4.) The design of the low pressure sewer system on the Island will comply with all applicable Florida Department of Environmental Protection regulations and guidelines. The low pressure sewer system will either directly or indirectly connect to existing ECUA lift station 380.

The quantities described above are based on conceptual designs and are subject to change. All facilities are to be designed and constructed in accordance with the ECUA Engineering Manual.