

This instrument prepared by:  
Beau Falgout  
City of Palm Coast  
160 Lake Avenue  
Palm Coast, Florida 32164

## **PRE-ANNEXATION AND ECONOMIC DEVELOPMENT AGREEMENT**

THIS PRE-ANNEXATION AND ECONOMIC DEVELOPMENT AGREEMENT made this \_\_\_ day of \_\_\_\_\_, 2016, by and between the **City of Palm Coast**, a municipal corporation organized and existing under the laws of the State of Florida (the "City"), whose address is 160 Lake Avenue, Palm Coast, Florida 32164, and **Edge Properties, LLC**, a Florida limited liability company ("Edge Properties"), whose address is 7 Florida Park Drive, Palm Coast, Florida 32137.

### RECITALS

- A. Edge Properties owns certain real property in the unincorporated area of Flagler County, Florida, which is described on **Exhibits "A"** hereto (individually the "Property").
- B. Edge Properties is empowered to enter into this Agreement.
- C. The Property is contiguous to an existing boundary of the City.
- D. Edge Properties has requested that the City annex the Property into the City.
- E. The provisions of Section 171.062(2), *Florida Statutes*, provide that:

"[i]f the area annexed was subject to a county land use plan and county zoning or subdivision regulations, these regulations remain in full force and effect until the municipality adopts a comprehensive plan amendment that includes the annexed area."
- F. Section 171.062(1), *Florida Statutes*, provides as follows:

"An area annexed to a municipality shall be subject to all laws, ordinances and regulations in force in that municipality and shall be entitled to the same privileges and benefits as other parts of that municipality upon the effective date of the annexation."
- G. The City has determined that further high quality development of the Property consistent with appropriate protections of natural resources will be of substantial economic benefit to the City and its citizens; and

H. Section 166.021 (b) and (c), *Florida Statutes*, specifically states, with regard to economic development, that:

"(b) The governing body of a municipality may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose. The provisions of this chapter which confer powers and duties on the governing body of a municipality, including any powers not specifically prohibited by law which can be exercised by the governing body of a municipality, shall be liberally construed in order to effectively carry out the purposes of this subsection."

and

"(c) For the purposes of this subsection, it constitutes a public purpose to expend public funds for economic development activities, including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for expansion of businesses existing in the community or the attraction of new businesses to the community."

I. The City desires to insure that the development of the Property and adjacent City land uses are compatible with surrounding land uses, that adequate public facilities exist concurrent with the impact of such development and that such development and the City's Comprehensive Plan are or will be consistent.

J. On Flagler County's Future Land Use Map ("County FLUM"), the Property is designated Commercial: High Intensity and Conservation. On Flagler County's Official Zoning Map, the Property is classified C-2 and Agriculture.

K. The purpose of this Agreement is to set forth the understandings and agreements of the parties with respect to the foregoing, and other matters as set forth herein.

L. This Agreement is authorized by, permitted by, and consistent with the provisions of the City's Home Rule Charter; the City's Comprehensive Plan, Chapter 163, *Florida Statutes*; Chapter 166, *Florida Statutes*; the State Comprehensive Plan (Chapter 187, *Florida Statutes*); Article VIII, Section 2(b), *Constitution of the State of Florida*, and other applicable law and serves and advances a vital public purpose.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration each to the other provided, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals.

(a) The above Recitals are adopted as the findings of the City Council.

(b) The above Recitals are true and correct, are incorporated into this Agreement by reference thereto, and form a material part of this Agreement upon which the parties have relied, including but not limited to, the assertions that Edge Properties owns the Property and is empowered to enter into this Agreement and make binding commitments to the City.

2. Petition for Voluntary Annexation.

Edge Properties hereby petitions for voluntary annexation of the Property into the City pursuant to Chapter 171.044, *Florida Statutes* (the "Annexation Petition"). The City will consider adopting an ordinance in accordance with Chapter 171.044, *Florida Statutes*, thereby annexing the Property to the City and redefining the boundaries to the City to include the Property. A proposed draft of the annexation ordinance is attached as **Exhibit "B"** hereto.

No fees, costs or expenses will be charged to or become due from Edge Properties to the City or any other governmental authority, private individual or entity on account of or in connection with the City's review and processing of the Annexation Petition or the annexation of the Property into the corporate limits of the City; provided, however, that Edge Properties will pay its own attorney fees and consulting fees.

3. Public Facilities.

(a) Solid waste collection services are available to serve the demands generated by the Property and will be provided as it is to any other owner of land within the City and will be available concurrent with the impacts of the development of the Property.

(b) All drainage issues will be appropriately addressed in the development approvals pertaining to the Property and the impacts of stormwater drainage will be addressed in accordance with state law and other applicable regulatory requirements.

(c) The City will provide fire, and EMS facilities, equipment and services as necessary to serve the Property. All such public services will be available to support the development of the Property.

(d) Except as otherwise provided herein, the City will provide water and sewer services to the Property, subject to standard requirements relating to Edge Properties' contributions-in-aid-of-construction, payment of connection fees, dedication of lift stations and other sites, granting of appropriate easements, and dedication of other facilities as necessary or appropriate. Edge Properties will execute the necessary standard City Utility Agreement at the appropriate time and connect to water and sewer as soon as it is available.

4. Land Use and Development Approvals.

(a) The conditions of any Flagler County development approval(s) set forth on the County FLUM, Official Zoning Map, development orders and development permits, relating to the Property, will continue to be in full force and effect upon and after annexation of the Property to the City and the development rights and entitlements relating to such approvals will carry forward as approvals for the Property.

(b) The City has evaluated Edge Properties' proposed land use, intensity and other land use planning matters for the Property and the City will expediently process any applications for the proposed land uses, densities/intensities and other aspects of the proposed uses for the Property.

(c) The City acknowledges that it will process an application to provide that the Property, upon annexation into the City, is located within the Utility Service Area.

(d) The parties acknowledge that the City cannot contract to approve specific comprehensive plan or zoning amendments. The City's only obligation with respect to comprehensive plan and rezoning amendments is to initiate and process the applications expeditiously, consistent with Edge Properties' proposed uses for the Property, consider all evidence presented in support of and in opposition to the amendments and make decisions to approve or deny the amendments based upon the legal standards that govern actions by local governments when considering comprehensive plan and zoning amendments. In partial consideration for Edge Properties entering into this Agreement, the City will initiate and process applications for a comprehensive plan amendment and rezoning consistent with Edge Properties' proposed use for the Property at no cost to Edge Properties; provided, however, Edge Properties will cooperate with the City by providing the City with all necessary and desirable data and analysis in connection with the comprehensive plan amendments and rezonings.

(e) Edge Properties will submit to the City such applications and such other documentation and support data and analysis and comply with all procedures set forth in the City's Land Development Regulations as may be normally and customarily required by the City for platting parcels, site plan applications and applications for any and all other development approvals, orders and permits. Edge Properties acknowledges and agrees that the City will not be responsible for any fees, costs, expenses or other financial expenses resulting to Edge Properties if applications are denied in accordance with the provisions of the City's Land Development Regulations or state law.

(f) The City and Edge Properties will cooperate at all times in good faith in the implementation and exercise of Edge Properties' development rights and entitlements in the Property and with regard to sound developmental practices and procedures. This good faith cooperation by the City and Edge Properties will extend to the acquisition by Edge Properties of all necessary local, state and federal permits, development orders, licenses, easements and other approvals or rights in connection with the development of the Property in accordance with all applicable land use, zoning, land development, building and construction regulations; provided, however, the City will incur no costs relative to such matters and Edge Properties will bear any and all costs.

(g) Pursuant to the City's Land Development Code, an upland buffer averaging no less than 25 feet with a minimum width of 15 feet will be maintained adjacent to and surrounding wetlands of moderate and minimal quality. The City acknowledges that its staff has agreed with Carter Environmental Services, Inc.'s findings (July 2016) of inspected moderate and minimal quality wetlands; however, optimal quality wetlands may exist elsewhere on the Property that would require additional buffers by the City beyond those stated herein. Activities or construction (such as construction of minor drainage structures, elevated boardwalks, docks,

passive recreation, or trails) may be permitted within the buffer, if there are no adverse effect on the natural function of the wetland buffer.

5. Conflicts.

All building codes, zoning ordinances and other land development regulations of the City, including, without limitation, any concurrency management requirements and the City Comprehensive Plan and/or any similar plans adopted by the City as may be amended from time to time, will be applicable to the Property.

6. Further Assurances.

In addition to the acts recited in or set forth in this Agreement, the City and Edge Properties will perform or cause to be performed, in a timely manner, any and all further acts as may be reasonably necessary to implement the provisions of this Agreement including, but not limited to, the execution and or recordation of further instruments; provided, however, that the City's obligations will be subject to such limitations of law as may be applicable to municipalities.

7. Limitations of Remedies.

The parties will not pursue an award of monetary damages for a breach of or non-performance under this Agreement. The only remedies available against the non-performing party will be either to withhold further performance under this Agreement until the non-performing party cures the non-performance or seek a court order from the Circuit Court of the Seventh Judicial Circuit in and for Flagler County, Florida requiring the non-performing party to fulfill its obligations under this Agreement. The City will not be deemed to have waived sovereign immunity in any manner or respect.

8. Disclaimer of Third Party Beneficiaries.

This Agreement is solely for the benefit of the City and Edge Properties and no right or cause of action will accrue by reason hereof to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement, expressed or implied, is intended or will be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the parties hereto and their respective representatives, successors and assigns.

9. Effectiveness of Agreement.

This Agreement will become effective upon its being duly executed by both of the parties hereto. If, for any reason, the City does not annex the Property by **December 31, 2016**, then either party may terminate this Agreement by notice to the other party in which event this Agreement will terminate and be of no further force or effect, and Edge Properties will be entitled to record, at the City's expense, a Notice of Termination of this Agreement in the Public Records of Flagler County, Florida.

10. Time Of The Essence.

Time is of the essence of the lawful performance of the duties and obligations contained in this Agreement. The parties covenant and agree that they will diligently and expeditiously pursue their respective obligations set forth in this Agreement.

11. Successors and Assigns.

This Agreement will be binding upon and inure to the benefit of the City and Edge Properties and their respective successors in interest.

12. Applicable Law.

This Agreement will be construed, controlled and interpreted according to the laws of the State of Florida. Further, to the extent permissible under the laws of the State of Florida, if there is a conflict between this Agreement and the terms of the City's land development regulations, the terms of this Agreement will control.

13. Binding Effects.

Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it.

14. Recording.

The City will, within five (5) business days following full execution of this Agreement, at the City's sole cost and expense, record a fully executed counterpart of this Agreement in the Public Records of Flagler County, Florida.

15. Choice of Law and Venue.

Florida law will govern the interpretation and enforcement of this Agreement. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue will be in Flagler County, Florida and Orlando Middle District for federal actions.

16. Effect of Change in Law.

If state or federal laws are enacted after execution of this Agreement which are applicable to and preclude the party's compliance with the terms of this Agreement, this Agreement will be modified or revoked as is necessary to comply with the relevant state or federal laws and the intent of the parties hereto; provided, however, that the City will not modify this Agreement in any manner which would in any way be inconsistent with the intent of the parties to provide for development of the Property in accordance with the terms and conditions hereof.

17. Construction or Interpretation of the Agreement.

This Agreement is the result of *bona fide* arms length negotiations between the City and Edge Properties. Both parties have contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement will not be construed or interpreted more strictly against any one party than against any other party.

18. Attorneys' Fees and Costs.

In the event of any action to enforce the terms of this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.

19. Captions/Exhibits.

(a) The headings or captions of the sections and subsections contained in this Agreement are used for convenience and reference only, and do not, in themselves, have any legal significance and will not be afforded any.

(b) The exhibits to this Agreement are hereby incorporated into this Agreement and are an integral part of this Agreement.

20. Parties Bound.

Following the recordation of this Agreement, the benefits and burdens of this Agreement will become a covenant running with the title to the Property, and all parts and parcels thereof, and this Agreement will be binding upon and inure to the benefit of both the City, Edge Properties and their assigns and successors in interest to the Property, and all parts and parcels thereof.

21. Severability.

If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by either party to the Agreement or substantially increase the burden of either party to the Agreement, is held to be unconstitutional, invalid or unenforceable to any extent by a court of competent jurisdiction, such portion will be deemed a separate, distinct, and independent provision and the same will not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

22. Notices.

Any notice that is to be delivered hereunder will be in writing and will be deemed to be delivered (whether or not actually received) when (i) hand delivered to the official hereinafter designated, or (ii) upon receipt of such notice when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the parties as follows (facsimile transmittal is not acceptable as a form of notice in this Agreement):

To the City:

Mr. Jim Landon, City Manager  
City of Palm Coast  
160 Cypress Point Parkway, Suite B-106  
Palm Coast, Florida 32164

To Edge Properties:

\_\_\_\_\_  
Edge Properties  
7 Florida Park Drive  
Palm Coast, Florida 32137

23. Entire Agreement.

This Agreement constitutes the complete and entire agreement between the City and Edge Properties with respect to the subject matter hereof, and supersedes any and all prior agreements, arrangements or understandings, whether oral or written, between the parties relating thereto, all of which have been integrated herein.

24. Modification.

This Agreement may not be amended, changed, or modified, and material provisions hereunder may not be waived, except by a written document, of equal dignity herewith, approved by the City Council and Edge Properties, and signed by all parties to this Agreement.

25. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, will constitute one and the same document.

*[signatures to follow]*

WHEREFORE, the parties hereto have caused these presents to be signed all as of the date and year first above written.

**Attest:**

**City of Palm Coast**

\_\_\_\_\_  
Virginia Smith, City Clerk

\_\_\_\_\_  
Milissa Holland, Mayor

STATE OF FLORIDA       )  
COUNTY OF FLAGLER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by **Virginia Smith** and **Milissa Holland**, the Clerk and Mayor respectively, for and on behalf of the City of Palm Coast, Florida, who are personally known to me and who did not take an oath.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public, State of  
My Commission Expires:

**Edge Properties, LLC,**  
a Florida limited liability company

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2016, by \_\_\_\_\_ as \_\_\_\_\_, for and on behalf  
of Edge Properties, LLC, who is personally known to me and did not take an oath.

\_\_\_\_\_  
Notary Public, State of  
My Commission Expires: