**INTERLOCAL AGREEMENT BETWEEN**

**CITY OF PALM COAST AND**

**ST. JOHNS RIVER WATER MANAGEMENT DISTRICT**

**TO COLLECT AND PROCESS LIDAR DATA**

**FOR THE CITY OF PALM COAST**

**THIS INTERLOCAL AGREEMENT** is made by and between the CITY OF PALM COAST, FLORIDA (hereinafter referred to as “CITY”), a municipal corporation of the State of Florida, whose address is 160 Lake Ave., Suite 223, Palm Coast, Florida 32164, and ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, (hereinafter referred to as “DISTRICT”), a state agency of the State of Florida, whose address is 4049 Reid Street, Palatka, Florida 32178.

***WITNESSETH:***

**WHEREAS,** the waters of the state of Florida are among its basic resources, and it has been declared to be the policy of the Legislature to promote conservation, development, and proper utilization of surface and ground water; and

**WHEREAS,** the PARTIES have pledged to cooperate on collecting and processing LiDAR (Light Detection and Ranging) data important to the City of Palm Coast to evaluate surface and ground water; and

**WHEREAS**, LiDAR is a remote sensing method that uses light in the form of a pulsed laser to measure ranges to generate topographical data; and

**WHEREAS**, the DISTRICT is already managing identical services through Dewberry Consultant, LLC as the project “Surveyor” that was approved by the DISTRICT in October 2016; and

**WHEREAS**, the CITY anticipates that the standards and specifications utilized through the Statement of Work (SOW) will be critical to ensure future CITY modeling efforts use consistent data; and

**WHEREAS,** the PARTIES have determined that the LiDAR Project serves a CITY and DISTRICT public purpose; and

**WHEREAS**, the DISTRICT is legally obligated to ensure that the LiDAR Project, including the expenditures, is in accordance with the terms and conditions of the SOW; and

**WHEREAS**, the CITY is legally obligated to ensure that the LiDAR Project, including the expenditures associated, is in accordance with the terms and conditions of the SOW, via this Interlocal Agreement; and

**WHEREAS**, the PARTIES desire to work together to ensure completion of LiDAR Project, to administer the funds from the CITY, and to set forth their relative rights and responsibilities for implementation of the LiDAR Project; and

**WHEREAS**, upon completion of the LiDAR Project, the deliverables will be owned and maintained by the CITY; and

**WHEREAS,** this Interlocal Agreement is authorized pursuant to the provisions of Chapters 125, 163 and 166, and 336 and 337, *Florida Statutes,* and other applicable law.

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES agree as follows:

**SECTION 1. RECITALS.** The above recitals are true and correct and form a material part of this Interlocal Agreement upon which the PARTIES have relied.

**SECTION 2. PURPOSE.** The purpose of this Interlocal Agreement is to establish the PARTIES’ respective responsibilities for completing the LiDAR Project and for complying with the SOW requirements. The LiDAR Project is to acquire and calibrate laser points collected during the surveying the Area of Interest (AOI) covering 144.38 square miles as detailed in the attached SOW. The SOW is a proposal provided by Dewberry Consultants LLC describing the LiDAR Project deliverables and expectations (Exhibit A). The DISTRICT is currently managing other projects of similar scope and will manage the referenced LiDAR Project.

**SECTION 3. CITY RESPONSIBILITIES.**

(a) The CITY will provide a final Area of Interest (AOI) figure that describes the LiDAR collection area.

(b) The CITY shall bear all costs and expenses associated with activities undertaken pursuant to the SOW with the funding provided under the terms of the SOW.

(c) The CITY shall not have any jurisdiction or control over the DISTRICT’s activities, except as specifically stated in this Agreement.

(d) The DISTRICT acknowledges that payment for the services of its consultants and vendors performing work for the LiDAR Project shall be limited to the reimbursement of expenditures authorized by, and for the amounts set forth in, the SOW. Three payments to the project surveyor will be scheduled at 25%, 25% and the remaining of 50% at final deliverable, consistent in the SOW. Once a payment request has been reviewed by the DISTRICT and has been submitted to the CITY for reimbursement, the payment request will be deemed “approved” by the CITY. The CITY shall forward the payment to the DISTRICT no later than 20 business days of receipt.

**SECTION 4. DISTRICT RESPONSIBILITIES.**

(a) The DISTRICT will cooperate with the CITY to ensure the parties maintain compliance with the terms of the SOW and will provide oversight and technical assistance to the CITY with respect to the administration of the SOW requirements.

(b) The DISTRICT shall ensure procurement of Dewberry Consultant, LLC are in accordance with applicable federal and state procurement requirements, and shall provide all documentation necessary for the CITY to certify that the procurement procedures were accomplished in compliance with Florida Statutes.

(c) The DISTRICT shall not have any jurisdiction or control over the CITY’s activities, except as specifically stated in this Agreement.

(d) The DISTRICT acknowledges that payment for the services of Dewberry Consultant, LLC performing work for the LiDAR Project shall be limited to the reimbursement of expenditures authorized by, and for the amounts set forth in the SOW. Three payments to the surveyor will be scheduled at 25%, 25% and the remaining of 50% at final deliverable. The DISTRICT approved invoice shall be sent to the CITY within ten (10) business days of receipt.

(e) The DISTRICT shall provide the CITY with all LiDAR data and reports produced for the AOI and further more detailed in the SOW.

**SECTION 5. PROJECT MANAGEMENT.**

(a) The Project Managers listed below shall be responsible for overall coordination and management of the LiDAR Project. Either party may change its Project manager upon three (3) business days prior to written notice to the other party. Written notice of change of address shall be provided within five (5) business days. All notices shall be in writing to the Project Managers at the addresses below and shall be sent by one of the following methods: (1) hand delivery; (2) U.S. certified mail; (3) national overnight courier; or (4) e-mail. Notices via certified mail are deemed delivered upon receipt. Notices via overnight courier deemed delivered one (1) business day after having been deposited with the courier. Notices via e-mail are deemed delivered on the date transmitted and received.

**DISTRICT** **CITY**

Bill VanSickle Denise Bevan

Project Manager Project Manager

St. Johns River Water Management District City of Palm Coast

4049 Reid Street 160 Lake Avenue

Palatka, Florida 32177 Palm Coast, Florida 32164

386-329-4580 386-986-2458

bvansick@sjrwmd.com dbevan@palmcoastgov.com

**SECTION 6. AUTHORIZATION.** The CITY hereby authorizes the DISTRICT to make arrangements for the coordination of all services necessary for the LiDAR Project with Dewberry Consultant, LLC consistent with the SOW.

**SECTION 7. EFFECTIVE DATE.** This Interlocal Agreement shall become effective on the date this Agreement is filed with the Clerk of Courts.

**SECTION 8. TERMINATION OF CONTRACT.**

(a) The CITY may terminate this Agreement for convenience at any time for one or more of the reasons as follows:

(1)  If, in the CITY’S opinion, adequate progress under SOW is not being made by the DISTRICT or its consultants; or

(2)  If, in the CITY’S opinion, the quality of the services provided by the DISTRICT pursuant to this Agreement and the SOW is/are not in conformance with commonly accepted professional standards, standards of the CITY, the requirements of Federal or State regulatory agencies, and the DISTRICT has not corrected such deficiencies in a timely manner as reasonably determined by the CITY; or

(3)  The DISTRICT or any employee or agent of the DISTRICT is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by the DISTRICT; or

(4)  Dewberry Consultant, LLC, becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or

(5)  Dewberry Consultant, LLC, violates the Standards of Conduct provisions herein or any provision of State or local law or any provision of the City Code of Conduct.

(b) In the event of any of the causes described in this Section, the CITY may send a certified letter requesting that the DISTRICT show cause why this Agreement should not be terminated.  If assurance satisfactory to the CITY of corrective measures to be made within a reasonable time is not given to the CITY within fourteen calendar days of the receipt of the letter, the CITY may consider the DISTRICT to be in default, and may immediately terminate this Agreement in progress under this Contract.

(c) In the event that this Agreement is terminated for cause and it is later determined that the cause does not exist, then this Agreement shall be deemed terminated for convenience by the CITY and the CITY shall have the right to so terminate this Agreement without any recourse by the DISTRICT.

**SECTION 9:  TERMINATION BY DISTRICT FOR CAUSE.**

(a) The DISTRICT may terminate this Agreement if:

(1)  The CITY materially fails to meet its obligations and responsibilities as contained in Section 3; City Responsibilities; or

(2)  The CITY fails to pay the DISTRICT in accordance with this Agreement.

(b) In the event of either of the causes described in Subsection (a), the DISTRICT shall send a certified letter requesting that the CITY show cause why the Agreement should not be terminated.  If adequate assurances are not given to the DISTRICT within fourteen calendar days of the receipt of said show cause notice, the DISTRICT may consider the CITY to be in default, and may immediately terminate this Agreement.

**SECTION 10:  TERMINATION BY THE CITY WITHOUT CAUSE.**

(a) Notwithstanding any other provision of this Agreement, the CITY shall have the right at any time to terminate this Agreement in its entirely without cause if such termination is deemed by the CITY to be in the public interest, provided that thirty calendar days prior written notice is given to the DISTRICT of the CITY’S intent to terminate.

(b)  In the event that this Agreement is terminated, the CITY shall identify any specific SOW tasks to be continued to completion pursuant to the provisions of this Agreement.

(c) This Agreement will remain in full force and effect as to all authorized Purchase Order(s)/Work Order(s) that is/are to be continued to completion.

**SECTION 11. NOTICES.**

(a) Whenever either party desires or is required to give notice unto the other, notice may be sent by hand delivery or by Certified Mail (return receipt requested) to:

**CITY DISTRICT**

City of Palm Coast St. Johns River Water Management District

Attn: City Manager Attn: Executive Director

160 Lake Ave. 4049 Reid Street

Palm Coast, Florida 32164 Palatka, Florida 32164

 (b) Any party may change, by written notice as provided herein, the address or person for receipt of notices. Notice shall be deemed to have been given when received.

**SECTION 12. FORCE MAJEURE**. No party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by *Force Majeure*. *Force Majeure* shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, terrorism, hurricane, explosion, any emergency declaration under state or local law, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

**SECTION 13. PUBLIC RECORDS**. The PARTIES shall allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, *Florida Statutes*, and the *Constitution of the State of Florida* and which have been made or received by the PARTIES in conjunction with this Interlocal Agreement.

**SECTION 14. ENTIRE AGREEMENT/MODIFICATION.** This Interlocal Agreement constitutes the complete, integrated and entire agreement between the PARTIES with respect to the subject matter hereof, and supersedes any and all prior agreements, arrangements, contracts or understandings, whether oral or written, between the PARTIES all of which, if any, have been integrated herein. This Interlocal 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 and signed by all PARTIES to this Interlocal Agreement.

**SECTION 15. THIRD PARTY BENEFICIARIES.** This Interlocal Agreement is solely for the benefit of the formal PARTIES to this Interlocal Agreement, and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal party hereto. Nothing in this Interlocal Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Interlocal Agreement or any provisions or conditions hereof, other than the PARTIES hereto as set forth herein.

**SECTION 16. SEVERABILITY.** If any one or more of the covenants or provisions of this Interlocal Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void, shall be deemed separable from the remaining covenants or provisions of this Interlocal Agreement, and shall in no way affect the validity of the remaining covenants or provisions of this Interlocal Agreement; provided, however, that the public interest in the terms set forth herein is not substantially, adversely impacted.

**SECTION 17. COUNTERPARTS.** This Interlocal Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

**SECTION 18. COVENANTS OF FURTHER ASSURANCES**. The CITY and the DISTRICT agree that from and after the date of execution hereof, each will, upon the request of the other, execute and deliver such other documents and instruments and take such other action as may be reasonably required to carry out the purpose and intent of this Interlocal Agreement.

**SECTION 19. DISPUTES**. The City Manager for the CITY and the Executive Director for the DISTRICT shall use their best efforts and diligence to amicably resolve any dispute or disagreement concerning any provision of this Interlocal Agreement; however, failing which after best efforts and diligence, then any dispute to this Agreement shall be resolved by a civil court located in Flagler County. For purposes herein, the PARTIES agree that should such dispute result which necessitates judicial intervention, that all conditions and prerequisites under the Florida Governmental Conflict Resolution Act (set forth in Chapter 164, Florida Statutes), shall be deemed to have been met and that the PARTIES shall be presumed to be at impasse for all purposes including judicial review. Further, to the extent allowed by law, the PARTIES expressly waive all procedures, processes and time frames set forth in Chapter 164, Florida Statutes. Each party shall be responsible for its own costs and attorney’s fees in the event of any dispute, claim, action or appeal related to or arising from this Agreement.

**SECTION 20. LIABILITY.** The DISTRICT shall not be liable to any person, firm, entity or corporation in connection with the services the CITY has agreed to perform hereunder, or for debts or claims accruing to such entities against the CITY. This Interlocal Agreement shall not create a contractual relationship, either express or implied, between the DISTRICT and any other person, firm, or corporation supplying any work, labor, goods or materials to the CITY.

**SECTION 21. INDEMNIFICATION/SOVEREIGN IMMUNITY.**

(a) To the extent permitted by Florida law and without waiving any statutory and constitutional sovereign immunity protections, the CITY agrees to hold harmless and shall indemnify the DISTRICT from any and all claims and all manner of action and actions, losses, demands, damages, penalties and expenses including reasonable attorney’s fees, which may result from, or arise out of the intentional or negligent acts of the members, employees, appointees or agents of the CITY while in the performance of this Interlocal Agreement, subject to applicable law including Section 768.28, Florida Statutes, regarding governmental agency liability.

(b) To the extent permitted by Florida law and without waiving any statutory and constitutional sovereign immunity protections, the DISTRICT agrees to hold harmless and shall indemnify the CITY from any and all claims and all manner of action and actions, losses, demands, damages, penalties and expenses including reasonable attorney’s fees, which may result from, or arise out of the intentional or negligent acts of the members, employees, appointees or agents of the DISTRICT while in the performance of this Agreement, subject to applicable law including Section 768.28, Florida Statutes, regarding governmental agency liability.

(c) Nothing herein shall be deemed a waiver, express or implied, of either PARTIES’ sovereign immunity or an increase in the limits of liability pursuant to Section 768,.28, Florida Statutes, regardless of whether any such obligations are based in tort, contract, statute, strict liability, negligence, product liability or otherwise, To the extent anything contained in this Interlocal Agreement constitutes a waiver of sovereign immunity, such terms and conditions shall be interpreted to the fullest extent possible to effectuate the intent of the PARTIES, but deleting any terms or conditions which would constitute a waiver of sovereign immunity. Nothing herein shall be construed as consent by either party to be sued by third parties in any matter arising out of any contract, act or action.

**IN WITNESS WHEREOF**, the PARTIES hereto have caused the execution by their duly authorized officials on the dates indicated below.

***ATTEST:*****CITY OF PALM COAST, FLORIDA**

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Virginia A. Smith, City Clerk BY: Milissa Holland, Mayor

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Approved as to form:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_

William E. Reischmann, Jr., City Attorney

***ATTEST:*****ST. JOHNS RIVER WATER**

**MANAGEMENT DISTRICT**

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 BY: Ann B. Shortelle, Ph.D.

 Executive Director

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Approved as to form:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_

William Abrams, Sr. Assistant General Counsel