

*
*
*
*
*

**INTERLOCAL AGREEMENT FOR THE INTERCONNECTION OF
POTABLE WATER BETWEEN
THE CITY OF WINTER HAVEN, FLORIDA,
AND THE CITY OF HAINES CITY, FLORIDA**

This Interlocal Agreement (“Agreement”) is made and entered into as of the Effective Date defined in Section 3.14, below, by and between the CITY OF WINTER HAVEN, FLORIDA (“Winter Haven”), a Florida municipal corporation organized and existing under the laws of the State of Florida and the CITY OF HAINES CITY, FLORIDA (“Haines City”), a Florida municipal corporation organized and existing under the laws of the State of Florida.

W I T N E S S E T H:

WHEREAS, Winter Haven and Haines City are vested with home rule authority pursuant to the Municipal Home Rule Powers Act, Chapter 166, Florida Statutes, Chapter 180, Florida Statutes, and Article VIII, §2 of the Florida Constitution; and

WHEREAS, Winter Haven and Haines City are therefore vested with governmental, corporate and proprietary powers to enable both to conduct municipal government, perform municipal functions and render municipal services, including the general exercise of any power for municipal purposes; and

WHEREAS, Winter Haven and Haines City acknowledge that an interlocal agreement entered into pursuant to the *Florida Interlocal Cooperation Act of 1969*, codified in Part I of F.S. Ch. 163, is considered a contract binding the parties thereto; and

WHEREAS, the *Florida Interlocal Cooperation Act of 1969*, as amended, codified at Section 163.01, Florida Statutes, authorizes local governmental units to enter into Interlocal Agreements for the mutual benefit of the governmental units; and

WHEREAS, Article VIII, Section 2(b), of the Florida Constitution, and Sections 166.021(1) and 180.06, Florida Statutes (2022), authorize Winter Haven to provide potable water services; and

WHEREAS, Winter Haven and Haines City mutually agree and acknowledge that

Winter Haven has no general duty to supply potable water service(s) to area(s) outside its corporate limits; and

WHEREAS, Winter Haven and Haines City (individually, a “Party” and collectively “the Parties” to this Agreement) agree that establishing a potable water interconnect facility between their respective Water Systems through which potable water can flow from one Party to another Party will benefit all the Parties; and

WHEREAS, the Parties acknowledge and represent that, in exchange for extra-jurisdictional potable water service(s) provided by Winter Haven to Haines City which are necessary and desirable in order to serve the residents and citizens within the corporate limits of Haines City, Haines City agrees to deliver reasonable compensation, in accordance with Section 180.191(1), Florida Statutes (2022), to Winter Haven as specifically set forth in this Agreement; and

WHEREAS, the Parties recognize and acknowledge that Winter Haven’s provision of potable water service to Haines City under this Agreement may require that adjustments or modifications be made to Winter Haven’s water use permit issued by the applicable water management district; and

WHEREAS, Winter Haven and Haines City have agreed, by separate Memorandum of Understanding executed of even date, to work together in good faith to resolve any and all environmental and permitting issues presented by Winter Haven’s provision of service to Haines City through the interconnect facility, any issues related to water use permit adjustments or modifications that may be required by the applicable water management district in order for Winter Haven to provide service, as a special condition of initial and continued provision of service under this Agreement; and

WHEREAS, it is therefore deemed to be in the interest of the public health, safety and welfare for the Parties, as well as an appropriate exercise of their respective police powers, to further specify and detail the manner in which the potable water service(s) by Winter Haven will be developed, owned, maintained, and provided to, by entering into this Agreement.

NOW THEREFORE, in consideration of the recitals, covenants, agreements and promises herein contained, the Parties covenant and agree that the purpose of this Agreement is to extend and provide for how municipal potable water service(s) for Haines City will be provided by Winter Haven, as follows:

ARTICLE I RECITALS AND DEFINITIONS

1.1 **Recitals**. The foregoing recitals are incorporated herein by the parties as true and correct statements which form the factual and material basis for entry into this Agreement between Winter Haven and Haines City.

1.2 **Authority and Purpose.**

1.2.1 This Agreement is entered into pursuant to the provisions of Chapter 163 of the Florida Statutes, and other applicable provisions of law.

1.2.2 This Agreement describes the terms and conditions by which the Parties will interconnect their potable water systems at a mutually agreed location so they may provide Water Services for need and reliability purposes between and among themselves.

1.3 **Definitions.** In interpreting this Agreement, the following words, phrases, and terms shall have the following meaning unless the context of this Agreement indicates otherwise.

1.3.1 *Agreement* means this Interlocal Agreement For The Interconnection of Potable Water Between The City of Winter Haven, Florida, and City of Haines City, Florida as it may from time to time be modified.

1.3.2 *Day(s)* means calendar day unless specifically stated otherwise.

1.3.3 *Calendar Day(s)* means any and all days in a 365-day calendar year.

1.3.4 *Business Day(s)* means each Calendar Day which is not a Saturday, Sunday or a recognized holiday by the City of Winter Haven and/or City of Haines City, Florida.

1.3.5 *Connection Point* means the physical location where the Interconnect Facilities owned by one Party join with the Interconnect Facilities of the other Party.

1.3.6 *Haines City* means the City of Haines City, Florida, a Florida municipal corporation, vested with home rule authority pursuant to the Municipal Home Rule Powers Act, Chapter 166 of the Florida Statutes, and Article VIII, §2 of the Florida Constitution.

1.3.7 *Winter Haven* means the City of Winter Haven, Florida, a Florida municipal corporation, vested with home rule authority pursuant to the Municipal Home Rule Powers Act, Chapter 166 of the Florida Statutes, and Article VIII, §2 of the Florida Constitution.

1.3.8 *Haines City System* means those facilities employed for the acquisition, treatment, transmission and distribution of potable water that are owned, operated, maintained and replaced by the City of Haines City.

1.3.9 *Interconnect Facilities* mean those facilities that are required to provide potable Water Service connections between the Parties at the Connection Point, specific to each Party's Water System such as those described in Section 2.3. herein, treatment facilities, off-site transmission and distribution system piping, or any other facilities needed by one of the Parties to facilitate the transfer of potable water to its system from the other Party's Water System. The Interconnect Facilities shall include metering,

cross connection control, pressure regulating valves, booster pumps at the Connection Point, and isolation valving equipment as necessary.

- 1.3.10 *Party* means one of the government signatories participating in this Agreement.
- 1.3.11 *Providing Party* means a Party providing Water Service pursuant to this Agreement to a Receiving Party.
- 1.3.12 *Receiving Party* means a Party receiving Water Service pursuant to this Agreement from a Providing Party.
- 1.3.13 *Reliability Water Service* means the provision of potable water by one Party to the other Party through the Interconnect Facilities to temporarily help the Receiving Party meet a need for potable water for a defined period of time.
- 1.3.14 *Water Service* means the provision of potable water acquired, treated, transmitted and distributed in accordance with all applicable governmental requirements and regulations. In this Agreement, the term *Water Service* may apply to Reliability Water Service. A Providing Party provides Water Service to the other by and through its respective Water System and by and through its Interconnect Facilities to the Interconnect Facilities of the Receiving Party.
- 1.3.15 *Winter Haven Water System* means those facilities employed for the acquisition, treatment, transmission and distribution of potable water that are owned, operated, maintained and replaced by Winter Haven.
- 1.3.16 *Effective Date* means the date on which this Agreement has been approved by the last of both the City of Haines City Commission and City of Winter Haven City Commission.
- 1.3.17 *Term* means the duration of this Agreement which shall commence on the Effective Date and shall expire and/or terminate in accordance with the provisions set forth in Section 3.2 of this Agreement.

Any terms defined elsewhere in this Agreement shall, when used herein, have the ascribed meaning and definition.

ARTICLE II TERMS AND CONDITIONS

2.1 **Intent.** The intent of this Agreement is to provide a Reliability Water Service interconnect between the Winter Haven Water System and the Haines City Water System to meet the existing need of Haines City, as follows:

- 2.1.1 Subject to availability, Winter Haven shall provide 0.50 MGD of potable drinking water to Haines City during the Term of this Agreement;
- 2.1.2 The Parties do not intend in any way to constrain, limit or prohibit Winter Haven or Haines City from obtaining their own additional water resources

or from expanding their respective Water Systems; and

- 2.1.3 This Agreement is not intended to memorialize any agreement(s) related to the distribution and/or transmission of potable water received by the Parties arising out of their participation with the Polk Regional Water Cooperative (the “PRWC”). Any agreement between Winter Haven and Haines City for the distribution and/or transmission of potable water received through the PRWC shall be in writing and the subject of a separate written agreement.

2.2 Utility Service Areas.

- 2.2.1 Each Party shall not directly serve or offer to serve any customer in the other Party’s utility service area on a temporary or permanent basis, unless one Party requests the other Party in writing to do so and the other Party agrees to do so. Any agreement between the Parties to provide potable water service(s) to a customer within the other Party’s utility service area shall be in writing and the subject of a separate written agreement.
- 2.2.2 Completing the Interconnect Facilities and providing Water Service and Reliability Water Service does not and will not change either of the Parties’ relationships to their respective customers. Accordingly, any customers that have or will connect to the Winter Haven Water System shall be customers of Winter Haven and shall pay the applicable Winter Haven rates, fees, charges, and deposits for water service; and any customers that have or will connect to the Haines City Water System shall be customers of Haines City and shall pay the applicable Haines City rates, fees, charges, and deposits for water service.

2.3 Potable Water Interconnect Facilities.

- 2.3.1 The Interconnect Facilities necessary to supply Water Service between the Parties will be located at or near the intersection of U.S. Hwy. 27 and Lucerne Park Road within the corporate limits of the City of Winter Haven, Florida. A mutually agreed location shall be agreed upon prior to design and construction.
- 2.3.2 Winter Haven and Haines City will independently design, permit and construct water main extensions to the proposed mutually agreed interconnect location. A minimum of a ten inch (10”) distribution main is required for each municipality. Each municipality will incur 100% of the cost of its extension and coordinate the work.
- 2.3.3 Design, permitting and construction of the Interconnect Facility will be procured by Winter Haven via professional continuing services agreement or competitively bidding the project. Review and acceptance of proposals

by both Winter Haven and Haines City are required prior to execution of agreements and notice to proceed.

- (a) Winter Haven shall act as agent on behalf of the Parties to contract for the construction of the Interconnect Facilities. The costs for the Interconnect Facilities will be equally divided between the Parties with Winter Haven responsible for 50.0% of the total final shared project costs and Haines City responsible for 50.0% of the total final shared project costs. The shared project costs shall include, without limitation, all design, permitting, materials, labor and other expenses incurred in construction of the actual Interconnect Facilities, as well as any other costs required to properly construct the Interconnect Facilities so that it may be operated as designed and permitted, *provided* that all capital costs related to individually operated facilities required by Haines City to receive service, to include by way of example and not limitation, design, materials, labor, and other expenses related to booster pumps, shall not be considered shared project costs and Haines City shall be responsible for 100.0% of the total of any such costs. Upon the review and approval of the Cost Estimate, a copy of which is attached hereto as **Exhibit “A,”** then the same shall be made a part hereof by reference. The Parties acknowledge that the Cost Estimate is only a preconstruction estimate of project costs and that the final shared project costs to be divided between the Parties as set forth in this Agreement may exceed the cost of the same due to the volatility of materials and labor markets as well as the outcome of Winter Haven’s public procurement processes. The parties contemplate that the final shared project costs for the design and construction of the Interconnect Facilities shall not exceed Three Million, Five Hundred Thousand Dollars and zero cents (\$3,500,000.00). In the event that the final shared project costs for the design and construction of the Interconnect Facilities are projected to exceed Three Million, Five Hundred Thousand Dollars and zero cents (\$3,500,000.00), the parties agree to seek the formal approval of their respective governing bodies prior to proceeding with the design and construction of the Interconnect Facilities.
- (b) In procuring contractors and professionals, Winter Haven shall comply with all Florida procurement and payment standards applicable to local government agencies, which include, but are not limited to, Chapters 218, 255 and 287 of the Florida Statutes (2022). Winter Haven shall notify Haines City of its expected respective share of all such project costs as Winter Haven enters into each agreement for project work. In addition, Winter Haven shall use its ordinary best judgment to select responsible contractors and professionals and shall not be bound to choose the lowest priced contractor or lowest priced professional without consideration of the potential vendor’s job history,

responsibility or ability to complete the project.

- (c) Haines City shall pay Winter Haven its respective share of each component project cost within thirty (30) days after receipt of Winter Haven's invoice. Winter Haven shall hold and maintain the funds received from the Parties until the amounts are due and payable to the engineer, contractor, and other project vendors or contractors in accordance with their respective agreements. Should the Parties' respective shares of each component project exceed the original invoiced amount as a result of unforeseen circumstances, or volatility in the materials or labor markets, or as a matter of interpretation of the various construction contracts for performance of the work, Haines City shall pay Winter Haven its respective share of such cost within thirty (30) days after receipt of Winter Haven's supplemental invoice.
- (d) Each Party shall be solely responsible for the cost to design, permit, and construct all potable water transmission lines necessary to connect its respective Water System to the Interconnect Facilities in accordance with the final engineering and/or construction plans for the project.
- (e) The Parties may elect to finance the cost of design work, construction work, or both, through the Drinking Water State Revolving Fund of the Florida Department of Environmental Protection ("SRF") or other mutually acceptable lending institutions. Additionally, the Parties may seek grants from the Southwest Florida Water Management District, the Florida Legislature, the Florida Department of Environmental Protection, or other responsible grant awarding entity, to reduce the cost of design, construction, or both design and construction of the project. If a Party elects to use SRF, or other market lender, to finance some or part of the cost of the Interconnect Facilities, the Parties shall confer within a reasonable time to determine whether both Parties desire to obtain financing from a joint or shared source. Each Party that desires to use financing shall bear its proportionate share of financing costs applicable to the project based on its decision, inclusive of additional design work, if any should be required. Grants received for the project shall be applied to reduce shared project costs such that, upon completion, Winter Haven receives 50.0% of the benefit of the total grant funds and Haines City receives 50.0% of the benefit of the total grant funds.

2.4 **Operation and Maintenance Costs.** Each Party shall, at its own cost, operate and maintain its respective portion of the Interconnect Facilities assembly with the assembly being divided evenly based on meters, cross connection control assemblies, valves, and other components. Haines City shall be solely responsible for the power cost associated with the Interconnect Facilities booster pumps billed directly by the electric provider. Each Party, at its own cost, shall operate and maintain potable

water transmission lines, booster pumps, and other facilities necessary to connect their respective water systems to the Interconnect Facilities. The Parties are each responsible for any maintenance or upkeep related to their individually operated facilities. If the Interconnect Facilities are designed such that any portion is not owned by one Party, then the Parties will jointly own such portions of the facilities and be equally responsible for any required maintenance or upkeep of the jointly-owned facilities and their related cost. When the design of the Interconnect Facilities is final, the Parties will collectively decide which Party will take the lead on the Operation & Maintenance of the jointly-owned facilities.

2.5 **Water Quality.**

2.5.1 The quality for the water being transferred between the Parties shall meet the “National Primary Drinking Water Standards” as described in the Safe Drinking Water Act. If any supply source is determined to contain a constituent concentration exceeding the maximum contaminant level, the Receiving Party shall immediately be notified, and the water supply from the source shall be discontinued or other appropriate action taken as required by the Safe Drinking Water Act. All water supply sources shall be tested in accordance with applicable State and Federal requirements.

2.5.2 Haines City acknowledges that Winter Haven adds sodium hypochlorite, fluoride and an ortho/poly phosphate to its treated ground water.

2.5.3 Haines City shall be responsible for providing any required legal notice(s) to its customers and DEP/DOH of the Water Service.

2.6 **Water Service.**

2.6.1 *Reliability Water Service.* After connection of the potable water systems and upon approval of the Receiving and Providing Parties, a Party may provide potable water to another Party upon request at the Connection Point for a defined period of time in accordance with the terms and conditions of this Agreement.

2.6.2 *Emergency Water Service.*

(a) After connection of the potable water systems, a Party may request Emergency Water Service from the other Party. To request Emergency Water Service, the Party needing the service shall contact the other Party by telephone. Within thirty (30) minutes after receiving a request, or as soon as practicable thereafter, the notified Party shall determine and notify the requesting Party whether it can supply the requested water or any portion thereof. If so, representatives for the Parties shall contact each other to coordinate and meet on site to operate and flush the system, and the Providing Party shall then proceed to open the necessary valves

and equipment on its respective side of the appropriate Interconnect Facilities flow meter to allow the requested service to begin. The Receiving Party shall follow-up the verbal request by delivering written confirmation to the Providing Party or Parties within twenty four (24) hours after the initial telephonic request. The Emergency Water Service shall continue for no longer than ninety six (96) hours after the Providing Party initiates the service, unless the Receiving Party requests continued service and the Providing Party consents in writing to fulfilling that request. Should automatic valves be installed in the Interconnect Facilities, the Parties agree to meet in good faith and consider an appropriate amendment to this Agreement describing the procedures to be used for initiating Emergency Water Service.

- (b) Notwithstanding anything herein, prior to placing the Interconnect Facilities into operation for Emergency Water Service, the Parties shall develop and approve a written protocol for notification and operation of the Interconnect Facilities in the event of an emergency.
- (c) A Providing Party providing Emergency Water Service can discontinue Emergency Water Service to the Receiving Party at any time and for any reason. The Receiving Party shall have no cause of action or any remedies in equity or law against the Providing Party for discontinuing Emergency Water Service. When a Providing Party determines to discontinue Emergency Water Service, it must, to the extent reasonably possible, advise the Receiving Party in advance of its need to do so.

2.7 Water Use Permits.

- 2.7.1 At no time shall this Agreement require or be construed to require a Providing Party to deliver potable water to a Receiving Party if doing so will cause a Providing Party to exceed any water quantities that were approved by the applicable water management district or other regulatory agencies having jurisdiction in the matter or to violate any special conditions of any water use permit issued by an applicable water management district or other regulatory agency having jurisdiction.
- 2.7.2 By separate memorandum of understanding, executed of even date, the Parties have agreed to work together in good faith to resolve any and all environmental and permitting issues related to service provided through the Interconnect Facilities, including without limitation any issues related to water use permit adjustments or modifications that may be required by the applicable water management district in order for Winter Haven to provide service. Cooperation as detailed in the memorandum of understanding, or in any subsequently executed agreement regarding the same or similar subject matter, shall be a special condition of both initial and continued provision of service under this Agreement.

2.7.3 Winter Haven may terminate this Agreement if:

- (a) The Southwest Florida Water Management District or any applicable water management district with jurisdiction decreases the water use quantity permitted for Winter Haven;
- (b) The Southwest Florida Water Management District or any applicable water management district with jurisdiction imposes a special condition upon Winter Haven's water use permit that requires action or mitigation regarding one or more surface or subsurface water resources located within or adjacent to Haines City's corporate limits or Haines City's utility service area and Haines City fails to timely cooperate or address such special condition by taking such action or mitigation; or
- (c) Winter Haven requires all of its water use quantity for users and uses that reside within the Winter Haven utility service area.

2.8 **Metering.** The metering equipment for the Interconnect Facilities shall be capable of measuring all water flowing through the Connection Point. Each Party shall review and approve the type of meters and meter installations used at the Interconnect Facilities. Each Party shall have the right to read another Party's meter and a right of access thereto for invoicing purposes.

The Interconnect Facilities shall include metering, cross connection control, booster pumping and isolation valving equipment. Each Party shall own and control that portion of the Interconnect Facilities which is part of the Party's water service system and shall be responsible for the operation, maintenance, and replacement of its respective infrastructure comprising that portion of the Interconnect Facilities.

Each Party's metering equipment will be of standard make and type that meet current AWWA Standards and each Party's meter standards, installed at a readily accessible location and shall record the flow with an error not to exceed plus or minus two percent (2%) of true accuracy for full-scale reading, suitable for invoicing purposes. Each Party shall check the accuracy of its meter in accordance with AWWA Standards every twelve (12) calendar months and send the results to the other Party within thirty (30) calendar days after receipt of the results. Expenses for meter verifications will be the responsibility of the meter owner. Meter verification for accuracy shall be conducted by an independent contractor selected by the meter owner.

If a Party's meter is found to be in error exceeding two percent (2%) of true accuracy, it will be verified to the satisfaction of all Parties. The meter owner shall be responsible for all the costs associated with the recalibration of the meter. If such an error occurs, invoices for the time period since the last meter verification will be adjusted based on the assumption that the meter error occurred for one-half of the

entire time interval between the accuracy verifications of the meter owner. The invoice adjustment will be made at the same rate valid for the respective time period and the water volume will be adjusted as described herein.

- 2.9 **Construction Permits.** Permits for construction of the Interconnect Facilities shall be acquired by Winter Haven as agent for the Parties during the construction phase of the project. Except as otherwise stated in this Agreement, each Party shall be solely responsible for securing all applicable permits or other regulatory approvals as may be required to operate the proposed interconnection between and among the Parties respective water systems. Each Party shall provide copies of permits and other regulatory approvals obtained to the other Party promptly after issuance. The Parties shall not operate the Interconnect Facilities for the delivery of water contemplated as part of this Agreement until all applicable regulatory permits or approvals have been obtained and copies of such permits and approvals have been provided. Each Party shall provide water through the Interconnect Facilities in such a manner so as to continue to properly maintain its respective permit(s) obtained from the applicable water management districts and other regulatory agencies that have jurisdiction over the water that could be provided to another Party pursuant to this Agreement.
- 2.10 **Demand Limitations.** The Parties agree that the Providing Party may restrict or discontinue water flows through the Interconnect Facilities if such flows result in an adverse effect on the Providing Party's water system pressure. The Parties acknowledge that there may exist pressure differentials between their water systems and no Party warrants or guarantees any minimum pressure other than a Florida Department of Environmental Protection required minimum system pressure of 20 pounds per square inch. All expenses necessary to adjust any differential pressure necessary to provide Water Service to the Receiving Party shall be the sole expense of the Receiving Party unless the Providing Party, at its sole discretion, decides to provide funding or other assistance to adjust the pressure differential. The Parties accept that the water service is interruptible and shall not be relied upon as a primary source of water.
- 2.11 **Regulatory Compliance and Disclosure.** Each Party shall comply with all local, state, and federal regulations regarding Reliability Water Service. This Agreement does not contemplate that a Party is, or is to be considered, the sole or primary source for potable water service or fire protection service for the other Party. If a Providing Party is not in compliance with local, state, or federal regulations concerning potable water service, then Providing Party shall notify the Receiving Party and the Providing Party shall have the right to discontinue service to the Receiving Party for the duration of the time period of noncompliance. A Providing Party that is not in compliance shall notify the Receiving Party within 24 hours, or as soon as possible, if noncompliance with a regulation has occurred. The Receiving Party may request that the Providing Party continue Water Service if such service necessary to protect the public health, safety, and welfare of Receiving Party's customers.

2.12 Water Use Rates and Payment.

- 2.12.1 The Providing Party shall provide Water Service to the Receiving Party in accordance with the terms and conditions hereof at the then-lowest current commercial rate (unit price) of the Providing Party. When providing Water Service to a Receiving Party in accordance with this Agreement, a Providing Party shall only charge for the volume of water delivered and shall not bill any fixed charges to the Receiving Party. Invoicing and payment terms shall be in accordance with Sections 218.73 and 218.74 of the Florida Statutes (2022) (the Florida “Local Government Prompt Payment Act”) relating to timely payments for non-construction services.
- 2.12.2 Invoicing and payment terms shall be in accordance with applicable provisions of Winter Haven and Haines City Code of Ordinances related to the payment of water services, respectively.

ARTICLE III MISCELLANEOUS PROVISIONS

- 3.1 **Disclaimer of Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Parties herein, and no right or cause of action will accrue upon or by reason hereto or for the benefit of any third party.
- 3.2 **Service Term.** This Agreement will have an initial term that commences on the Effective Date (as defined in §1.3.16) and shall expire and/or terminate, as follows: (i) the date on which Haines City receives distribution and/or transmission of water from the Polk Regional Water Cooperative (PRWC); or (ii) on December 31, 2027, whichever occurs first in time; or (iii) as otherwise provided in the Agreement. In the event PRWC does not begin delivery of water to Haines City prior to December 31, 2027, this Agreement may be renewed for a renewal term by the Parties on its same terms and conditions for an additional three (3) year period by the exchange of written notice. Any additional extension of this Agreement beyond the expiration of the initial and renewal terms shall be negotiated by the Parties by formal written amendment.
- 3.3 **Termination; Withdrawal.** The Parties may at any time mutually consent to terminate the Agreement. In addition, a Party may withdraw from the Agreement by providing a minimum one hundred and eighty (180) calendar day(s) prior written notice to the other Party. Any termination or withdrawal pursuant to this section does not relieve a Party from its payment obligations stated herein.
- 3.4 In the event that this Agreement is terminated, the Parties agree to negotiate in good faith for a separate Agreement relating to an Emergency Interconnect on the same general terms and conditions as specified in Section 2.6.2 herein.
- 3.5 **Notices.** All notices, requests, consents and other communications required or

permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any party may designate by notice complying with the terms of this Section:

James Elensky, Town Manager
City of Haines City
620 East Main Street
Haines City, Florida 33844

T. Michael Stavres, City Manager
City of Winter Haven
451 Third Street, N.W.
Winter Haven, FL 33881

With Copies to (which shall not constitute notice):

Frederick J. Murphy, Jr, City Attorney
C/O Boswell & Dunlap, LLP
Post Office Drawer 30
245 South Central Avenue
Bartow, FL 33831-0030

Fred Reilly, City Attorney
P. O. Box 2039
Haines City, FL 33845

Each such notice shall be deemed delivered: on the date of delivery if by personal delivery; and if the notice is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; (b) the date upon which delivery is refused; (c) the date upon which notice is designated by the postal authorities as not delivered; or (d) the third business day after mailing. Notwithstanding the foregoing, service by personal delivery shall be deemed to have been made on the next day that is not a Saturday, Sunday, or recognized holiday where the recipient's city hall is closed for public business.

If a notice is delivered by multiple means, the notice shall be deemed delivered upon the earliest date determined in accordance with the preceding subsection.

3.6 **Severability**. If any part of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability will 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 severable.

3.7 **Breach; Remedy**. In the event of breach of this Agreement by a Party ("Breaching

Party”), the Party suffering the breach (“Serving Party”) shall serve upon the Breaching Party a written notice of breach (“Notice of Breach”) detailing the Breaching Party’s non-compliance with the obligations set forth in this Agreement. Except for a breach caused by failure to timely pay project costs or pay for Water Service, a Breaching Party shall have a cure period (“Cure Period”) of thirty (30) calendar days after receipt of the Notice of Breach within which to cure or otherwise comply with those obligations violated and set forth in the Notice of Breach. Should the Breaching Party fail to timely cure or otherwise comply with such violated obligations, then, the Serving Party may (i) terminate this Agreement effective as of the end of the Cure Period unless the Breaching Party’s failure to cure or otherwise timely comply with those obligations violated is due to an event of Force Majeure hereunder; and (ii) pursue any and all remedies available in law, equity, and under this Agreement.

3.8 **Assignment.** No Party may assign this Agreement to a third-party unless the other Party consents in a mutually agreeable written joinder agreement by and among the Parties and as approved by each Party’s respective governing body or duly authorized representative and the third-party assignee. All provisions contained in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the respective successors and permitted assigns of the Parties to the same extent as if each successor and assign were named as a party hereto.

3.9 **Liability and Hold Harmless.** Each Party shall to the extent allowed under Section 768.28, Florida Statutes, indemnify and hold the other Party harmless from and against all claims, loss, damage and expense including attorney’s fees and costs (trial and appellate), arising from the negligent acts or omissions of the indemnifying Party’s officers, and employees, related to its performance under this Agreement, provided, however, the indemnifying Party’s responsibilities with respect to such liability shall not exceed the limits (the “Liability Limits”) of liability stated in section 768.28(5), Florida Statutes (or any successor statutory provision), regardless of whether a claim for damages or other relief is based in tort, contract, statute, strict liability, negligence, product liability or any other legal theory. This section is not intended and does not establish a contractual obligation whereby any Party undertakes responsibility to any other party for any liability in amounts exceeding the Liability Limits under any legal theory, claim, or cause of action. This provision does not constitute a waiver of the Parties’ sovereign immunity under Section 768.28, Florida Statute or extend the Parties’ liability beyond the limits established in Section 768.28, Florida Statute.

3.10 **Limitations of Liability.**

3.9.1 IN NO EVENT, SHALL A PARTY BE LIABLE TO ANOTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY

A PARTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

- 3.9.2 A Providing Party can restrict water flows or discontinue providing Water Service to a Receiving Party without incurring any liability therefor if providing the water would have a detrimental effect upon its Water System, to include without limitation the circumstances described by this Agreement, and the Receiving Party shall have no claim, cause of action, or remedies in equity or at law against the Providing Party for such acts and any consequences thereof.
- 3.11 **Time of the Essence.** Time is hereby declared to be of the essence to the lawful performance of the duties and obligations contained in this Agreement.
- 3.12 **Applicable Law.** This Agreement is an Interlocal Agreement as provided for in Florida Statutes, Section 163.01, and said statute is hereby incorporated herein by reference. Any terms in conflict therewith will be governed by the statute. This Agreement and the provisions contained herein will be construed, controlled, and interpreted according to the laws of the State of Florida, including all rules relating to permitting, construction, enforcement and conflicts of laws.
- 3.13 **Entire Agreement; Effect on Prior Agreements.** This Agreement constitutes the entire agreement between the Parties and supersedes all previous discussions, understandings, and agreements between the Parties relating to the subject matter of this Agreement. Amendments to and waivers of the provisions herein shall be made by the Parties in writing by formal amendment and approved by each Party's respective governing body or duly authorized representative.
- 3.14 **Venue, Jury Trial; Attorneys' Fees, Costs and Expenses.** Venue of all actions will lie in Polk County, Florida. Each Party waives the right to a jury trial. Each Party shall be responsible for its own legal and attorneys' fees, costs and expenses incurred in connection with any dispute or any litigation arising out of, or relating to, or resulting from this Agreement, which will include without limitation applicable courts costs, including appellate proceedings.
- 3.15 **Pre-suit Mediation.** Disputes arising under this Agreement must first be mediated by a Florida Supreme Court-certified Civil Mediator in accordance with Chapter 44, Florida Statutes. The parties agree that the mediation shall occur within thirty (30) days of the date mediation is requested by either party. The Mediator shall be agreed upon, but if the parties are unwilling or unable to agree, the parties agree that a Civil Mediator from Central Florida Mediation Group, LLC shall be selected by striking names from the mediators in that Group. The parties agree to mediate in good faith, be bound by the Mediation Agreement (if any), pay Mediator fees promptly and share them on an equal basis unless otherwise agreed upon by the parties. Litigation may not be commenced until after mediation has been (i) declared an impasse by the Mediator, or (ii) terminated in writing by one or both of the parties. The confidentiality provisions

of the Mediation Confidentiality and Privilege Act (Section 44.403, Florida Statutes) shall apply to any such pre-suit mediation. Pre- Suit Mediation shall occur within Polk County, Florida. The parties agree that the mediation provided for herein shall constitute an agreed-upon alternative dispute resolution process and the parties waive the applicability of the Florida Governmental Conflict Resolution Act to disputes arising under this Agreement pursuant to Section 164.1041(1) of the Florida Statutes.

[The balance of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

ATTEST:

CITY OF HAINES CITY,
FLORIDA

By: _____
Auburn Taylor, Interim City Clerk

By: _____
Anne Huffman, Mayor

Reviewed as to Form and Legal Sufficiency:

Fred Reilly, City Attorney

ATTEST:

CITY OF WINTER HAVEN, FLORIDA

By: _____
Vanessa Castillo, MMC, City Clerk

By: _____
Mayor Bradley T. Dantzler

Reviewed as to form and legal sufficiency

By: _____
Frederick J. Murphy, Jr., City Attorney

EXHIBIT "A"

**INTERLOCAL AGREEMENT FOR THE INTERCONNECTION OF POTABLE WATER
BETWEEN THE CITY OF WINTER HAVEN, FLORIDA, AND THE CITY OF HAINES
CITY, FLORIDA**

COST ESTIMATE

<i>Cost Estimate for Design and Permitting:</i>	\$ 254,322.00
<i>Cost Estimate Construction:</i>	\$ 2,543,224.70
<i>Cost Estimate for "CEI" Services:</i>	\$ 145,018.97
<i>Total Cost Estimate:</i>	\$ 2,942,565.67