

**INTERLOCAL AGREEMENT
POTABLE WATER SERVICE
RAINBOW DRIVE 1 MUNICIPAL SERVICES BENEFIT UNIT**

THIS INTERLOCAL AGREEMENT is made and entered into this _____ day of _____, 2021, by and between **ST. LUCIE COUNTY**, a political subdivision of the State of Florida (the "County") and the **CITY OF PORT ST. LUCIE**, a Florida municipal corporation (the "City").

WHEREAS, on June 28, 1994, the City and the County entered into an Agreement of Transfer whereby the County transferred ownership of a County water, wastewater, and propane utility system to the City (hereinafter referred to as the "City Utility System"); and

WHEREAS, the Agreement of Transfer provides that the County has the right to create special assessment districts to construct line extensions to the City Utility System to provide utility services to residents in unincorporated portions of the City Service Area and the City has agreed to cooperate with the County to provide utility services to these special assessment districts by entering into separate agreements for each such district in accordance with the Agreement of Transfer and the City Uniform Extension Policy; and

WHEREAS, the County is considering the creation of a special assessment district in the nature of a municipal services benefit unit to fund the cost of providing potable water service, to be provided by the City Utility System to the Rainbow Drive 1 Municipal Service Benefit Unit in unincorporated St. Lucie County (the "Rainbow Drive 1 MSBU").

NOW THEREFORE, for and in consideration of these premises, the parties hereto agree as follows:

1. **Definitions.** The definitions set forth in the Title entitled "Public Utilities" found in the Port St. Lucie City Code ("City Code") shall apply in this Agreement unless otherwise specified below; provided, however, that for purposes of this Agreement the County shall be considered a "Developer" or "Customer" thereunder except that pursuant to Section 5.4(b)(iii) of the Transfer Agreement, the County is not required to pay Guaranteed Revenues. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning.

(A) **"Service"** - The readiness and ability by the City to furnish water to the Rainbow Drive 1 MSBU.

(B) **"Rainbow Drive 1 MSBU"** - a special assessment district in the nature of a municipal services benefit unit to fund the cost of providing potable water service, to be provided by the City Utility System to the Rainbow Drive 1 Municipal Service Benefit Unit in

unincorporated St. Lucie County. The Rainbow Drive 1 MSBU is the area described in **Exhibit “A”** to this Agreement.

(C) **"Point of Delivery Collection"** - The point where the pipes of the utility are connected with the pipes of the Property Owners. Unless otherwise indicated, the point of delivery shall be at a point on the Property Owner’s lot or property line.

(D) **"Property Owners"** - The owners of record of the real property within the Rainbow Drive 1 MSBU and their respective successors or assigns.

(E) **"Contribution—in-Aid-of-Construction"** - The sum of money, and/or property, represented by the City Charges, as hereinafter defined, and the water distribution system and all appurtenances thereto from the Rainbow Drive 2 MSBU to a Point of Delivery Connection with existing City mains constructed by the Developer (the “MSBU Facilities”), which the Developer shall pay or deliver to the City pursuant to the Developer Agreement to induce the City to continuously provide water service to the Property.

(F) **"Developer"** – Ravinia Port St. Lucie, LLC.

(G) **"Developer Agreement"** – The agreement between the City and the Developer providing for construction of the MSBU Facilities and conveyance of such facilities to the City upon completion.

(H) **"MSBU Facilities"** – The potable water facilities necessary to serve the parcels of real property comprising the Rainbow Drive 1 MSBU.

2. **Payment.** In accordance with the Agreement of Transfer, the City Uniform Extension Policy, and the City Code, as amended from time to time, the County agrees to pay the water capital charges (collectively “City Charges”) from the proceeds of a financing supported by special non-ad valorem assessments to be levied on the properties within the Rainbow Drive 1 MSBU (the “MSBU Financing”). The City acknowledges that any other applicable fees or charges imposed by the City, including but not limited to inspection fees, review fees, and processing fees, shall be paid to the City by the Developer. The Developer and/or Property Owners shall be responsible for the payment of all other applicable fees in accordance with the Agreement of Transfer, the City Uniform Extension Policy, and the City Code, as amended from time to time.

3. **Easement and Rights of Access.** The parties agree that all facilities necessary to provide water service to the Rainbow Drive 1 MSBU will be located in County’s rights-of-way depicted on **Exhibit “B”** to this Agreement. The County has represented to the City that the County’s rights-of-way include the necessary right of ingress and egress to the property lines of the lots in the Rainbow Drive 1 MSBU. If necessary, the County agrees to assist the City in obtaining any easements rights of access necessary to provide water service from the Property Owner's lot lines to the customer’s existing house water system Connection. The County further agrees that the City will be under no obligation to provide water service to any customer who fails

to give the City such access easements, if any. The City hereby agrees that it will use all County right-of-way in accordance with the County's standard right-of-way regulations. Additionally, the County consents to the City's use of its rights-of-way to conduct the work contemplated by this Agreement without the need for a right-of-way permit

4. **Provision of Service** Upon the accomplishment of all the prerequisites contained in this Agreement to be performed by the County, including but not limited to the payment in full of all City Charges, and upon completion and conveyance of the MSBU Facilities by the Developer to the City, the City covenants and agrees that it will allow the connection of the MSBU Facilities installed by the Developer to the central water facilities of the City in accordance with the terms and intent of the the City Code, as amended from time to time, and the City's Utility Standards, as amended from time to time. Such connection shall be in accordance with rules and regulations of the Department of Health and the Florida Department of Environmental Protection. The City agrees that once it provides water service to the Rainbow Drive 1 MSBU and has connected customer installations to its system, that thereafter, the City will continuously provide, in return for payment of all applicable rates, fees, and charges by the Property Owners and in accordance with and subject to the other provisions of this Agreement, and of applicable laws, including rules and regulations and rate schedules, water service to the Rainbow Drive 1 MSBU in a manner to conform with all requirements of all governmental agencies having jurisdiction over the water distribution operation of the City.

5. **Design. Review. Construction. Inspection and Conveyance Facilities**

5.1 The City acknowledges that the Developer is responsible for construction of the MSBU Facilities and that the Developer is responsible for transferring ownership and control of the MSBU Facilities in compliance with paragraph 5.4 of this Agreement. The MSBU Facilities are shown in the final approved plans and specifications attached to the Developer Agreement or otherwise on file with the City.

5.2. [Reserved.]

5.3. During the construction of the MSBU Facilities by the Developer, the City shall have the right to inspect such installation and perform testing in accordance with the Developer Agreement.

5.4 Upon review and acceptance of the MSBU Facilities by the City, the Developer will transfer to the City title to the MSBU Facilities installed by the Developer's contractor in accordance with the Developer Agreement.

5.5 [Reserved.]

5.6 [Reserved.]

6. **Ownership of Facilities** The County agrees with the City that all MSBU Facilities conveyed to the City for use in connection with providing water services to the Rainbow Drive 1

MSBU, shall always remain in the complete and exclusive ownership of the City after written acceptance of the MSBU Facilities by the City, and any entity owning any part of the Rainbow Drive 1 MSBU or any residence or building constructed or located thereon, shall not have the right, title, claim or interest in and to such facilities, or any part of them, for any purpose, including the furnishing of water services to other persons or entities located within or beyond the limits of the Rainbow Drive 1 MSBU.

7. **Application of Rules, Regulations and Rates.** Notwithstanding any provision in this Agreement and to the extent not in conflict with the Transfer Agreement, the City may establish, revise, modify and enforce rules, regulations and rates covering the provision of water and/or wastewater service to the Rainbow Drive 1 MSBU. If such rules are found in conflict with the Transfer Agreement, the rule(s) shall not be enforced against the County or the Property Owners to the extent of such conflict. Such rules, regulations and rates are subject to the approval of the City Council of the City. Such rules and regulations shall always be reasonable and subject to regulation as may be provided by law or under contract. Rates charged to the Property Owners shall be identical to rates charged for the same classification of service. All rules, regulations and rates in effect, or placed into effect in accordance with the preceding, shall be binding upon the County and Property Owners, upon any other entity holding by, through or under the County or the Property Owners and upon any customer of the water and/or wastewater service provided to the Rainbow Drive 1 MSBU by the City provided, however, that the County shall be bound only by such rules, regulations and rates which relate to the construction, installation, and conveyance of MSBU Facilities to the City as described herein.

8. **Disclaimers, Limitations on Liability, County Obligations.**

8.1 **Status** The parties deem each other to be independent contractors, and not agents of the other.

8.2 **Force Majeure** Neither the City nor the County as to the Property Owners, shall be liable or responsible to the other by reason of the failure or inability to take any action it is required to take or to comply with the requirements imposed hereby or any injury to the other or to those claiming by or through the other, which failure, inability or injury is caused directly or indirectly by force majeure as hereinafter set forth. The term “force majeure as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbance: acts of public enemies, war, blockades, riots, acts of armed forces, militia, or public authority, epidemics, breakdowns of or damage to machinery, pumps, or pipe lines; landslides, earthquakes, hurricanes, fires, storms, floods, or washouts; arrests; title disputes; or other litigation; governmental restraints of any nature whether federal, state, county, municipal or otherwise, civil or military; civil disturbances; explosions, failure or inability to obtain necessary materials, supplies, labor or permits or governmental approvals whether resulting from or pursuant to existing or future rules, regulations,

orders, laws or proclamations whether federal, state, county, municipal or otherwise, civil or military; or by any other causes, whether or not of the same kind as enumerated herein, not within the sole control of either party that by exercise of due diligence the respective party is unable to overcome.

8.3. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of and shall be binding upon the formal parties hereto and their respective authorized successors and assigns. No right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a party to this Agreement or an authorized successor or assignee thereof, except that, the Property Owners and their successors or assigns shall be considered third party beneficiaries of this Agreement.

8.4. Disclaimer of Security. Notwithstanding any other provision of this Agreement, the County expressly acknowledges (a) that it has no pledge of or liens upon any real property, any personal property, or any existing or future revenue source of the City as security for any amounts of money payable by the City under this Agreement; and (b) that its rights to any payments or credits under this agreement are subordinate to the rights of all holders of any stocks, bonds, or notes of the City, whether currently outstanding or hereafter issued.

8.5. County Obligations. The County's sole obligations under this Agreement are to pay all City Charges set forth Section 2. of this Agreement. Following the fulfillment of these obligations, the County shall have no further responsibilities under this Agreement.

9. Permission to Connect Required - Annexation/Surcharge. The Property Owners, or any occupant of any residences or buildings located thereon, shall not have the right to and shall not connect any customer installation to the water or wastewater facilities of the City until the City has granted approval for such connection. Pursuant to the Transfer Agreement, the City has the right to condition connection approval upon, at the option of the Property Owners, either (A) the payment of a surcharge as authorized by Section 180.191, Florida Statutes, or (B) by agreement to be voluntarily annexed into the City upon the determination to do so.

10. Consent to Rainbow Drive 1 MSBU Upon Annexation. The parties acknowledge that annexation of the Rainbow Drive 1 MSBU into the City will result in the existence of a St. Lucie County municipal services benefit unit within the jurisdictional boundary of the City. Accordingly, the City agrees that if it intends to annex the Rainbow Drive 1 MSBU (or any part thereof), into the City it will include within the appropriate annexation ordinance a statement that the City consents to the existence of the Rainbow Drive 1 MSBU within the boundaries of the City pursuant to the provisions of Section 125.01(1)(q), Florida Statutes

11. Covenant Not to Engage in Utility Business. To the extent not in conflict with the Transfer Agreement and provided that the City has not defaulted under the terms of this Agreement, the County, as a further consideration for this Agreement, agrees that it shall not (the

words "shall not" being used in a mandatory definition) engage in the business of providing water or wastewater service to the Rainbow Drive 1 MSBU during the time the City, or its successors and assigns, provides water and/or wastewater service to the Rainbow Drive 1 MSBU, it being the intention of the parties hereto that the foregoing provision shall be a covenant running with the land. Under said provision and also under other provisions of this Agreement, the City shall have the sole and exclusive right and privilege to provide water service to the Rainbow Drive 1 MSBU and to the occupants of each residence, building or unit constructed thereon.

12. **Reservation of Capacity.** City will reserve 20 ERC's for water service (the "Reserved ERC's") for the 20 properties in the MSBU provided the County: (a) complies with all the terms and conditions set forth in this Agreement, and (b) complies with all the provisions of the City's applicable Ordinances, as the same may be modified or amended. Each Property Owner shall have the right to utilize one of the Reserved ERC's upon connection to the City's water systems without payment of additional charges to the City.

13. **Entire Agreement: Amendments: Applicable Law.** This Agreement supersedes all other previous agreements or representations in effect between the County and the City and made with respect to the matters herein contained. No addition, alteration or variation of the terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations, or waivers are expressed in writing and duly executed by both parties. This Agreement shall be governed by the laws of the State of Florida.

14. **Notices.** Any notice, report, demand or other instrument authorized or required to be given or furnished hereunder shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, on the date hand delivered at such address, or (ii) three (3) business days after the same is deposited in the United States mail as first class mail, postage paid, return receipt requested, whether or not the same is actually received by such party, or (iii) on the first business day following delivery of same to an overnight courier, as evidenced by the sender's copy of the bill of lading issued by such overnight courier.

Any party may change the address to be used for notification purposes hereunder by providing written notice thereof in accordance with the terms hereto to the other parties.

If to County:
St. Lucie County Administrator
2300 Virginia Avenue, Annex
Fort Pierce, Florida 34982

With a copy to:
St. Lucie County Attorney
2300 Virginia Avenue, Annex
Fort Pierce, Florida 34982

St. Lucie County Engineer
2300 Virginia Avenue, Annex
Fort Pierce, Florida 34982

If to City:

With a copy to:

City Manager
121 SW Port St. Lucie Blvd
Port St. Lucie, Florida 34952

City Attorney
121 SW Port St. Lucie Blvd
Port St. Lucie, Florida 34952

Port St. Lucie Utility Systems Department
900 S.E. Ogden Lane
Port St. Lucie, Florida 34983
Attn. Jesus A. Merejo, Utility Systems, Director

15. **Recording of Agreement.** The City, at the County's expense, shall cause this Agreement to be recorded with the Clerk of the Circuit Court of St. Lucie County, Florida.

16. **Effective Date.** This Agreement shall be effective upon filing with the Clerk of the Circuit Court of St. Lucie County, Florida, in accordance with Section 163.01(11), Fla. Stat.

17. **Venue.** Venue of any action to enforce the terms of this Agreement shall be in St. Lucie County if filed in state court, and in the Southern District of Florida if filed in federal court.

18. **Agreement Not Waiver.** No waiver of any of the provisions of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such waiver shall be applicable only to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver, nor shall any such provision be binding upon the parties or construed as precedential in any subsequent transaction between the parties respecting water services to other real property.

19. **Binding Agreement: Assignments by the County.** This Agreement shall be binding upon and shall inure to the benefit of the County, the City and their respective assigns and successors by merger, consolidation or conveyance. The rights held by the County under this Agreement shall not be sold, conveyed, assigned or otherwise disposed of by the County without the written consent of the City first having been obtained. The City agrees not to unreasonably withhold such consent.

20. **Survival of Covenants.** The rights, privileges, obligations and covenants of the County and the City shall survive the completion of the work by the County with respect to completing the MSBU Facilities or any phase of the MSBU Facilities.

21. **Severability.** If any clause or provision of this Agreement is found to be illegal, invalid, or unenforceable under any present or future law, the remainder of this Agreement shall not be affected thereby. It is the intention of the parties that, if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is legal, valid and enforceable.

22. **Financing.** The County's obligations under this Agreement are subject to and conditioned upon the County successfully closing the MSBU Financing. In the event the County

does not successfully close the MSBU Financing, the County may terminate this Agreement by written notice to the City.

IN WITNESS WHEREOF, the parties have caused the execution of this Agreement, with the named exhibits attached, to be executed in several counterparts, each of which counterpart shall be considered an original executed copy of the Agreement.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
ST. LUCIE COUNTY, FLORIDA**

DEPUTY CLERK

By: _____
CHAIR

**APPROVED AS TO FORM AND
CORRECTNESS**

COUNTY ATTORNEY

ATTEST:

CITY OF PORT ST. LUCIE, FLORIDA

DEPUTY CLERK

BY: _____
MAYOR

**APPROVED AS TO FORM AND
CORRECTNESS**

CITY ATTORNEY

**STATE OF FLORIDA
COUNTY OF ST. LUCIE**

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by _____, as the Chairman of the Board of County Commissioners for St. Lucie County, Florida, a political subdivision of the State of Florida who is personally known to me.

Print Name: _____
Notary Public, State of Florida
Commission No: _____
My Commission Expires: _____

**STATE OF FLORIDA
COUNTY OF ST. LUCIE**

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, as the Mayor of the City of Port St. Lucie, Florida, a municipality organized under the laws of the State of Florida, who (check one) ___ is personally known to me, ___ produced a driver's license (issued by a state of the United States within the last five years) as identification, or ___ produced other identification, to wit:

_____.

Print Name: _____
Notary Public, State of Florida
Commission No: _____
My Commission Expires: _____

EXHIBIT A

Legal Description

Rainbow Drive 1 MSBU

A PARCEL OF LAND LYING IN SECTION 5, T- 36- S, R- 40- E, ST. LUCIE COUNTY, FLORIDA. SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT PART OF THE UNRECORDED DANIELS SUBDIVISION; SAID SUBDIVISION BEING BOUNDED ON THE WEST BY THE EAST LINE OF LOT 109, WHITE CITY SUBDIVISION AS RECORDED IN PLAT BOOK 1 AT PAGE 23 OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA AND BOUNDED ON THE EAST BY THE WEST RIGHT OF WAY LINE OF ST. JAMES DRIVE AS NOW LAID OUT AND IN USE; AND BOUNDED ON THE SOUTH BY THE NORTH LINE OF THE SOUTH 268' FEET OF THE NE' / 4 OF THE SE' / 4 OF SECTION 5, T- 36- S, R- 40- E; AND BOUNDED ON THE NORTH BY THE FOLLOWING DESCRIBED AGREED LINE AS RECORDED IN ORB 232 AT PAGE 237 OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA, " STARTING AT A POINT 654. 4 FEET NORTH (AS MEASURED ALONG THE EAST LINE OF SECTION 5) AND 25 FEET WEST OF THE SOUTHEAST CORNER OF THE NE' / 4 OF THE SE' / 4 OF SECTION 5, TOWNSHIP 36 SOUTH, RANGE 40 EAST (POINT OF BEGINNING) RUN THENCE WESTERLY ON A BEARING SOUTH 89 54' 40" WEST A DISTANCE OF 1294. 75 FEET TO A POINT TERMINUS)".

LESS AND EXCEPT THE FOLLOWING PARCEL OF LAND DESCRIBED IN ORB 2084 AT PAGE 1320 OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA; " BEGIN AT THE SOUTHEAST CORNER OF THE NORTH 375 FEET OF THE SOUTH ONE- HALF OF THE NE' / 4 OF THE SE' / 4 OF SECTION 5, T- 36- S, R- 40- E, THENCE RUN WEST 25 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREINAFTER DESCRIBED: THENCE CONTINUE WEST 125 FEET; THENCE NORTH 121 FEET; THENCE RUN EAST 125 FEET TO THE WEST LINE OF HAWLEY ROAD; THENCE TURN AND RUN SOUTH ALONG SAID WEST LINE 121 FEET TO THE POINT OF BEGINNING. (BEING LOT 1 OF DANIELS UNRECORDED SUBDIVISION)".

AND:

LESS AND ACCEPT THE FOLLOWING PARCEL OF LAND AS DESCRIBED IN ORB 1419 AT PAGES 1919- 1921; " THE EAST 180 FEET OF THE FOLLOWING DESCRIBED PROPERTY: BEGINNING AT THE NORTHEAST CORNER OF THE NORTH 375 FEET OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 5, T- 36- S, R- 40- E, RUN WEST 35 FEET TO THE POINT OF BEGINNING, -

Page 5 of 6

FROM SAID POINT OF BEGINNING, CONTINUE WEST 358. 4 FEET TO A POINT ; THENCE TURN AND RUN NORTH 204 FEET TO THE POINT OF BEGINNING. LESS AND EXCEPTING THE NORTHERN MOST 8. 45 FEET THEREOF, RELEASED AND CONVEYED GUIDO MESITO AND ANTOINETTE MESITO, HIS WIFE AND OTHERS, TO ESTABLISH THE NORTHERN MOST BOUNDARY HEREOF AS SET FORTH IN INSTRUMENT RECORDED IN ORB 232, PAGE 235, PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA".

PREPARED OCTOBER 19, 2005

REVISED NOVEMBER 06, 2007

GAENG\MSBU\WORD\NOI\ s\ NOI 2009\ RESOLUTIONS\ Rainbow Drive 1. doc

Page 6