

**JOINT PARTICIPATION AGREEMENT FOR UTILITIES RELOCATION  
BETWEEN NASSAU COUNTY AND THE TOWN OF CALLAHAN**

**THIS AGREEMENT**, made and entered into this 28<sup>th</sup> day of July 2008, by and between **NASSAU COUNTY, a political subdivision of the State of Florida** (hereinafter the "County"), and the **TOWN OF CALLAHAN, a municipal corporation**, (hereinafter the "Town"), providing the terms and conditions associated with identifying and relocating the utilities owned by the Town which occupy the right of way of County Road 115 ( a/k/a Old Dixie Highway), as required to perform the improvement on said road.

**WHEREAS**, the Town owns utility facilities (i.e. water and sewer lines) located in the right of way of County Road 115;

**WHEREAS**, the County is engaged in a project for improvements on County Road 115 (hereinafter the "Project");

**WHEREAS**, the Project will require the protection, relocation, adjustment or removal of the utility facilities, or some combination thereof (hereinafter "Utility Work");

**WHEREAS**, the Parties desire to enter into an agreement which establishes the terms and conditions applicable to the Utility Work;

**WHEREAS**, the Town has reviewed the Contract Plans prepared by R-A-M Professional Group, Inc., dated May 6, 2008 (hereinafter the "Plans") and believes the only utility facilities owned by the Town within the Project are shown on the Plans, which utility facilities are hereinafter referred to as "Identified Conflict Utilities"; and

**WHEREAS**, based on the information provided by the Town related to its utility facilities in the Project area, the County has contracted for the construction of the road improvements, including obtaining a lump sum amount to perform certain Utility Work.

**NOW THEREFORE**, in consideration of the premises and mutual covenants contained herein, the County and the Town hereby agree as follows:

**1. Identification of the Utility Facilities**

1.1 The Town shall immediately notify the County of any utility facilities within the Project area that are not part of the Identified Conflict Utilities which the Town discovers at a later time. In the event the Town makes such a discovery, the County shall perform the Utility Work necessary for the County to satisfactorily complete the Project and depending on whether the Town utilizes the facility. The Town shall pay the costs of such Utility Work, including the cost of removing and/or relocating conflict facilities.

1.2 The County shall immediately notify the Town of any utility facilities discovered in the Project area that the County believes the Town owns that are not part of the Identified Conflict Utilities. In the event the County notifies the Town of the existence of any utility facility that are not part of the Identified Conflict Utilities, the County shall perform the Utility Work necessary for the County to satisfactorily complete the Project and depending on whether the Town utilizes the facility. The Town shall pay the costs of such Utility Work, including the cost of removing and/or relocating conflict facilities.

1.3 In fulfilling the obligations and duties described herein, the parties shall act in a manner as to avoid any delay in the construction project.

**2. Parties' Responsibilities for Utility Work**

2.1 The Town shall pay the County, within thirty days from the execution of this Agreement, the lump sum amount of Fifty Eight Thousand Eight Hundred Thirty Three Dollars (\$58,833.00) as reimbursement for Utility Work associated with the Identified Conflict Utilities. If the Utility Work can be revised or altered through field changes to lower costs, any cost

reduction shall be passed on to the Town. If necessary field changes raise costs beyond the lump sum amount, the Town shall be reasonable for any reasonable cost increases.

2.2 The parties acknowledge a portion of the lump sum amount the Town agrees to pay for the Utility Work includes the cost of maintaining for use during and after construction the six inch force main shown in the Plans and referenced on pages 96-99, 109, 110 of the Plans. In addition to the continued use of the force main, the lump sum amount includes performing Utility Work on the other Identified Conflict Utilities as set forth in the Table of Conflicts in the Plans.

### **3. Default**

In the event that either party breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement, the non-breaching party may exercise one or more of the following options, provided that at no time shall either party be entitled to receive double recovery of damages:

- a) Terminate this Agreement if the breach is material and has not been cured within thirty (30) days from written notice thereof.
- b) Pursue a claim for damages.
- c) In the event of an uncured breach by the Town, the County may perform any work with its own forces or through contractors and seek repayment for costs thereof under Section §337.403(3), Florida Statutes.

### **4. Indemnification**

To the extent permitted by law, the Town and the County shall indemnify, defend, and hold harmless each other and all of their officers, agents and employees from any claim, loss, damage, cost, charge or expense arising out of any acts, action error, neglect, or omission by the

either party, their agents, employees, or contractors during the performance of this Agreement, including costs incurred as a result of incomplete or inaccurate information regarding the existence or location of the Town's utility facilities. Neither party, their agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the other party or any of its officers, agents, or employees during the performance of this Agreement.

If either party receives a notice of claim for damages that may have been caused by the other party in the performance of services required under this agreement, the party will immediately forward the claim to the other party. The Town and the County will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, parties will determine whether to require the participation of the other in defense of the claim or to require the other to defend the other in such claim as described in this section. Either party's failure to notify the other of a claim shall not release the first party from any of the negotiations and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs.

#### **5. Force Majeure**

Neither the Town nor the County shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war riots, natural catastrophe, or other event beyond the control of the nonperforming party and which could not have been avoided or overcome by the exercise of due diligence, provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimated duration, if the occurrence and its duration is not within the general

knowledge of persons within Nassau County, Florida; (b) promptly remedied or mitigated the effect of the occurrence to the extent possible; and (c) resumed performance as soon as possible.

**6. Miscellaneous**

**6.1** This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto.

**6.2** This Agreement shall be governed by that law of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining provisions hereof.

**6.3** Time is of the essence in the performance of all obligations under this Agreement.

**6.4** All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or in the case of Section 3 herein, telephone to:

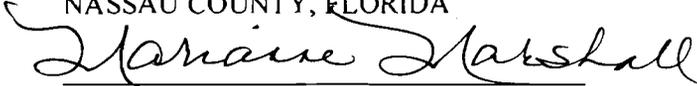
**For the County:** Douglas Seaman, Director of Engineering Services  
96161 Nassau Place  
Yulee, FL 32097  
(904) 491-3606

**For the Town:** Michael Williams, Director of Public Works  
542300 U.S. Highway 1  
Callahan, FL 32011  
(904) 838-8724

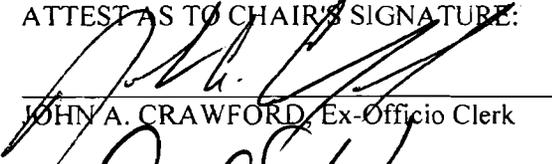
**6.5** Prior to litigation any dispute that arises under this Agreement in any legal, administrative, or alternative tribunal, the parties agree to mediate it using a mutually agreed upon mediator.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective  
the day and year first written above.

BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA

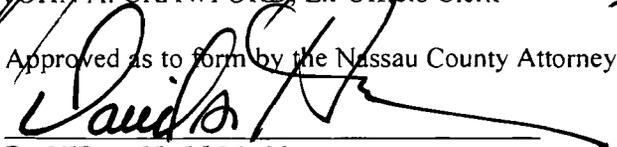
  
MARIANNE MARSHALL, Chair

ATTEST AS TO CHAIR'S SIGNATURE:

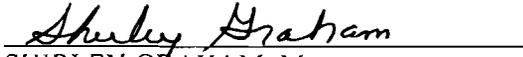
  
JOHN A. CRAWFORD, Ex-Officio Clerk

ESC 8/13/08

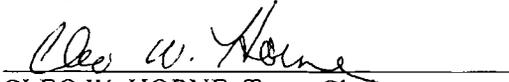
Approved as to form by the Nassau County Attorney

  
DAVID A. HALLMAN

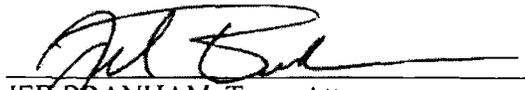
TOWN OF CALLAHAN

  
SHIRLEY GRAHAM, Mayor

ATTEST:

  
CLEO W. HORNE, Town Clerk

Approved as to form:

  
JEB BRANHAM, Town Attorney



**NASSAU COUNTY**  
**BOARD OF COUNTY COMMISSIONERS**  
 P.O. Box 1010  
 Fernandina Beach, Florida 32035-1010

Jim B. Higginbotham    Dist. No. 1 Fernandina Beach  
 Michael H. Boyle      Dist. No. 2 Amelia Island  
 Tom Branan             Dist. No. 3 Yulee  
 Barry Holloway        Dist. No. 4 Hilliard/Bryceville  
 Marianne Marshall     Dist. No. 5 Callahan

JOHN A. CRAWFORD  
 Ex-Officio Clerk

DAVID A. HALLMAN  
 County Attorney

EDWARD L. SEALOVER  
 County Coordinator

August 1, 2008

Mr. Jeb T. Branham, Esq.  
 Attorney at Law  
 333 first Street North, Suite 305  
 Jacksonville Beach, FL 32250

RE: CR 115 Utility Relocation Agreement

Dear Jeb:

RECEIVED  
 2008 AUG - 7 PM 4: 09  
 COUNTY ATTORNEY

We have found a typographical error on Page 3, Section 2.1, last sentence, and in order to avoid having to take this matter back to our respective boards, I suggest that you and I agree by our signatures on this letter that the first instance of the word "reasonable" should be "responsible".

If you agree with my assessment, please indicate your agreement by counter signing this letter and returning it to me.

Sincerely,

David A. Hallman  
 County Attorney

DAH:jb

I, Jeb T. Branham, I do hereby agree that, by my signature below, the assessment by David A. Hallman, as stated above is correct and I do hereby agree that the word reasonable should be responsible, under Section 2.1 Page 3.

Jeb T. Branham

County Attorney's Office (904) 548-4590 or (866) 474-1446

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