

**ALACHUA COUNTY AND CITY OF GAINESVILLE
SETTLEMENT AGREEMENT AND
AGREEMENT FOR INTERLOCAL COOPERATION AND JOINT PLANNING**

This Agreement ("Agreement") is entered into by and between ALACHUA COUNTY, a charter county and political subdivision of Florida ("County"), and the CITY OF GAINESVILLE, a municipal corporation ("City").

RECITALS

WHEREAS, the County in 2010 adopted the Alachua County Mobility Plan and the City in 2015 (Ordinance No. 140023) rescinded transportation concurrency and adopted a Transportation Mobility Program. Therefore, both jurisdictions now implement an alternative mobility funding system to address the transportation impacts of development; and

WHEREAS, the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local governments to cooperate with one another on matters of mutual interest and advantage, and provides for interlocal agreements to achieve such purposes; and

WHEREAS, Section 163.3180(5)(g) encourages adjacent local governments to coordinate how development impacts to transportation facilities are addressed; and

WHEREAS, the Community Planning Act, Chapter 163, Part II, Florida Statutes, requires that counties and cities include in their respective planning efforts intergovernmental coordination and particularly, mechanisms for identifying and implementing joint planning areas; and

WHEREAS, the Comprehensive Plans of both the City and the County require coordination of land use and transportation planning; and

WHEREAS, Section 163.3171, Florida Statutes, grants the City and the County the authority to jointly exercise the powers granted under the Community Planning Act (Chapter 163, Part II, Florida Statutes) and enter into Joint Planning Agreements to facilitate intergovernmental cooperation to encourage planning in advance of jurisdictional changes; and

WHEREAS, the City and the County currently do not have a Joint Planning Agreement in place to address mutual and cross-jurisdictional land use and transportation planning; and

WHEREAS, on February 16, 2017, the City adopted Ordinance No. 160216, which, at the request of the property owner, annexed approximately 100 acres of property into SW Gainesville ("Annexation of Property 1"); and

WHEREAS, on February 28, 2017, the County adopted Resolution No. 2017-28, which initiated the intergovernmental conflict resolution procedures set forth in Chapter 164, Florida Statutes, and alleged that the Annexation of Property 1 does not meet the requirements for annexation set forth in Chapter 171, Florida Statutes, and that the County will suffer material injury by reason of, inter alia, impacts to land use and transportation planning and funding of future transportation infrastructure needs; and

WHEREAS, on March 2, 2017, the City adopted Ordinance No. 160398, which changed the land use

categories of approximately 157 acres of property in SW Gainesville, following voluntary annexation into the City in June 2016, from County to City land use categories ("Land Use Change of Property 2"); and

WHEREAS, on April 3, 2017, the County filed an administrative challenge petition (Florida Division of Administrative Hearings Case No. 17-1992GM) pursuant to Section 163.3184(5), Florida Statutes, and alleged that the Land Use Change of Property 2 is not "in compliance" as set forth in Section 163.3184(1)(b), Florida Statutes, and that the County has a substantial interest by reason of future impacts on and the increased need for County transportation infrastructure to serve the potential future development within the City; and

WHEREAS, on June 1, 2017, the City adopted Ordinance No. 160744, which, at the request of the property owner, annexed approximately 108 acres of property into SW Gainesville ("Annexation of Property 3"); and

WHEREAS, on September 21, 2017, the City adopted Ordinance No. 160981, which changed the land use categories of the property that is the subject of Annexation of Property 3 from County to City land use categories ("Land Use Change of Property 3"); and

WHEREAS, as of the Effective Date of this Agreement, at least three additional private property owners have discussed with the City their desire to voluntarily annex into the City; and

WHEREAS, as part of the intergovernmental conflict resolution process for Annexation of Property 1, the County and the City discussed working together to achieve mutually acceptable solutions to the issues raised by the County in its challenges to Annexation of Property 1 and Land Use Change of Property 2, as well as any potential future challenges to Annexation of Property 3 or Land Use Change of Property 3, in a holistic manner because of the overlapping primary issues (Annexation of Property 1, Land Use Change of Property 2, Annexation of Property 3, and Land Use Change of Property 3 shall be referred to collectively as "Subject Cases"); and

WHEREAS, this Agreement is intended to settle the Subject Cases and is not intended to determine the terms of an upcoming Joint Planning Agreement; and

WHEREAS, the County and the City both recognize the benefit to their respective citizens that can be achieved through a coordinated and thoughtful implementation of joint planning, and therefore desire in this Agreement to establish the framework to achieve same; and

WHEREAS, the County and the City are authorized by Section 163.01, Florida Statutes, and Sections 164.101-164.1061, Florida Statutes, to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the City and the County (collectively, "Parties") agree as follows:

1. **Recitals.** The above recitals are true and correct and are hereby incorporated into this Agreement for all purposes.
2. **Contingent on Governing Body Approval.** The Parties' obligations and rights under this Agreement are expressly made contingent upon the approval of this Agreement by the Alachua County Board

of County Commissioners ("BOCC") and the City of Gainesville Commission ("City Commission"). In the event that either the BOCC or the City Commission does not approve this Agreement on or before October 13, 2017, this Agreement shall be null and void and the Parties shall retain all of their rights to continue with the Subject Cases.

3. **Effective Date and Recording.** This Agreement shall become effective on the date the last of the Parties executes this Agreement as indicated below, subject to the contingency described in Section 2 of this Agreement ("Effective Date"). Pursuant to Section 163.01(11), Florida Statutes, the County shall file a fully executed copy of this Agreement with the Clerk of the Circuit Court of Alachua County, Florida.

4. **Terms of Agreement.**

- a. **Joint Planning Agreement.** The Parties agree to meet and work together expeditiously and in good faith to coordinate and implement a Joint Planning Agreement, as described herein, to present to both the BOCC and the City Commission for approval. If either the BOCC or the City Commission has not approved a Joint Planning Agreement within nine months after the Effective Date, the Parties agree to share the cost of an agreed-upon mediator to foster the resolution of any outstanding issues.
- b. **Settlement of Subject Cases.** For the properties that are the subject of the Annexation of Property 1 and the Land Use Change of Property 2, both as described above, the Parties agree as follows:
 - i. Prior to annexation, the subject properties were located in the Southwest District of Alachua County's Multimodal Mobility Transportation Area, and had specific transportation projects identified in Alachua County's Comprehensive Plan Capital Improvements Element that were planned to maintain an acceptable area wide level of service.
 - ii. The subject properties are within the jurisdiction of the City and any site development will be subject to the City's Transportation Mobility Program. Upon the Comprehensive Plan Amendment becoming effective, the subject properties will both be located within the City's Transportation Mobility Program Area (TMPA) Zone D, and any site development will require contribution of TMPA fees to the City in the amount of \$236.50 per external daily trip generated as a result of development. Note: the \$236.50 per daily trip generated fee amount may be adjusted by 5% every two years when Appendix A to the City's Code of Ordinances is updated. The net external daily trips shall be determined by a traffic study performed by accepted professional standards with a methodology agreement approved by City and County staff and the owner(s)/developer(s) of the subject properties.
 - iii. The owner(s)/developer(s) of the subject properties will be required to provide a traffic study(ies) that considers the impacts of the full build-out of the property, including all proposed phases of development, and that presents a transportation mobility strategy.
 - iv. Any construction of internal neighborhood streets within the subject properties will not be eligible for credit towards satisfying the City's TMPA Zone D mobility requirements. In addition, the owner(s)/developer(s) of the subject properties will be responsible for the costs of any required Operational and Safety Modifications as determined by the required traffic studies, which will also not be eligible for credit towards satisfying the City's TMPA Zone D mobility requirements and will be in addition to the TMPA fee contribution.
 - v. The City will retain 25% of all TMPA fees the City collects from the owner(s)/developer(s) of

the subject properties to fund City transportation mobility needs, specifically the funding gaps associated with the implementation of the SW 40th Blvd/SW 47th Ave corridor and the SW 40th Blvd/SW 47th Ave multimodal trail between Archer Rd and SW 34th St. Beyond these projects, any funds remaining from this 25% portion will be allocated towards the implementation of the SW 62nd Blvd corridor extension between SW 43rd St and SW 20th Ave.

- vi. The City will distribute to the County 75% of all TMPA fees the City collects from the owner(s)/developer(s) of the subject properties to complement the funding for the County's implementation of the SW 8th Ave corridor between Tower Rd and SW 20th Ave, and beyond these projects if sufficient collected funds remain to complement the funding for the County's proposed widening of the SW 20th Ave bridge generally between SW 61st St and SW 52nd St. (**Exhibit A** attached to this Agreement is the County's Capital Improvement Program cost/funding estimate for the SW 8th Ave project, and the County's applicable FY 2010-2030 Multimodal Transportation Capital Improvements Program.) The City shall distribute the TMPA fees described herein to the County within 30 calendar days of the date that the County submits to the City an invoice showing the cost of and documenting the construction of the transportation infrastructure improvements described herein, or any portion of the transportation infrastructure improvements described herein. This process of the City distributing funds to the County upon receipt of an invoice shall continue until the available funds are depleted. However, if the transportation infrastructure improvements described herein have not been constructed and therefore applicable invoices have not been submitted by the County to the City within six years of the date that the City collects the TMPA fees from the owner(s)/developer(s) of the subject properties, then the City may use such fees to fund City transportation mobility needs.
 - vii. The City will amend its Capital Improvements Element to include the funding of the SW 8th Ave and SW 20th Ave projects.
 - viii. The City shall require that permanent functional access be provided to Tax Parcel Nos. 06975-001-000 and 07002-001-000 from SW 62nd Avenue coincident with the construction of any City-approved development plan for the area north of SW 62nd Ave.
 - ix. Immediately upon this Agreement becoming effective, the County shall take the following actions: 1) Provide a letter to the City stating that, as a result of this Agreement, the County's concerns regarding the Annexation of Property 1 have been resolved and the County is immediately closing all proceedings related to this matter under Chapter 164, Florida Statutes; and 2) File a voluntary dismissal with prejudice in the administrative challenge petition (Florida Division of Administrative Hearings Case No. 17-1992GM) regarding the Land Use Change of Property 2.
- c. **Settlement Solely for Subject Cases.** The Parties agree that this Agreement is intended to settle the Subject Cases and is not intended to determine the terms of an upcoming Joint Planning Agreement.
- d. **Mutual Releases.**
- i. The County hereby waives and releases, acquits, satisfies, and forever discharges the City, including any elected officials, officers, directors, shareholders, managing members, and employees, and any and all subsidiaries, affiliates, legal representatives, insurance carriers, successors, and assigns thereof, from any and all claims, counterclaims, defenses, actions, causes of action, suits, controversies, agreements, promises, and demands whatsoever that

the County ever had or now has, in law or in equity, for, upon, or by any reason of any matter, cause, or thing whatsoever in direct connection with any claim raised by any Party in the Subject Cases, as defined in this Agreement, as of the Effective Date of this Agreement. In addition, and without waiving the generality of the foregoing, the County covenants with and warrants to the City, that there exist no claims, counterclaims, defenses, objections, offsets, or claims of offsets by the County against the City, with regard to any claim raised by any Party in the Subject Cases that are not included in and covered by this Agreement. The release set forth in this provision does not apply to any rights granted by or arising from this Agreement.

- ii. The City hereby waives and releases, acquits, satisfies, and forever discharges the County, including any elected officials, officers, directors, shareholders, managing members, and employees, and any and all subsidiaries, affiliates, legal representatives, insurance carriers, successors, and assigns thereof, from any and all claims, counterclaims, defenses, actions, causes of action, suits, controversies, agreements, promises, and demands whatsoever that the City ever had or now has, in law or in equity, for, upon, or by any reason of any matter, cause, or thing whatsoever in direct connection with any claim raised by any Party in the Subject Cases, as defined in this Agreement, as of the Effective Date of this Agreement. In addition, and without waiving the generality of the foregoing, the City covenants with and warrants to the County, that there exist no claims, counterclaims, defenses, objections, offsets, or claims of offsets by the City against the County, with regard to any claim raised by any Party in the Subject Cases that are not included in and covered by this Agreement. The release set forth in this provision does not apply to any rights granted by or arising from this Agreement.

5. **Entire Agreement; Amendments.** This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof. No representations have been made, either express or implied by the Parties, other than those expressly set forth in this Agreement. This Agreement or any part hereof may not be changed, amended, waived, discharged, or terminated except by an instrument in writing signed by all Parties and executed with the same formality as this Agreement.
6. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the Parties and all of which shall constitute one and the same agreement. The Parties further agree that each Party shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Agreement fully and legally effective, binding, and enforceable as between them and as against third parties.
7. **Interpretation.** This Agreement shall be read and interpreted in such a manner as to give all provisions their ordinary and customary meaning, and all words, terms, and phrases not otherwise specifically defined by a capitalized term or otherwise shall have the same meaning and interpretation as customarily used among lay persons. The terms "hereby," "hereof," "herein," "hereto," "hereunder," and any similar terms refer to this Agreement in its entirety and not solely to the particular section or paragraph in which the term is used. All words, terms, and phrases specifically defined by a capitalized term shall apply throughout this Agreement in its entirety and not solely to the particular section or paragraph in which the term is used. In construing this Agreement, the singular shall be held to include the plural, the plural shall include the singular, and

the use of any gender shall include every other and all genders.

8. **Construction; Headings.** The Parties acknowledge that they participated in the negotiation and drafting of the terms of this Agreement and acknowledge that no provision shall be strictly construed against one party or the other based solely on draftsmanship. The Parties have entered into this Agreement without duress, coercion, or under undue influence of any kind, and are motivated by a desire to avoid the costs, time, and uncertainty associated with the Subject Cases and to arrive at a fair and reasonable agreement with regard to the Parties' dispute. The Parties acknowledge that they have been represented by counsel in connection with the negotiation of the terms of this Agreement and that they enter into this Agreement freely and voluntarily, and only after consultation with their respective counsel. All sections and descriptive headings in this Agreement are inserted for convenience only, and shall neither affect the construction or interpretation hereof, nor add or subtract from the meaning of the contents of each section.
9. **Governing Law; Venue.** This Agreement shall be construed, interpreted, enforced, and governed in accordance with the laws of the State of Florida. Venue for any action arising out of or related to this Agreement shall be in Alachua County, Florida.
10. **Enforcement; Remedies.** The Parties shall have all equitable and legal remedies available under Florida law to enforce the terms and conditions of this Agreement, and the terms of this Agreement shall be specifically enforceable in court. In the event of any dispute hereunder or any action to interpret or enforce this Agreement, any provision hereof, or any matter arising herefrom, the prevailing party shall be paid by the non-prevailing party the reasonable attorneys' fees and costs incurred in enforcing its rights and remedies, whether incurred at the pre-trial, trial, or appellate levels, including any fees and costs incurred in determining the amount of awardable fees.
11. **Waiver of Jury Trial.** The Parties hereby knowingly, voluntarily, and intentionally waive any right to a jury trial with respect to any claims arising in connection with this Agreement.
12. **Non-Waiver.** Failure by the Parties to insist upon the strict performance of any of the terms, conditions, or provisions of this Agreement shall not be deemed to be a waiver of such terms, conditions, and provisions, and the Parties, notwithstanding such failure, shall have the right hereafter to insist upon the strict performance of any or all such terms and conditions of this Agreement as set forth herein. Any Party's waiver of any breach of this Agreement or forbearance from action shall not be a continuing waiver or a waiver of any other breach of this Agreement.
13. **Sovereign Immunity.** Nothing in this Agreement shall constitute a waiver by any party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.
14. **Severability.** If any part of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be effectuated. To that end, this Agreement is declared severable.
15. **Disclaimer of Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon

or give any other third person or entity any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof, other than as expressly stated herein.

16. Purpose of this Agreement; Not Establishing Precedent. By entering into this Agreement, the Parties do not admit any liability whatsoever to the other, or to any other person, arising out of any claims asserted in the Subject Cases, and expressly deny any and all such liability. The Parties acknowledge and agree that this Agreement is not intended by any Party to be construed, and shall not be construed, as an admission by any Party of any liability or violation of any law, statute, ordinance, regulation, agreement, or other legal duty of any nature whatsoever. Rather, this Agreement is for the compromise of potential and disputed claims, involving both fact and law, and the Parties enter into this Agreement in a spirit of cooperation for the purpose of ending the Subject Cases and in recognition of the desire for the speedy and reasonable resolution of the Parties' dispute. The acceptance of proposals for purposes of this Agreement is part of a mediated settlement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances.

17. Notices. All notices and other communications required hereunder shall be in writing and shall be delivered personally, or by registered or certified mail, return receipt requested, postage prepaid, or by Federal Express or other nationally recognized overnight commercial delivery service, fees prepaid for next day delivery. Such notices shall be deemed to have been received: 1) upon delivery, if personally delivered; 2) upon the earlier of actual receipt or the third day after mailing, if mailed by registered or certified United States mail, return receipt requested, postage prepaid; and 3) upon the earlier of actual receipt or the next business day if sent by Federal Express or other nationally recognized overnight commercial delivery service, if fees are prepaid for next day delivery. The addresses for delivery of such notices shall be as follows, except when such other address as any party hereto shall from time to time designate to the other party by notice in writing as herein provided:

a. To the County: Michele Lieberman, Interim County Manager
Alachua County
12 SE 1st Street
Gainesville, Florida 32601

With a copy to: Sylvia Torres, Interim County Attorney
Alachua County
12 SE 1st Street
Gainesville, Florida 32601

b. To the City: Anthony Lyons, City Manager
City of Gainesville
200 E University Avenue
Gainesville, Florida 32601

With a copy to: Nicolle Shalley, City Attorney
City of Gainesville
200 E University Avenue
Gainesville, Florida 32601

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates beneath each signature.

ALACHUA COUNTY:

ATTEST:



Jesse K. Irby, II, Clerk

By:  for

Ken Cornell, Chair
Board of County Commissioners

Date: 10.5.17

APPROVED AS TO FORM AND LEGALITY:



Sylvia Torres, Interim County Attorney

CITY OF GAINESVILLE:

ATTEST:



Kurt Lannon, Clerk of the Commission
City of Gainesville

By: 

Lauren Poe, Mayor

Date: 10/9/17

APPROVED AS TO FORM AND LEGALITY:

For

Nicolle M. Shalley, City Attorney

APPROVED AS TO FORM AND LEGALITY
By:  10/11/17

Sean M. McDermott
Assistant City Attorney II
City of Gainesville, Florida