



## Interoffice Memorandum

June 3, 2019

**TO:** Mayor Jerry L. Demings  
and Board of County Commissioners

**FROM:** Raymond E. Hanson, P. E., Director  
Utilities Department

A handwritten signature in black ink, appearing to read "Raymond E. Hanson".

**SUBJECT: BCC AGENDA ITEM – Consent Agenda  
June 18, 2019 BCC Meeting  
Escrow Agreement – Waterleigh PD Turnout  
Contact Person: Andres Salcedo, P. E., Assistant Director  
Utilities Engineering Division  
407-254-9719**

D. R. Horton, Inc., the developer of the Waterleigh PD, identified a need for a new 12-inch reclaimed water turnout (the “developer turnout”) to serve areas in Waterleigh PD within Village H, while the County identified a need for a new 16-inch reclaimed water turnout (the “county turnout”) to serve areas outside of Village H.

In lieu of constructing the developer turnout and the county turnout, the County agrees to construct a new 20-inch Reclaimed Water Turnout 3T-03 (the “oversized turnout”) to provide reclaimed water to Waterleigh PD and areas outside of Village H. The developer has agreed to fund the developer’s share of the design, permitting, and construction costs of the oversized turnout.

The developer has agreed to post a surety to guarantee funds are available to pay for the developer’s share of the design, permitting, and construction costs of the oversized turnout as stated within the escrow agreement. The developer has agreed to post such surety in the form of a cash escrow in the amount of \$204,760.21 and will adhere to the terms set forth in the escrow agreement.

The Orange County Attorney’s Office, the Orange County Comptroller’s Office, and Risk Management staffs reviewed the document and found it acceptable as to form. Orange County Utilities staff recommends approval.

**Action Requested: Approval and execution of Escrow Agreement by and among D.R. Horton, Inc., Orange County, and Orange County Comptroller in the amount of \$204,760.21 for utility work associated with the Waterleigh PD Turnout.**

**District 1.**

BCC Mtg. Date: June 18, 2019

## ESCROW AGREEMENT

**THIS ESCROW AGREEMENT** (the "Escrow Agreement") is made and entered into as of the date of latest execution (the "Effective Date"), by and among D.R. Horton, Inc., a Delaware corporation (the "Developer"), whose principal place of business is 1341 Horton Circle, Arlington, Texas 76148; **Orange County**, a charter county and political subdivision of the State of Florida (the "County"), whose principal place of business is 201 South Rosalind Avenue, Orlando, Florida 32801 (the Developer and County may collectively be referred to herein as the "Principals"); and the **Orange County Comptroller**, in its capacity as Escrow Agent ("Escrow Agent"), whose principal place of business is 201 South Rosalind Avenue, 4<sup>th</sup> Floor, Orlando, Florida 32801.

### WITNESSETH:

**WHEREAS**, the Developer is building a residential subdivision located in Orange County, Florida (the "Project"); and

**WHEREAS**, the Project is located within the County's reclaimed water service area; and

**WHEREAS**, Orange County Code Section 37-4(a)(3)a. requires reclaimed water use as a condition of all development approvals granted, provided that service is available; and

**WHEREAS**, the reclaimed water service is available for the Project; and

**WHEREAS**, pursuant to Orange County Code Section 37-3(e), the County has the authority to enter into agreements with developers or other entities addressing specific requirements for constructing improvements to the County's reclaimed water system; and

**WHEREAS**, the Developer has identified a need for a new 12-inch Reclaimed Water Turnout (the "Developer Turnout") to serve areas in Waterleigh PD within Village H; and

**WHEREAS**, the County has identified a need for a new 16-inch Reclaimed Water Turnout (the "County Turnout") to serve areas outside of Village H; and

**WHEREAS**, in lieu of constructing the Developer Turnout and the County Turnout, the County agrees to construct a new 20-inch Reclaimed Water Turnout 3T-03 (the "Oversized Turnout") to provide reclaimed water to Waterleigh PD and areas outside of Village H; and

**WHEREAS**, the Developer has agreed to fund the Developer's share of the design, permitting, and construction costs of the Oversized Turnout (the "Developer's Obligation"); and

**WHEREAS**, the Developer has agreed to post a surety to guarantee funds are available to pay for the Developer's Obligation; and

**WHEREAS**, the Developer has agreed to post such surety in the form of a cash escrow; and

**WHEREAS**, the County has consented to accept the Escrowed Funds (as defined below) to be held by Escrow Agent, in accordance with the terms and provisions of this Escrow Agreement; and

**WHEREAS**, Escrow Agent has agreed to serve as escrow agent in accordance with this Escrow Agreement; and

**WHEREAS**, the Principals desire that Escrow Agent hold and release the Escrowed Funds, subject to the terms and conditions set forth in this Escrow Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained in this Escrow Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Principals and Escrow Agent, and intending to be legally bound, the parties to this Escrow Agreement represent, warrant, covenant, and agree as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated in this Escrow Agreement by this reference.
2. **Establishment of Escrow Relationship; Acceptance by Escrow Agent**. By this Escrow Agreement, the Principals retain Escrow Agent, at no cost to them, to serve solely in its capacity as escrow agent (and in no other capacity) with respect to the Escrowed Funds, as defined in this Escrow Agreement, and by executing this instrument Escrow Agent accepts such retention.
3. **Escrowed Funds**. No later than five days after the Effective Date of this Escrow Agreement, the Developer shall deliver funds in the amount of Two Hundred Four Thousand Seven Hundred Sixty and 21/100 Dollars (\$204,760.21) (the "**Escrowed Funds**") to Escrow Agent, the approximated cost of the Developer's Obligation. Within five days of receipt, Escrow Agent will place the Escrowed Funds into an escrow account (the "**Escrow Account**") to be held, administered, distributed, and released as provided for in this Escrow Agreement. Escrow Agent shall acknowledge receipt of the Escrowed Funds by providing notice to each of the Principals within five days after receipt of the Escrowed Funds.
4. **County Claim(s) on Escrowed Funds**. The County may use all or a portion of the Escrowed Funds, as it deems reasonably necessary, to construct the Oversized Turnout.
5. **Escrow Term and Release of Escrowed Funds**. Notwithstanding anything to the contrary in this Escrow Agreement, the Escrowed Funds shall be held by Escrow Agent for a period (the "**Escrow Term**") commencing on their receipt following the Effective Date and expiring on the date that the County accepts ownership of the Oversized Turnout (the "**Completion Date**"). The escrow established by this Escrow Agreement will terminate and any unused balance of the Escrowed Funds will be disbursed to the Developer within sixty days following the Completion Date.

6. **Termination.** This Escrow Agreement and all of the parties' rights and obligations pursuant hereto will automatically terminate upon the earlier of (i) the delivery of all of the Escrowed Funds to the County pursuant to Section 4 hereof, or (ii) delivery of the balance of the Escrowed Funds to the Developer pursuant to Section 5 hereof. In the event this Escrow Agreement has not been terminated by the fifth anniversary of the Effective Date (the "**Review Date**"), the Principals will determine within sixty days of the Review Date whether conditions have changed in such a manner as to change the original conditions behind and the intent of this Escrow Agreement. If the Principals' mutually agree that such changes have occurred, the Principals will jointly prepare and execute a Notice of Termination, and will send the Notice of Termination to Escrow Agent. On the effective date of the Notice of Termination, this Escrow Agreement will terminate, and all of the Principals' rights and obligations pursuant to this Escrow Agreement will automatically terminate no later than ninety days after the Review Date, and Escrow Agent shall immediately deliver the balance of the Escrowed Funds to the Developer unless otherwise instructed in writing by a notice jointly signed by the Principals.

7. **Indemnification of Escrow Agent; Sovereign Immunity.** The parties agree that the duties of Escrow Agent are purely ministerial in nature and are expressly limited to the matters in this Escrow Agreement for which Escrow Agent is expressly obligated. The Developer and the County hereby indemnify Escrow Agent and agree to hold Escrow Agent harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits, or proceedings at law or in equity, and any other expenses, fees, or charges of any character or nature, which Escrow Agent may incur or with which Escrow Agent may be threatened directly or indirectly arising from or in any way connected with this Escrow Agreement, except in the case of gross negligence, willful misconduct, or breach of trust of Escrow Agent. In connection therewith, the Developer and the County shall, to the extent allowable by law, indemnify Escrow Agent against any and all reasonable expenses, including reasonable attorney fees (pre-litigation, litigation, and appellate) and the cost of defending or prosecuting any action, suit, or proceeding or resisting any claim, whether or not litigation is instituted. Nothing contained in this Escrow Agreement is intended as, nor shall constitute, a waiver by the County or Escrow Agent, respectively of their sovereign immunity protections pursuant to Section 768.28, Florida Statutes.

8. **No Constructive Knowledge.** Escrow Agent will not be deemed to have knowledge of any matter or thing unless and until Escrow Agent has actually received written notice of such matter or thing, and then will only be required to act on that knowledge in its capacity as Escrow Agent as further described herein. Escrow Agent will not be charged with any constructive knowledge whatsoever.

9. **Capacity of Escrow Agent.** The Principals expressly agree that Escrow Agent will not act under this Escrow Agreement in any capacity as Clerk to the Orange County Board of County Commissioners, but rather in Escrow Agent's capacity as an independent constitutional officer.

10. **No Overdraw.** Notwithstanding any provision of this Escrow Agreement seemingly to the contrary, Escrow Agent will not make payment of an amount in excess of the balance in the Escrow Account.

11. **No Obligation to Pay Interest.** Notwithstanding any provision of this Escrow Agreement to the contrary, Escrow Agent will not be required to make any interest payment on any balance in the Escrow Account.

12. **No Liability for Turnout.** The execution of this Escrow Agreement does not obligate the County or Escrow Agent to undertake or complete the Oversized Turnout within any specified timeframes and does not imply or require that either the County or Escrow Agent assume any liability for the Oversized Turnout. The County agrees that Developer shall continue to be allowed to use temporary turnouts until the Oversized Turnout is completed. The use of the temporary turnouts shall cease at the time the Oversized Turnout is placed in service.

13. **Notices.** All notices, consents, approvals, waivers, and elections which any party is required or desired to make or give under this Escrow Agreement must be in writing and will be sufficiently made or given (i) when mailed by certified mail, postage prepaid, return receipt requested; (ii) by hand delivery to the named individuals representing the party to be notified; or (iii) by private parcel delivery services for which receipt is provided to the notifying party. Notices, including notice of change of address, must be addressed to the addresses set forth below or such other address that a party may designate in the manner prescribed herein:

If to the County:	Orange County Utilities Department 9150 Curry Ford Road Orlando, Florida 32825-7600 Attn: Director
With copy to:	Orange County Administrator's Office Orange County Administration Building 201 S. Rosalind Avenue, 5th Floor Orlando, Florida 32801-3527 Attn: County Administrator
If to Escrow Agent:	Orange County Comptroller 201 S. Rosalind Avenue, 4 <sup>th</sup> Floor P.O. Box 38 Orlando, FL 32802-0038 Attn: Director of Finance and Accounting
If to the Developer:	D.R. Horton, Inc. 6200 Lee Vista Boulevard, Suite 400 Orlando, Florida 32822-5149 Attn: Christopher Wrenn
With copy to:	Lowndes, Drosdick, Doster, Kantor & Reed, P.A. 215 North Eola Drive Orlando, Florida 32801-2028 Attn: Miranda F. Fitzgerald

Notices, consents, approvals, waivers, and elections given or made as aforesaid shall be deemed to have been given and received on the date of the mailing, or delivery, thereof as aforesaid.

14. **Governing Law.** The parties agree that this Escrow Agreement is entered into and delivered in the State of Florida. This Escrow Agreement will be governed by, and be construed and interpreted in accordance with, the laws of the State of Florida, without regard to choice of law rules. Venue for any action arising out of or in connection with this Escrow Agreement will lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

15. **Entire Agreement, Modification.** This Escrow Agreement contains the entire understanding and agreement between the parties relating to the subject matter hereof, and all prior or extrinsic agreements, understandings, representations and statements, oral or written, concerning the subject matter hereof are merged herein and superseded hereby. There are no other agreements, written or oral, between the parties with respect to the subject matter hereof except those contained in this Escrow Agreement. Neither Escrow Agent nor the Principals will be bound by any modification, cancellation, or rescission of this Escrow Agreement unless in writing and signed by Escrow Agent and the Principals.

16. **No Recording; Binding Effect.** This Escrow Agreement may not be recorded in the Public Records of Orange County, Florida. This Escrow Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, successors and assigns until such time as the Oversized Turnout has been completed and the Escrowed Funds disbursed unless there has been a prior cancellation or rescission of this Escrow Agreement as contemplated by Section 15 above.

17. **Waiver.** The failure of any party to insist in any one or more cases upon the strict performance of any one of the terms, covenants, conditions, or provisions of this Escrow Agreement may not be construed as a waiver or a relinquishment of such party's right to insist on strict performance of any such term, covenant, condition, or provision in the future.

18. **Counterparts.** This Escrow Agreement may not be executed in counterparts.

19. **Time.** Time is of the essence in connection with this Escrow Agreement and each provision hereof.

20. **Construction.** All parties to this Escrow Agreement participated fully and equally in the negotiation and preparation hereof. The fact that one of the parties to this Escrow Agreement, or its attorney, may be deemed to have drafted or structured any provision of this Escrow Agreement must not be considered in construing or interpreting any particular provision of this Escrow Agreement, either in favor of or against such party.

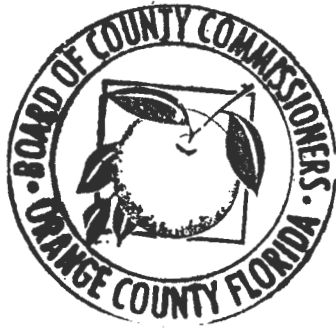
21. **Settlement of Dispute.** In the event Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrowed Funds, Escrow Agent shall, at its option, either: (a) tender the Escrowed Funds into the registry of the appropriate court; or (b) disburse the Escrowed Funds in accordance with the court's ultimate disposition of the case. In the event Escrow Agent tenders the Escrowed Funds into the registry of the appropriate court and files an action of interpleader naming the Principals and any affected third parties of whom

Escrow Agent has received actual notice, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith. The parties agree that Escrow Agent shall not be liable to any party or person whomsoever for the misdelivery to the Developer and the County or otherwise of any monies except where such misdelivery shall be due to willful misconduct, gross negligence, or breach of trust by Escrow Agent. The Principals expressly agree that each will bear the cost of its own attorney's fees for any action arising out of or in connection with this Escrow Agreement. The parties waive their rights to a jury trial.

22. **Captions; Days.** The captions contained in this Escrow Agreement are for convenience of reference only and in no way define, describe, extend, or limit the scope or intent of this Escrow Agreement or the intent of any provision contained herein. Each reference to "day" or "days" means calendar days, unless otherwise stated.

**IN WITNESS WHEREOF**, the parties have executed this Escrow Agreement or caused this Escrow Agreement to be executed and delivered by their duly authorized officers on the date(s) noted below.

**COUNTY:**  
ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners



By: *Jerry L. Demings*  
for Jerry L. Demings  
Orange County Mayor

Date: *18 June 2019*

ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

By: *Katie Smith*  
Deputy Clerk

Print Name: JUN 18 2019

DEVELOPER: D.R. Horton, Inc.

By: Chris

Print Name: CHRISTOPHER WRENN

Title: ASSISTANT SECRETARY

Date: 5/13/19

Signed, sealed, and delivered in our presence as witnesses:

Signature: [Signature]

Print Name: MATTHEW SPIGA

Signature: [Signature]

Print Name: John Auld

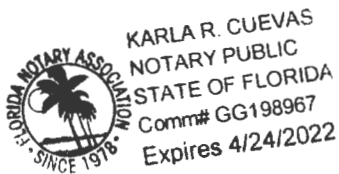
STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 13 day of MAY, 2019, by CHRISTOPHER WRENN as ASSISTANT SECRETARY of D.R. Horton, Inc., a Delaware corporation, on behalf of the company, who  is personally known to me or  has produced \_\_\_\_\_ as identification.

(Notary Seal)

[Signature]

Notary Public

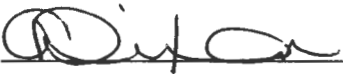


KARLA R. CUEVAS  
Name Printed or Stamped

My Commission Expires: 4.24.2022




Signed, sealed, and delivered in the presence of: **ESCROW AGENT:**

Attest: 

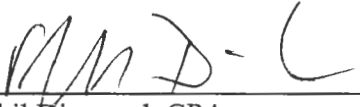
Print Name: CATHYN DIXON

Title: PUBLIC INFORMATION OFFICER

Attest: 

Print Name: Natasha Ramirez

Title: VAB specialist

By: 

Phil Diamond, CPA  
Orange County Comptroller

Execution Date: 6-21-19