



Interoffice Memorandum

July 16, 2018

TO: Mayor Teresa Jacobs
and Board of County Commissioners

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

A handwritten signature in black ink, appearing to be "R. Hanson", written over the "FROM" line.

**SUBJECT: BCC AGENDA ITEM – Consent Agenda
July 31, 2018 BCC Meeting
Reimbursement Agreement between the City of Orlando and Orange
County Regarding the Purchase of 3814 Winderlakes Drive Property
Contacts: Todd Swingle, P. E.
Deputy Director, Utilities Department
407-254-9880**

**William C. Turner, Jr.
Assistant County Attorney
407-836-7320**

This consent agenda item requests authorization from the Board of County Commissioners ("BCC") for the approval of the Reimbursement Agreement Between the City of Orlando and Orange County Regarding the Purchase of 3814 Winderlakes Drive (the "Agreement"). The purchase of the real property is related to the settlement of lawsuits concerning damage to real property around a water main owned and operated by Orange County, and an agreement by Orange County to purchase that same real property to better repair and maintain a Conserv II reclaimed water main that is also located in the same vicinity.

A summary of the matter is as follows: 4 TON owns residential property in Orange County, located at 3814 Winderlakes Drive, Orlando, Florida. While Orange County has denied the claims brought by 4 TON, 4 TON nevertheless brought three lawsuits against the County in connection with 4 TON's property. 4 TON alleged its property sustained damaged on or about September 11, 2015, caused by a broken County water main, resulting in flooding or sinkhole activity or both. The County, in denying 4 TON's claims, has obtained evidence demonstrating that the sinkhole caused the County water main to break, and that the County was not responsible for the damage to 4 TON's property. The sinkhole activity also damaged a Water Conserv II reclaimed water main located in the immediate vicinity of the County water main.

County staff determined that the damaged Conserv II reclaimed water main needs to be better repaired and maintained, and that the most cost-effective way to do so is to acquire the real property belonging to 4 TON, which was the subject of 4 TON's lawsuits and settlement agreement scheduled for approval at the same Commission meeting as this Agreement. By acquiring this property, Conserv II will have better access to the damaged reclaimed water main and can conduct repairs and future maintenance at the lowest cost for the most reliable service.

Orange County and Conserv II agreed to pay 4 TON \$225,000 to obtain fee simple title to the real property at issue. This amount is below the \$295,000 appraised value of the property, as reflected in an appraisal obtained by Orange County's Real Estate Management Division, which valued the property last year based on an assumption that the damage had not occurred. 4 TON has agreed to release Orange County from 4 TON's claims and to dismiss its lawsuits with prejudice.

The City agreed to reimburse the County \$87,500 for a fifty percent undivided interest in the property. The City's payment is based on an assumed value to the County alone of \$50,000 for settling lawsuits brought against Orange County, only $(\$225 - \$50 = \$175)$, divided by 2. Upon reimbursement by the City and purchase of the property by the County, the County will convey a fifty percent undivided interest to the City by County deed.

The County Attorney's Office recommends approval of the Reimbursement Agreement Between the City of Orlando and Orange County regarding the purchase of 3814 Winderlakes Drive. Orange County Utilities staff recommends approval.

Action Requested: **Approval and execution of Reimbursement Agreement Between The City of Orlando and Orange County regarding the purchase of 3814 Winderlakes Drive Property by and between City of Orlando, Florida and Orange County.**

District 1.

**REIMBURSEMENT AGREEMENT
BETWEEN
THE CITY OF ORLANDO
AND
ORANGE COUNTY
REGARDING
THE PURCHASE OF 3814 WINDERLAKES DRIVE PROPERTY**

THIS REIMBURSEMENT AGREEMENT (the “Agreement”) is made and entered on the date of last execution (the “Effective Date”) by and between the **City of Orlando, Florida**, a municipal corporation existing under the laws of the State of Florida (the “City”), whose address is 400 South Orange Avenue, Orlando, Florida 32801 and **Orange County**, a charter county and political subdivision of the State of Florida (the “County”) whose address is 201 South Rosalind Avenue, Orlando, Florida 32801. The City and the County may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the City and the County jointly own, operate, and maintain the water reclamation facilities known as Water Conserv II, which produces and distributes reclaimed water for use in productive and beneficial purposes as permitted by the Florida Department of Environmental Protection; and

WHEREAS, on or about September 11, 2015, a Water Conserv II transmission main was damaged as the result of sinkhole formation on or adjacent to the Property; and

WHEREAS, on or about September 11, 2015, a County water main located in the vicinity of the Water Conserv II transmission main failed likely due to the sinkhole formation that damaged the Water Conserv II transmission main; and

WHEREAS, the owners of a parcel of real property and single-family residence (the located at 3814 Winderlakes Drive, Orlando, Florida (the “Property) and adjacent to the location of the County’s water main failure (the “Plaintiffs”), brought several actions against Orange County in cases styled *4 TON, LLC v. Orange County, Florida, Case Number 2016-CA-0031020*; *4 TON LLC v. Orange County, Florida, Case Number 2017-CV-74-A-O*; and *4 Ton LLC v. Orange County, Florida, Case Number 2017-CA-004579* (the “Actions”); and

WHEREAS, the Plaintiffs alleged that the Property sustained damage on or about September 11, 2015, as a result of the County’s water main failure; and

WHEREAS, while the County denies any and all wrongful acts or omissions, and denies any responsibility for any injury alleged by the Plaintiffs, the Plaintiffs and the County entered a settlement agreement to settle all claims that have or could have been asserted in the Actions; and

WHEREAS, in consideration of the settlement agreement, the County agreed to purchase the Property for \$225,000 in full and complete settlement of any and all claims asserted, or which could have been asserted, in the Actions which arise out of, or which in any way relate to the incident or damages; and

WHEREAS, the City agrees to reimburse the County \$87,500 for the purchase of the Property in exchange for an undivided fifty percent (50%) interest in the Property; and

WHEREAS, the Parties agree that the purchase of the Property is in the public interest; and

WHEREAS, the Parties are empowered to be bound by the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the covenants and promises of the Parties and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the City and the County agree as follows:

Section 1. *Recitals Incorporated.* The above recitals are true and correct, form a material part of this Agreement, and are incorporated in this Agreement as set forth hereafter.

Section 2. *Conveyance of Interest.* Within thirty (30) days of the County acquiring title to the Property, the City shall pay to the County \$87,500 and the County shall convey and deliver to the City an undivided fifty percent (50%) interest in the Property by County deed. The County makes no warranty or guarantee as to the condition of the Property or suitability of the Property for any use. The City agrees to accept its interest in the Property “AS IS” and “WITH ALL FAULTS.”

Section 3. *Property Management.* The Property will be managed as Water Conserv II property in the same manner as all other Water Conserv II properties. The cost of managing the Property will be shared equally by the Parties.

Section 4. *Validity.* The County and the City each represents, warrants, and covenants to and with the other its respective authority and power under Florida law to enter into this Agreement, acknowledges the validity and enforceability of this Agreement, and waives any future right of defense based on claim of illegality, invalidity or unenforceability of any nature. Also, the County and the City each hereby represents, warrants and covenants to and with the other that this Agreement has been validly approved by its respective governing body, and that

this Agreement constitutes a legal, valid and binding contract enforceable against the respective Party in accordance with the terms hereof (assuming the due authorization, execution and delivery hereof by the other Parties hereto).

Section 5. *Ambiguities.* Both Parties have been allowed equal input regarding the terms and wording of this Agreement and have had the benefit of consultation with their respective legal counsel prior to its execution, such that all language herein shall be construed equally against the Parties, and no language shall be construed strictly against its drafter.

Section 6. *Headings.* The headings or captions of sections or subsections used in this Agreement are merely for the convenience of the Parties for reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

Section 7. *Severability.* The provisions of this Agreement are declared by the Parties to be severable only to the extent that the remaining provisions can effectuate the purpose and intent of the Parties.

Section 8. *Governing Law; Venue; Attorney's Fees and Costs.*

a. This Agreement shall be governed by and construed in accordance with laws of the State of Florida.

b. Venue for any action arising out of or related to this Agreement shall be in the Circuit Court for the Ninth Judicial Circuit in Orange County, Florida.

c. In the event a Party deems it necessary to take legal action to enforce any provisions of this Agreement, each Party shall bear its own attorney's fees and costs at both the trial and appellate levels.

Section 9. Entire Agreement. This Agreement, along with any exhibits, constitutes the entire Agreement between the Parties regarding the subject matter hereof. Any prior oral or written agreements or understandings of any kind between the Parties relating to the subject matter hereof are null and void and of no further effect.

Section 10. Amendments. This Agreement may be amended only by express written instrument approved by the Board of County Commissioners of the County and the City Council of the City, and executed by the authorized officers of each Party.

Section 11. Assignment. Neither Party may sell, assign or transfer this Agreement or any interest it may have under this Agreement, without prior written approval of the other Party, such approval to be not unreasonably withheld, and provided that any such assignment shall not unreasonably interfere with the rights of the non-assigning Party hereunder. All covenants, terms, conditions, and provisions of this Agreement shall be binding upon the Parties and shall extend to and be binding upon the successors and permitted assigns of the Parties.

Section 12. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the formal Parties to this Agreement and no rights or cause of action shall accrue upon or by reason hereof, to or for the benefit of, any third party not a formal party hereto.

Section 13. Notices. Any notice required to be given or otherwise given by one Party to the other Party shall be in writing and shall be deemed delivered (i) when given by hand delivery; or (ii) five (5) days after being deposited in the United States Mail, postage prepaid, certified or registered; or (iii) the next business day after being deposited with a recognized overnight mail service; and addressed as follows:

If to the County: Director, Orange County Utilities Department
9150 Curry Ford Road
Orlando, Florida 32825

With a copy to: County Administrator
Orange County Administration Center
201 South Rosalind Avenue
P. O. Box 1393
Orlando, Florida 32802-1393

If to the City: Director, Public Works
City of Orlando
400 South Orange Avenue
Orlando, Florida 32802-4990

In all cases, notices shall be deemed delivered to a Party only upon delivery of copies to the persons indicated above in the same manner as for the Party being notified. Either Party may change its designated official or address for receipt of notice by giving notice of such change to the other Party in the manner provided in this section.

Section 14. Effective date. This Agreement shall take effect upon the date of its adoption.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year written below their signatures.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
County Mayor
Date: 7.31.18

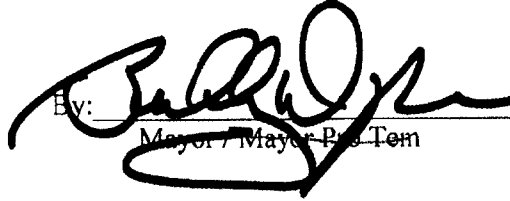
ATTEST: Phil Diamond, CPA, County Comptroller
as Clerk of the Board of County Commissioners

By: *Kate Smith*
Deputy Clerk



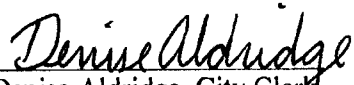
CITY OF ORLANDO, FLORIDA

(SEAL)

By: 
Mayor / Mayor Pro Tem

Date: 7.23.18


ATTEST:


Denise Aldridge, City Clerk

APPROVED AS TO FORM AND LEGALITY

For the use and reliance of the
City of Orlando, Florida only.

7/17, 2018


Chief Assistant City Attorney
City of Orlando