



Interoffice Memorandum

March 5, 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 read "Raymond E. Hanson" with a flourish at the end.

**SUBJECT: BCC Agenda Item – Consent Agenda
March 20, 2018 BCC Meeting
First Amendment to City of Mount Dora/Orange County Water and
Wastewater Service Territorial Agreement
Contact Person: Andres Salcedo, P. E.
Assistant Director, Utilities Department
407-254-9719**

Orange County and the City of Mount Dora entered into the City of Mount Dora/Orange County Water and Wastewater Service Territorial Agreement (agreement) on November 20, 1996. Orange County now desires to remove the territorial service fee from the agreement and has worked with the City of Mount Dora to amend the agreement to rescind the territorial service fee.

The County Attorney's Office staff has reviewed the agreement and finds it acceptable as to form. Utilities Department staff recommends approval.

Action Requested: Approval and execution of First Amendment to City of Mount Dora/Orange County Water and Wastewater Service Territorial Agreement by and between City of Mount Dora and Orange County to rescind the territorial service fee.

District 2.

**FIRST AMENDMENT TO CITY OF MOUNT DORA/ORANGE COUNTY
WATER AND WASTEWATER SERVICE TERRITORIAL AGREEMENT**

THIS FIRST AMENDMENT TO CITY OF MOUNT DORA/ORANGE COUNTY WATER AND WASTEWATER SERVICE TERRITORIAL AGREEMENT (the "First Amendment") is made and entered into as of the date of last execution below, by and between **CITY OF MOUNT DORA**, a municipal corporation located in Lake County, organized and existing under the laws of the State of Florida, whose address is 510 North Baker Street, Mount Dora, Florida 32757, hereinafter referred to as the "CITY;" and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida, whose address is 201 South Rosalind Avenue, Orlando, Florida, 32801, hereinafter referred to as the "COUNTY." The CITY and the COUNTY may also hereinafter be referred to collectively as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, the CITY and the COUNTY entered into the City of Mount Dora/Orange County Water and Wastewater Service Territorial Agreement (hereinafter the "Territorial Agreement") on or about November 20, 1996; and

WHEREAS, the CITY and the COUNTY, in the best interest of its citizens, desire to rescind the Territorial Service Fee, as that term is defined in the Territorial Agreement, in accordance with the provisions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the CITY and the COUNTY hereby agree as follows:

SECTION 1. RECITALS INCORPORATED

All the recitals contained herein are true and correct, and are incorporated herein and made a part of this First Amendment by this reference.

SECTION 2. AMENDMENT TO SUBSECTION 3.2, NEW CUSTOMERS.

Subsection 3.2, New Customers, of the Territorial Agreement is amended with the deleted text shown by strikethrough and the inserted text shown with underlines as follows:

3.2 New Customers. The City shall not hereafter serve or offer to serve any customer (whether individual or on a project basis) located in the County's Territorial Area, unless, on a temporary or permanent basis, the County requests the City in writing to do so; and the County shall not hereafter serve or offer to

serve any customer (whether individual or on a project basis) located in the City's Territorial Area, unless, on a temporary or permanent basis, the City requests the County in writing to do so. The City shall be responsible for collecting ~~both the~~ Utility Fees, as defined hereinafter, ~~and the Territorial Service Fee~~ within the City's Territorial Area.

SECTION 3. REPEAL OF SECTION 5, TERRITORIAL SERVICE FEE.

Section 5 and **Exhibit "B"** to the Territorial Agreement is hereby deleted in its entirety.

SECTION 4. AMENDMENT TO SUBSECTION 6.1, ASSESSMENTS/SETTING OF FEES.

Subsection 6.1, Assessments/Setting of Fees, of the Territorial Agreement is amended with the deleted text shown by strikethrough and the inserted text shown with underlines as follows:

6.1 Assessments/Setting of Fees. The City covenants to bill each of its customers in the City's Territorial Area no less frequently than once each month, and shall include on its bill the utility tax permitted by Section 166.231, of Florida Statutes (1995) (or its successor statute), and to remit such revenue as is collected from such tax, ~~along with the Territorial Service Fee,~~ to the County on a monthly basis. Except as provided in Section ~~56~~, it is within the City's power and discretion to set the amount of connection fees to the City's water and wastewater system as well as the amount of charges for water, wastewater, and reclaimed water service (hereinafter "Utility Fees"). However, the City Agrees that it shall not impose any assessment, Utility Fees or taxes on customers within Orange County which the City would not impose on comparable customers within the City, without the consent of the County. The monthly service charge for utility service (whether water, wastewater, or reclaimed water), excluding the Utility Tax referred to in this subsection 6.1, shall not exceed an amount equal to a comparable monthly service charge paid by a customer residing within the City's limits multiplied by a factor of no more than 1.25. Further, the City agrees that it shall not facilitate in any way the assertion of fees or taxes on Orange County customers by any local government (other than Orange County) without the express written consent of Orange County.

SECTION 5. NOTICE.

Notice to the County, as required under Section 10 of the Territorial Agreement shall be amended as follows:

COUNTY: Director of Utilities
 Orange County Utilities
 9150 Curry Ford Road
 Orlando, FL 32825

With a copy to: County Administrator
Orange County Government
201 S. Rosalind Ave., 5th Floor
P.O. Box 1393
Orlando, FL 32802-1393

SECTION 6. AMENDMENT TO SECTION 14, TERM OF AGREEMENT; TERMINATION.

The first paragraph of Section 14, Term of Agreement; Termination, of the Territorial Agreement is amended with the deleted text shown by strikethrough and the inserted text shown with underlines as follows:

This Agreement shall take effect ~~as of the date first above written on~~ November 20, 1996, and shall terminate on January 1, 2047. Upon termination, the City shall retain title to all water, wastewater, and reclaimed water facilities then owned by it in the City's Territorial Area and may continue to provide water, wastewater, and reclaimed water service to all customers being served by the City as of the date of termination of this Agreement, without the duty ~~to pay the Territorial Service Fee to the County or otherwise~~ to comply with the requirements of this Agreement, except as otherwise provided in this Agreement. Further, the City may serve such additional customers in the City's Territorial Area (or elsewhere in Orange County) as the County may thereafter approve from time to time in writing (which approval may be granted or denied at the County's sole discretion), but may not expand its utility systems (whether within the City's Territorial Area or elsewhere in Orange County) or otherwise agree to serve any additional customers in the City's Territorial Area without the County's written approval (which likewise may be granted or denied at the County's sole discretion).

SECTION 7. AMENDMENT TO SECTION 23, CHALLENGES.

Section 23, Challenges, of the Territorial Agreement is amended with the deleted text shown by strikethrough and the inserted text shown with underlines as follows:

If this Agreement is challenged by any third party in any judicial or administrative proceeding (each party hereby covenanting not to initiate or pursue such challenge), the parties collectively and individually agree to defend its validity through final determination. The City however, shall not be obligated to defend any challenge to ~~the Territorial Service Fee or the Utility Tax~~ referenced in Sections 5 and Subsection 6.1 herein. In the event of any challenge to ~~either the Utility Tax or the Territorial Service Fee,~~ the City agrees to notify the County and the County shall have the right to defend and intervene as the real party in interest to any such challenge.

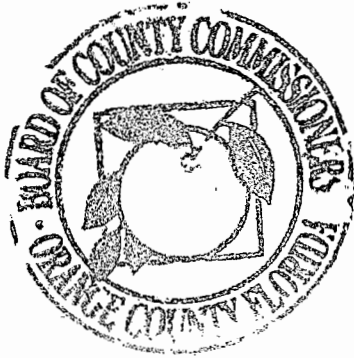
SECTION 8. EFFECTIVE DATE OF REPEAL OF TERRITORIAL SERVICE FEE; PRIOR TERRITORIAL SERVICE FEES.

The City shall cease assessing the Territorial Service Fee within 30 days of final execution of this First Amendment. The City shall collect and remit to the County all Territorial Service Fees that were assessed per the Territorial Agreement. Any prior Territorial Service Fees paid to the County will remain the property of the County, and shall not be refunded.

SECTION 9. AGREEMENT IN FULL FORCE.

The Parties agree and affirm that the Effective Date of the Territorial Agreement is November 20, 1996. Except as expressly modified herein, the Territorial Agreement remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the CITY and COUNTY have below caused this First Amendment to be executed in manner and form and by persons and/or officers thereunto duly authorized.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*

Teresa Jacobs

Orange County Mayor

TJ

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

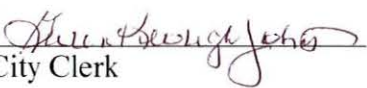
By: *Noelia Perez*
Deputy Clerk

Print: Noelia Perez

Date: MAR 20 2018

Attest:

CITY OF MOUNT DORA, FLORIDA


City Clerk


Mayor

Date: April 13, 2013

Approved as to form and reliance
for the benefit of the City:


City Attorney
