

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF PENSACOLA AND
EMERALD COAST UTILITIES AUTHORITY, RELATING TO UTILITY UPGRADES AS
PART OF THE BURGESS ROAD SIDEWALK AND DRAINAGE IMPROVEMENTS
PROJECT**

THIS AGREEMENT is made and entered into as of 21ST day of APRIL, 2021, by and between the City of Pensacola, Florida, a municipal corporation created and existing under the laws of the State of Florida (hereinafter referred to as "City") with administrative offices at 222 West Main Street, Pensacola, Florida 32502 and Emerald Coast Utilities Authority, an independent special district of the State of Florida (hereinafter referred to as "ECUA") with administrative offices located at 9255 Sturdevant Street, Pensacola, Florida 32514 (each being at times referred to as "Party" or "Parties").

WITNESSETH:

WHEREAS, City and ECUA are authorized by §163.01, Florida Statutes, to enter into Interlocal Agreements and thereby cooperatively utilize their governmental powers and available resources in the most efficient manner possible; and

WHEREAS, City plans to install utility upgrades in addition to sidewalk and drainage improvements along Burgess Road; and

WHEREAS, ECUA owns and maintains the water and sewer utilities within the right of way along Burgess Road and has committed to contribute an amount not to exceed \$200,000.00 for the cost of said utility upgrades that lie within the project's boundaries.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and terms of payment hereinafter set forth, City and ECUA agree as follows:

Section 1. Purpose of Agreement.

1.1 **Recitals.** The recitals contained in the preamble of this Agreement are declared to be true and correct and are hereby incorporated into this Agreement.

1.2 **Purpose.** Pursuant to §163.01, Florida Statutes, this Agreement establishes the responsibilities of the Parties with respect to the utility upgrades installed by the City that lie within the project's boundaries as provided herein.

Section 2. Responsibilities of the Parties.

2.1 In consideration of the faithful performance by City of the project described in **Exhibit "A"** which is attached hereto and incorporated by reference herein, ECUA agrees to contribute an amount not to exceed \$200,000.00 in accordance with the terms of this Agreement for the cost of installation of utility upgrades to be completed in accordance with the project described in **Exhibit "A."**

2.2 City agrees to contract with a third party to fully perform and complete in a good workmanlike manner the project described in **Exhibit "A."**

2.3 City agrees to convey such utility upgrades to ECUA by quitclaim deed promptly upon completion and acceptance by ECUA of responsibility for future maintenance, repair, and replacement of the utility upgrades to be completed in accordance with the project described in **Exhibit "A."** Prior to the conveyance by quitclaim deed, ECUA shall have the right to inspect and approve the acceptance of the utility upgrades. ECUA shall be responsible for filing said deed with the Office of the Clerk of the Circuit Court of Escambia County, Florida.

2.4 This Agreement shall become effective upon filing with the Office of the Clerk of the Circuit Court of Escambia County, Florida. ECUA shall be responsible for such filing.

2.5 Title to the utility upgrades specified in **Exhibit "A"** shall pass to ECUA subsequent to payment by ECUA to City as provided herein and acceptance of the project and responsibility for future maintenance, repair, and replacement of the utility upgrades that are the subject of this agreement. ECUA shall, upon reasonable notice, have the right to inspect all utility upgrades prior to the City accepting it.

2.6 City shall obtain and shall assign to ECUA all express warranties given to City regarding the parts of the project paid for by the ECUA. If within one (1) year, any aspect of the project is found to be defective or not in conformance with applicable contract documents, City shall reasonably cooperate with ECUA regarding the enforcement of any warranty. These warranties are in addition to those implied warranties, if any, to which ECUA may be entitled as a matter of law.

2.7 ECUA shall cooperate with City in obtaining such other easements and rights of way as may be required for successful completion of this project.

Section 3. Compensation and Method of Payment.

3.1 ECUA agrees to reimburse City for project costs related to the work described in **Exhibit "A"** in an amount not to exceed **Two Hundred Thousand Dollars (\$200,000.00).**

3.2 Upon request, City shall provide to ECUA copies of any payment documentation and such other financial documents as ECUA may reasonably require to verify any and all costs related to the project described in **Exhibit "A."**

3.3 Invoices to ECUA will be sent to: ECUA
Attention: Brandon Knight, PE
9255 Sturdevant Street
Pensacola, Florida 32514

3.4 Payments to City will be sent to: City of Pensacola
Attention: Brad Hinote
222 W. Main Street
Pensacola, Florida 32514

Section 4. Miscellaneous Provisions.

4.1 **Term and Termination:** It is anticipated by the parties that the time for completion of the project described in **Exhibit "A"** shall be within one (1) year from commencement of construction, unless otherwise agreed between the parties in writing. This Agreement will remain in effect for one year unless terminated by either party for cause or convenience upon providing at least 180 days prior written notice to the non-terminating party.

4.2 **Force Majeure:** In the event that performance by ECUA or City of any of its obligations under this Agreement shall be interrupted, delayed, or prevented by any occurrence not occasioned by the conduct of such party, whether such occurrence be an act of God or any other occurrence whatsoever that is beyond the reasonable control of such party, including a change in environmental law or regulation rendering performance impractical or impossible, then such party shall be excused from such performance for such period of time as is reasonably necessary after the occurrence to remedy the effects thereof, or until such performance is no longer impractical or impossible.

4.3 **Liability:** The parties hereto, their respective elected officials, officers and employees shall not be deemed to assume any liability for the acts, omissions or negligence of the other party. The City and ECUA, as local government bodies of the State of Florida, agree to be fully responsible for their individual negligent acts or omissions or tortious acts which result in claims or suits against their respective jurisdictions and agree to be fully liable for any damages proximately caused by said acts or omissions. Nothing herein is intended to serve as a waiver of sovereign immunity by the City or ECUA and nothing herein shall be construed as consent by the City or ECUA to be sued by third parties in any matter arising out of this Agreement.

4.4 Records: The parties acknowledge that this Agreement and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes, as amended. In the event a party fails to abide by the provisions of Chapter 119, Florida Statutes, the other party may, without prejudice to any right or remedy and after giving that party, seven (7) days written notice, during which period the party fails to allow access to such documents, terminate this Agreement.

4.5 Assignment: This Agreement or any interest herein shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties, without the prior written consent of the other party.

4.6 All Prior Agreements Superseded:

(a) This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or Agreements whether oral or written.

(b) It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

4.7 Headings: Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

4.8 Survival: All other provisions, which by their inherent character, sense, and context are intended to survive termination of this Agreement, shall survive the termination of this Agreement.

4.9 Interpretation: For the purpose of this Agreement, the singular includes the plural and the plural shall include the singular. References to statutes or regulations shall include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined that have well-known technical or industry meanings, are used in accordance with such recognized meanings. References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities.

(a) If either Party discovers any material discrepancy, deficiency, ambiguity, error, or omission in this Agreement, or is otherwise in doubt as to the meaning of

any provision of the Agreement, it shall immediately notify the other Party and request clarification of its interpretation of this Agreement.

(b) This Agreement shall not be more strictly construed against either Party hereto by reason of the fact that one Party may have drafted or prepared any or all of the terms and provisions hereof.

4.10 **Severability:** The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed to be enforced as if this Agreement did not contain such invalid or unenforceable portion of provision.

4.11 **Further Documents:** The parties shall execute and deliver all documents and perform further actions that may be reasonably necessary to effectuate the provisions of this Agreement.

4.12 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and the parties stipulate that venue for any matter which is the subject of this Agreement shall be in the County of Escambia.

4.13 **Notices:** All notices required or made pursuant to this Agreement by either party to the other shall be in writing and delivered by hand or by United States Postal Service, first class mail, postage prepaid, return receipt requested, addressed to the following:

CITY: City Administrator
City of Pensacola
P.O. Box 12910 (32521)
222 W. Main Street (32502)
Pensacola, Florida

ECUA: ECUA
Attention: Brandon Knight, PE
9255 Sturdevant Street
Pensacola, FL 32514

Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this section.

4.14 **No Waiver:** The failure of a party to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of any other provision or of either party's right to thereafter enforce the same in accordance with this Agreement.

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

ECUA, an independent special district of the State of Florida acting by and through its duly authorized ECUA Board

BY: [Signature]
Lois Benson, Chairwoman

DATE: 2/23/21

ATTEST:

BY: [Signature]
Deputy Clerk (SEAL)

Legal in form and valid as drawn:

[Signature]
ECUA Attorney



CITY OF PENSACOLA, a Florida Municipal Corporation acting by and through its duly authorized City Council.

BY: [Signature]
Mayor, Grover C. Robinson, IV

DATE: 4-16-2021

ATTEST: [Signature]
City Clerk (SEAL)

Legal in form and valid as drawn:

[Signature]
City Attorney



Legislation Details (With Text)

File #: 21-00222 **Version:** 1 **Name:**

Type: Legislative Action Item **Status:** Consent Agenda

File created: 2/24/2021 **In control:** City Council

On agenda: 4/8/2021 **Final action:**

Enactment date: **Enactment #:**

Title: INTERLOCAL AGREEMENT BETWEEN THE CITY OF PENSACOLA AND THE EMERALD COAST UTILITIES AUTHORITY (ECUA) FOR BURGESS ROAD SIDEWALK AND DRAINAGE IMPROVEMENTS PROJECT

Sponsors: Grover C. Robinson, IV

Indexes:

Code sections:

Attachments: 1. Interlocal Agreement, Emerald Coast Utilities Authority

Date	Ver.	Action By	Action	Result
4/5/2021	1	Agenda Conference	Placed on Consent Agenda	Pass

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

INTERLOCAL AGREEMENT BETWEEN THE CITY OF PENSACOLA AND THE EMERALD COAST UTILITIES AUTHORITY (ECUA) FOR BURGESS ROAD SIDEWALK AND DRAINAGE IMPROVEMENTS PROJECT

RECOMMENDATION:

That City Council approve the Interlocal Agreement between the City of Pensacola and the Emerald Coast Utilities Authority (ECUA) for the Burgess Road Sidewalk and Drainage Improvements Project.

HEARING REQUIRED: No Hearing Required

SUMMARY:

ECUA owns and maintains the water and sewer utilities within the right of way along Burgess Road and has committed to contribute an amount not to exceed \$200,000 for the cost of said utility upgrades that lie within the project boundaries.

PRIOR ACTION:

None

FUNDING:

Budget: \$ 1,640,000.00 Local Option Sales Tax Fund-Burgess Road
200,000.00 Local Option Sales Tax Fund-Sidewalk Improvements
500,000.00 Escambia County Interlocal Agreement
200,000.00 Emerald Coast Utilities Authority Agreement
\$ 2,540,000.00

Actual: \$ 2,039,662.68 Construction Contract
203,966.27 10% Contingency
209,885.68 Engineering Design/Permitting/Surveying (Completed)
50,000.00 Engineering Management/Inspection (Estimate)
8,000.00 Construction Testing/Misc. (Estimate)
\$ 2,511,514.63

FINANCIAL IMPACT:

The City has allocated \$1,640,000 for this project through the Local Option Sales Tax Fund-Burgess Road. In addition, a budget transfer in the amount of \$200,000 will be made within the Local Option Sales Tax Fund moving funding from Sidewalk Improvements to this project. Additional funding in the amount of \$700,000 will be reimbursed through Interlocal Agreements with Escambia County and the Emerald Coast Utility Authority. Escambia County will provide \$500,000 to be used for sidewalk and drainage improvements for those portions of Burgess Road that lie within the County's jurisdictional boundaries. ECUA will provide \$200,000 for the cost of utility upgrades that lie within the project's boundaries.

CITY ATTORNEY REVIEW: Yes

3/26/2021

STAFF CONTACT:

Keith Wilkins, City Administrator
Kerrith Fiddler, Duty City Administrator - Community Development
L Derrik Owens, Director of Public Works and Facilities/City Engineer

ATTACHMENTS:

- 1) Interlocal Agreement, Emerald Coast Utilities Authority

PRESENTATION: No

CONTRACTS/AGREEMENTS REQUIRING MAYORAL SIGNATURE
FINAL DOCUMENT REVIEW FORM
(blue)

DEPARTMENT

Document Title: INTERLOCAL AGREEMENT

Project **X** Contract Lease Other (Check One)

Brief Description: INTERLOCAL AGREEMENT BETWEEN THE CITY OF PENSACOLA AND THE EMERALD COAST UTILITIES AUTHORITY (ECUA) FOR THE BURGESS ROAD SIDEWALK AND DRAINAGE IMPROVEMENTS PROJECT.

Contract Cost: \$ 200,00.00 Department: ENGINEERING AND CONSTRUCTION SERVICES

Approved by Mayor: / / Dept Contact Person: BRAD HINOTE/ SHERI CARLTON

OR
Approved By Council: 04/08/2021 Sent to Contract Admin. (Purchasing) 4/15/21

CONTRACT ADMINISTRATOR (PURCHASING) Date Received 4/15/21

N/A Debarment Check

Pending (See comments below): _____ Sent to Department / /
(Signature)

Approved:  Sent to Contract/Lease Counsel 4/15/21
(Signature)

Comments: _____

CONTRACT/LEASE COUNSEL Date Received / /

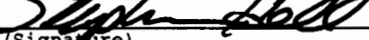
Pending (See comments below): _____ Sent to Department / /
(Signature)

Approved: _____ Sent to Budget Review / /
(Signature)

Comments: _____

BUDGET REVIEW Date Received / /

Pending (See comments below): _____ Sent to Department / /
(Signature)

Approved:  Sent to Risk Manager 4/15/21
(Signature)

Comments: _____

CONTRACTS/AGREEMENTS REQUIRING MAYORAL SIGNATURE
FINAL DOCUMENT REVIEW FORM
(page 2)

RISK MANAGER

Date Received 4/16/21

Pending (See comments below): _____ (Signature)

Sent to Department / /

Approved: [Signature]
(Signature)

Sent to City Attorney 4/16/21

Comments: _____

CITY ATTORNEY

Date Received 4/16/21

Pending (See comments below): _____ (Signature)

Sent to Department / /

Approved: [Signature]
(Signature)

Sent to Mayor 4/16/21

Comments: _____

MAYOR'S OFFICE (CITY ADMINISTRATOR)

Date Received 4/16/21

Pending (See comments below): _____ (Signature)

Sent to Department / /

Approved: [Signature]
(Signature)

Sent Original to City Clerk 4/19/2021

Comments: _____

CITY CLERK

Date Received 4/20/21

Pending (See comments below): _____ (Signature)

Sent to Dept/Admin/Legal / /

Approved: [Signature]
(Signature)

Retained original/copy in Fortis

Comments: Return (1) copies to Engineering

Returned 1 ONLY original(s) to Department 4/21/21

Initials: [Signature]