

PARTICIPATION AGREEMENT FOR SELF-INSURANCE PROGRAMS

THIS PARTICIPATION AGREEMENT FOR SELF-INSURANCE PROGRAMS (hereinafter “Participation Agreement”) is entered into between the VOLUSIA COUNTY TAX COLLECTOR, (hereinafter “Participant” or “Tax Collector”), and the COUNTY OF VOLUSIA, a body corporate and politic and political subdivision of the State of Florida (hereinafter “County”).

RECITALS

WHEREAS, the County is one of twenty charter counties in Florida and governed by the Volusia County Charter enacted by special act of the Florida Legislature, and adopted by Volusia County voters, in 1970;

WHEREAS, the Charter abolished the constitutional offices of property appraiser, sheriff, supervisor of elections, and tax collector and transferred those duties to County government;

WHEREAS, Amendment 10 to the Florida Constitution takes effect on January 5, 2021 (“Effective Date”), which will re-establish the constitutional offices of property appraiser, sheriff, supervisor of elections, and tax collector ;

WHEREAS, a portion of the functions of the Tax Collector are currently performed by an appointed department head of the County, but will transition to an independent county constitutional officer on January 5, 2021;

WHEREAS, on July 21, 2020, the Volusia County Council adopted Resolution 2020-127 (“Resolution”) which included a Transition Plan for Volusia County Tax Collector;

WHEREAS, the County and Tax Collector are committed to an orderly transition;

WHEREAS, pursuant to Florida Statute section 112.08, counties, municipalities, constitutional officers, and special districts of the State of Florida have authority to self-insure any plan for health, accident, and hospitalization coverage or enter into a risk management consortium to provide such coverage, subject to approval of the Florida Office of Insurance Regulation;

WHEREAS, pursuant to Florida Statute, section 768.28(16), the state, its agencies, and subdivisions are authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance for whatever coverage they may choose, or to have any combination thereof, in anticipation of any claim, judgment, and claims bill which they may be liable to pay pursuant to Florida Statutes, section 768.28;

WHEREAS, such units of local government have authority to enter interlocal agreements and exercise jointly with any other public agency of the state any power, privilege or authority

which they share in common and which each might exercise separately as provided in section 163.01, Florida Statutes;

WHEREAS, the County and Tax Collector desire to participate in a self-funded program for risk management (“Self-Insurance Program”), for the mutual benefit of each and to provide for the payment of contribution amounts necessary to achieve and preserve adequate levels of funding and reserve balances to enable payment of the benefits and administrative costs incurred under such programs; and,

WHEREAS, the County and Tax Collector have successfully worked together to arrive at this Participation Agreement to begin on the Effective Date to further implement the Resolution;

NOW THEREFORE, the County and Tax Collector agree as follows:

I. SELF-INSURANCE PROGRAM.

A. **PROGRAM.** The County Council by resolution shall establish the Self-Insurance Program and all procedures for the program. The County, in its sole discretion, shall determine the method and manner through which it provides the Self-Insurance Program under this agreement.

B. **COVERAGES PROVIDED.** The Self-Insurance Program consists of self-insurance, administration, and insurance policies to appropriately absorb or transfer risk from County and Participant operations. The purpose of the Self-Insurance Program is generally to manage the risks associated with the County’s operations and Participant’s operations; provide uniform and centralized self-insurance for Automobile Liability, General Liability, Workers' Compensation, Employment-Related Practices Liability, Professional Liability; and to provide insurance coverage for such other risks as may from time to time be added, amended, or removed by the County’s Risk Manager or County’s designee.

C. **DEFINITIONS APPLICABLE TO SELF-INSURANCE PROGRAM.** Unless the context otherwise requires, words and phrases used in this Participation Agreement are defined in Exhibit A, attached hereto and incorporated herein.

D. **SCOPE OF COVERAGE.**

1. **In General.** The Self-Insurance Program shall cover all officials, officers, employees, and volunteers of the Participant while acting within the course and scope of their duties. It is intended that the Self-Insurance Program shall only cover such officials, officers, employees, and volunteers of the Participant while acting in the scope and course of their employment while acting in good faith and in the best interests of the Participant. By participating in the Self-Insurance Program, Participant does not intend to waive sovereign immunity. The County reserves the right to assert sovereign immunity to the

extent allowed by law and to assert restrictions, conditions, and limitations on the settlement of Claims and payments of judgments, as set forth in applicable state or federal law.

2. Self-Insurance Program.

a) *Specimen Policies.* The County will assemble, maintain and distribute to the Participant, copies of Specimen Policies for Automobile Liability, General Liability, Workers' Compensation, Professional Liability, and Employment-Related Practices Liability. Unless the context otherwise requires, words and phrases used in the Specimen Policies shall be defined within the Specimen Policies. To the extent that there is any conflict between the definitions contained in Exhibit A and the definitions contained in the Specimen Policies, the definitions contained in the Specimen Policies shall control.

b) *Modification of Specimen Policies.* Periodically, the County may modify the Specimen Policies by adding, removing, or amending the forms and endorsements attached. When such modifications are made, Participant will be provided with copies of the revised Specimen Policies and all attached forms at least sixty (60) days prior to the effective date of any change.

c) *Specimen Policies Reservation.* The County utilizes insurance industry forms and standards in its Specimen Policies which are specifically identified in this Agreement which may be amended or replaced from time to time in the sole discretion of the Risk Manager or County's designee. County reserves the right to utilize any source of form or standard for its Specimen Policies. If changes are made, Participant shall be provided with copies of any changed Specimen Policies and all attached forms at least sixty (60) days prior to the effective date of any changes.

d) *Automobile Liability.* The Specimen Policy for Automobile Liability will be based upon the liability coverage section of the most recent version of the Business Auto Coverage Form, Form CA 00 01, as issued by the Insurance Services Office, Inc., and with Symbol 1 ("any auto") selected. The Specimen Policy for Automobile Liability will also include designated endorsements as selected by the County. Where possible, such endorsements modifying the Specimen Policy for Automobile Liability may be selected from the forms and endorsements issued by the Insurance Services Offices, Inc., and approved for use by insurance companies in the State of Florida.

e) *General Liability.* The Specimen Policy for General Liability will be based upon the most recent version of the Commercial General Liability Coverage Form, Form CG 00 01, as issued by the Insurance Services Office, Inc. The Specimen Policy for General Liability will also include designated endorsements as selected by the County. Where possible, such endorsements modifying the Specimen Policy for General Liability may be selected from the forms and endorsements issued by the Insurance Services Offices, Inc. and approved for use by insurance companies in the State of Florida.

f) *Workers' Compensation.* The Specimen Policy for Workers' Compensation will cover all liabilities of Participant arising under Chapter 440, Florida Statutes, and will be based upon the most recent version of the Workers Compensation and Employer's Liability Insurance Policy Form, Form WC 00 00 00 C, as issued by the National Council on Compensation Insurance. The Specimen Policy for Workers' Compensation will also include designated endorsements as selected by the County. Where possible, such endorsements modifying the Specimen Policy for Workers' Compensation may be selected from the forms and endorsements issued by the National Council on Compensation Insurance and approved for use by insurance companies in the State of Florida.

g) *Professional Liability.* The Specimen Policy for Professional Liability will be based upon the most recent version of the Professional Liability Coverage Form, Form MI 00 01, as issued by the Insurance Services Office, Inc. The Specimen Policy for Professional Liability will also include designated endorsements as selected by the County. Where possible, such endorsements modifying the Specimen Policy for Professional Liability may be selected from the forms and endorsements issued by the Insurance Services Offices, Inc., and approved for use by insurance companies in the State of Florida.

h) *Employment-Related Practices Liability.* The Specimen Policy for Employment-Related Practices Liability will be based upon the most recent version of the Employment-Related Practices Liability Coverage Form, Form EP 00 01, as issued by the Insurance Services Office, Inc. The Specimen Policy for Employment-Related Practices Liability will also include designated endorsements as selected by the County. Where possible, such endorsements modifying the Specimen Policy for Employment-Related Practices Liability may be selected from the forms and endorsements issued by the Insurance Services Office, Inc., and approved for use by insurance companies in the State of Florida.

i) *Claim Costs and Administrative Expenses.* The Self-Insurance Program covers all Claim costs and administrative expenses, which are covered by the Automobile Liability, General Liability, Workers' Compensation, Professional Liability, and Employment-Related Practices for the Participant.

3. **Policies of Insurance Issued by Carriers.** The scope of coverage for insurance policies issued by insurance companies shall be governed by the terms and conditions of the specific insurance policies.

E. **UTILIZATION OF COUNTY ATTORNEY.**

1. This section is intended to supersede and replace references to legal services in the Resolution and provide additional detail.

2. The Self-Insurance Program utilizes the legal services of the County Attorney to provide uniform and centralized self-insurance to the County and the Participating Independent Constitutional Officers. Participant acknowledges that the County Attorney provides additional legal services to the County. Because their operations are diverse, it is possible that the County and Participant may develop adverse interests in matters, such as budgetary disputes, in which the County Attorney represents the County. Participant acknowledges it will need to retain separate counsel if it requires legal services in matters adverse to the County. Participant maintains the right to retain independent counsel at its own expense at any time.

3. As a condition of participating in the Self-Insurance Program, Participant agrees that the County Attorney may represent the County in matters adverse to Participant while representing Participant in substantially unrelated matters. For purposes of this section, "the County" may include any employees, officials, agents, or other persons and entities represented by the County Attorney.

4. Should adverse interests develop in a matter, Participant agrees to provide informed consent to the continued representation of the County Attorney in all substantially unrelated Self-Insurance Program matters if (1) the County Attorney reasonably believes he or she will be able to provide competent and diligent representation to each affected participant in the Self-Insurance Program; (2) the representation is not prohibited by law; and (3) the representation does not involve the assertion of a position adverse to another participant in the Self-Insurance Program when the County Attorney represents both participants in the same proceeding before a tribunal.

5. If the County Attorney concludes that Participant should not agree to representation by the County Attorney in a Self-Insurance Program matter due to the County Attorney's representation of the County in a substantially unrelated matter, the County shall select appropriate conflict counsel to represent Participant at the expense of the Self-Insurance Program. If Participant does not consent to the representation offered by the County Attorney, Participant may receive the benefits of the Self-Insurance Program if it retains mutually agreeable conflict counsel at its own expense.

F. WITHDRAWAL AND REENTRY OF PARTICIPANT FROM THE SELF-INSURANCE PROGRAM.

1. Once admitted to participate in the Self-Insurance Program, Participant may not withdraw from the Self-Insurance Program without the consent of the County Council, unless otherwise provided herein.

2. Participant may petition County Council to re-enter the Self-Insurance Program two (2) years from the date of its removal from the Program. County Council retains the sole discretion to allow reentry and establishment of any terms and conditions upon reentry. Participant shall only be allowed to re-enter the Self-Insurance Program on October 1 of each Fiscal Year. Should Participant desire to re-enter the Self-Insurance Program, Participant shall provide written notice of its request to the County Manager no later than twelve (12) months in advance of desired reentry date. Participant shall, upon request of County, timely provide all data requested for an actuarial study to determine the financial impact on the Self-Insurance Program and reimburse County for the actuarial study and all related costs.

G. SELF-INSURANCE PROGRAM FUNDING.

1. Annually, the County's budget office shall determine the Annual Self-Insurance Premium Amount for Participant for the ensuing Fiscal Year no later than the end of the first full business week in April.

2. County shall notify the Participant in writing of the Annual Self-Insurance Premium Amount.

H. SETTLEMENT AND SPECIAL COUNSEL.

1. Settlement of Claims.

a) Claims arising from any of the risks covered by the Self-Insurance Program shall be settled in accordance with all ordinances and County Council resolutions governing the Self-Insurance Program.

b) County is authorized to settle all Claims on behalf of Participant covered under the Self-Insurance Program.

2. Notwithstanding anything in the County Code of Ordinances or County Council Self-Insurance Resolutions, the County Attorney is authorized to employ outside counsel and special counsel, from time to time, to perform legal services in connection with Claims asserted against the Self-Insurance Program and Participant.

3. Subject to the right of review of the County Manager, all strategic decisions related to the settlement and administration of Claims covered by the Self-Insurance Program, not otherwise provided for herein, including but not limited to decisions related to the expenditure of costs and decisions to appeal, shall be made by the County, including, but not limited to, by the County Risk Manager after consultation, as appropriate, with the County Attorney's office.

I. **SUBROGATION RIGHTS.** In all instances where the Self-Insurance Program makes any payments on behalf of Participant in relation to any Claim, the County shall be subrogated to all rights of the Participant against any third parties that are potentially liable or responsible for the Occurrence that gave rise to the Claim. The Participant shall do nothing after the Occurrence has transpired to impede such rights of the County.

J. **ADMINISTRATION AND PURCHASE OF INSURANCE POLICIES.**

1. **Authorization.** The County is authorized to purchase insurance to protect the Participant and County against property and casualty risks for which the County has determined that a need has arisen for the purchase of such insurance coverages so as to transfer some or all of the risks to third parties. The County is authorized to effectuate and contractually bind coverage on behalf of the Participant.

K. **INSURANCE POLICY PREMIUMS.** All premiums paid by the County for the purchase of insurance policies outside of the Self-Insurance Program shall be chargeable to Participant, other participating constitutional officers of the County, departments, divisions, agencies, offices, and organizational units of the County covered under said insurance policies. Any surplus of funds chargeable to various departments, divisions, agencies, offices, and organizational units of the County for insurance premiums shall be retained by the County in County reserve fund. Any

surplus of funds chargeable to the Participant or other participating constitutional officer of the County for insurance premiums shall likewise be retained by the County.

L. **INSURANCE POLICY DEDUCTIBLES AND SELF-INSURED RETENTIONS.** The insurance policies purchased by the County may be subject to deductibles and self-insured retentions. To the extent that it can be reasonably segregated and the County pays any deductible or self-insured retention on behalf of Participant, the County shall be authorized to charge the cost of payment to the Participant.

M. **PARTICIPANT INSURANCE REQUESTS.**

1. The County may elect to purchase insurance policies upon written request of a Participant related to the Participant's operations not otherwise covered by the Self-Insurance Program and at the discretion of the County that includes coverage for Participant.

2. The Participant shall be responsible for the portion of the premium attributable to its inclusion in those insurance policies. Any surplus of funds chargeable to Participant shall be retained by the County.

3. The County shall charge the cost of payment back to the Participant to the extent the County pays any deductible or self-insured retention on behalf of the Participant.

4. If Participant elects to withdraw from its participation in insurance policy that was obtained for the Participant at its request and the Participant is the only named insured on the policy, Participant shall give notice of such intent to withdraw from that policy, in writing, no later than 120 days prior to the expiration of the insurance policy at issue. Once notice has been given, it cannot be rescinded during that policy period.

N. **INSURANCE CLAIMS, SETTLEMENTS AND PROCEEDS.**

1. Insurance claims, settlements and proceeds.

a) The County shall be authorized to make and settle Claims on behalf of the County and any Participant covered under a policy of insurance obtained by or through the County.

b) The County shall be authorized to receive payment of insurance proceeds from the insurance companies in settlement of Claims on behalf of all parties covered under a policy of insurance obtained by or through the County. The County shall be entitled to deduct any costs incurred in adjudicating such Claim, including deductible and self-insured retention payments, from such proceeds before forwarding such proceeds to Participant for the suffered Loss.

O. **SALVAGE AND RECOVERY RIGHTS.** The County shall have the right to release, on behalf of Participant, all rights of salvage and recovery to any insurance company that pays a covered Claim. To the extent the County incurs costs in the adjudication of an insured Claim against Participant's property, including costs incurred satisfying a deductible or self-insured retention, the County shall be entitled to assume the rights of salvage and recovery of the Participant's property so that the County may recover such incurred costs.

P. **RECOVERIES.**

1. The County is authorized to pursue, collect, and retain Participant Recoveries and General Recoveries from third parties in relation to the payment of any Claims.

2. The Participant shall cooperate with the County to pursue, and collect, Participant Recoveries and General Recoveries from third parties in relation to the payment of any Claims.

Q. **PARTICIPANT RECOVERIES.** Participant Recoveries shall be credited against the Participant's Claim that generated the recovery of funds.

R. **COUNTY INSURANCE AND INDEMNIFICATION STANDARDS.**

1. Insurance and Indemnity Reviews.

a) The County shall be responsible for reviewing and approving all proposed insurance and indemnity provisions, including any limitation on liability provisions in favor of a third party, in:

(1) All Participant contracts, including, but not limited to, construction contracts, vendor agreements, leases, easements, license and use agreements, permits, applications, grants, and all other agreements;

(2) All Participant bid and procurement documents; and,

(3) Any Participant personnel or related policies that have the potential of expanding or creating Workers' Compensation benefits not provided under Chapter 440 of the Florida Statutes.

2. Drafts of Participant proposed contracts, procurement documents, and any other document with an insurance or indemnity provision shall be provided to the County for review and approval not less than thirty (30) days prior to the execution, release, or submission for execution of such documents.

S. STANDARD INSURANCE AND INDEMNIFICATION REQUIREMENTS.

1. The County is authorized, subject to the concurrence of the County Attorney, to develop standard insurance and indemnification requirement terms and conditions to be used in all Participant contracts, agreements, leases, use agreements, and procurement documents. Any limitation on any liability provision in favor of a third party contained in a Participant contract, agreement, use agreement, or procurement document, shall be subject to the County's review and approval.

T. PARTICIPANT-PRODUCED EVENTS.

1. The County shall be responsible for the establishment, review, and approval of the insurance and indemnification provisions to be required of all vendors and participants in Participant-Produced Events.

2. Participant agrees to submit all participant-produced events to the County Risk Manager for approval at least thirty (30) days prior to the scheduled date on which the event will begin or occur.

II. TERM, RENEWAL, AND TERMINATION OF AGREEMENT.

A. **TERM.** The Tax Collector and County recognize that the Council prepares its budget based on a fiscal year beginning on October 1 and ending September 30. The initial term of this Self Insurance Program shall begin at 12:00 a.m. on January 5, 2021 and last through 11:59 p.m. on September 30, 2021.

B. **RENEWAL.** Except as provided for herein as to specific insurance policies, participation in this Self-Insurance Program shall be automatically renewed each subsequent October 1st for a full fiscal year, so long as this Participation Agreement remains in effect.

C. **NOTICE OF TERMINATION.** The Tax Collector shall continue to utilize and/or participate in the Self-Insurance Program as set forth in this Participation Agreement, unless the Tax Collector provides written notice to the County Manager before 5:00 p.m.

on April 1. The County shall continue to provide to the Tax Collector the services and programs set forth in this Participation Agreement unless the County Manager provides written notice to the Tax Collector before 5:00 p.m. on April 1.

D. **TERMINATION.** Upon receipt of a timely notice of termination, the services and programs set forth in this Participation Agreement will end on September 30 of the fiscal year in which the notice of termination was given.

III. **INTERLOCAL AGREEMENT.**

A. **STATUTE.** Pursuant to section 163.01, Florida Statutes, units of local government have the authority to enter interlocal agreements and exercise jointly with any other public agency of the state any power, privilege or authority which they share in common and which each might exercise separately.

B. **INTERLOCAL AGREEMENT.** This Participation Agreement shall be deemed an interlocal agreement for purposes of section 163.01, Florida Statutes, upon the transition of the Tax Collector from a county charter officer to an independent constitutional officer on January 5, 2021.

IV. **ADDITIONAL AGREEMENTS.**

A. **Additional Agreements.** After this Agreement is executed, the County or Tax Collector may determine that additional agreements or changes to this agreement may be appropriate to implement the intent of the Resolution or this agreement. The Tax Collector and County agree to enter into additional agreements or amend this agreement if appropriate.

B. **Conflicts between Agreements.** . If there are any conflicts between this Participation Agreement and the Resolution, the terms of this Agreement will prevail. If additional agreements are entered to between the Tax Collector and the County with regard to items addressed in the Resolution, the later agreement or amendment shall prevail over any prior agreement and the Resolution. As to all agreements, more specific provisions shall prevail over general provisions as to the specific subject of the provision. If an agreement is entered into between the Tax Collector and the County regarding a specific subject, the more specific agreement shall apply independently of all other agreements and the Resolution as to that specific subject.

V. **MISCELLANEOUS.**

A. **NON-WAIVER.** Nothing herein shall be construed as waiving any liability limits or other protections or immunities provided by common law or Florida law to any Participant or to any officers or employees of Participant.

- B. **MODIFICATIONS.** No provision of this Participation Agreement may be changed, altered, modified, or waived except in writing signed by both parties, which writing shall specifically reference this Participation Agreement and the specific provision which the parties intend to modify or waive.
- C. **COMPLETE AGREEMENT.** This Participation Agreement sets forth the entire understanding related to the matters set forth herein between the parties and supersedes any and all prior oral or written agreements, understandings, representations, or warranties between the parties, except as specified herein.
- D. **SEVERABILITY AND ENFORCEABILITY.** Should any provision of this Agreement, as set forth herein be declared illegal or unenforceable by any court of competent jurisdiction, such that it cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Participation Agreement in full force and effect.
- E. **TERMS.** Common nouns and pronouns refer to the singular and plural, identity of the person or persons, firm or corporation as the context requires. Any reference to the Code or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.
- F. **HEADINGS.** All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Participation Agreement.
- G. **RECITALS.** The paragraphs outlined in the Recitals above are true and correct and made a part of this Participation Agreement.
- H. **NOTICES.** Notices, consents, and approvals, which any party shall be required or shall desire to make or give under this Agreement shall be in writing and shall be sufficient only when mailed by certified mail, first class postage affixed, addressed as follows:

County: County of Volusia ATTN: County Manager 123 West Indiana Avenue, Room 301 DeLand, Florida 32720-4613 With Copies to: County of Volusia	Participant: Volusia Tax Collector ATTN: Will Roberts 123 West Indiana Avenue, Room DeLand, Florida 32720
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ATTN: County Attorney 123 West Indiana Avenue, Room 301 DeLand, Florida 32720-4613	
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IN WITNESS WHEREOF, the parties hereto have executed this PARTICIPATION AGREEMENT SELF-INSURANCE PROGRAMS between the Tax Collector and the County of Volusia as set forth below.

**VOLUSIA COUNTY
TAX COLLECTOR**

**COUNTY OF VOLUSIA,
FLORIDA**

By: _____
Will Roberts
Tax Collector

By: _____
Ed Kelley
County Chair

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____

[Printed name and title]

By: _____
George Recktenwald
County Manager

EXHIBIT A

SELF-INSURANCE PROGRAM DEFINITIONS

- (a) *Annual Self-Insurance Premium Amount*: the amount that Participant is required to pay into the Self-Insurance Program for the purpose of coverage for the ensuing fiscal year.
- (b) *Automobile Liability*: that which is deemed payable under the terms and conditions of the most recent edition of the Specimen Policy for Automobile Liability as kept on file with the County.
- (c) *Claim*: a demand by an individual or entity, made against Participant, to recover money as a result of a loss that is covered by either the Self-Insurance Program or by a policy maintained in the Miscellaneous Insurance Program.
- (d) *General Liability*: that which is deemed payable under the terms and conditions of the most recent edition of the Specimen Policy for General Liability as kept on file with the County Risk Management Office.
- (e) *General Recoveries*: those amounts which are recovered from third parties as a result of Occurrences of property damage or other losses suffered by the County.
- (f) *Loss*: a monetary liability resulting from an Occurrence against Participant under the coverages provided by this Agreement.
- (g) *Occurrence*: an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- (h) *Participant Produced Event*: any event organized and managed by Participant.
- (i) *Participating Independent Constitutional Officers*: Volusia County Property Appraiser, Volusia County Supervisor of Elections, Volusia Sheriffs Office, and Volusia County Tax Collector.
- (j) *Risk Manager*: the person employed by the County as the risk manager.
- (k) *Self-Insurance Program*: collectively, the Self-Insurance Program established by County ordinance or County Council resolution, and all property & casualty related insurance policies maintained by or through the County and any related activities and responsibilities delegated to the County's Risk Division.
- (l) *Specimen Policy or Policies*: the insurance form that shall be used to determine whether the Self-Insurance Program will be responsible for administering, adjusting and paying any Claim or Occurrence which is submitted to the Self-Insurance Program by Participant.
- (m) *Workers' Compensation*: that which is deemed payable under the terms and conditions of the most recent edition of the Specimen Policy for Workers' Compensation as kept on file with the County.

**PARTICIPATION AGREEMENT FOR
EMPLOYEE BENEFITS PROGRAMS**

THIS PARTICIPATION AGREEMENT FOR EMPLOYEE BENEFITS PROGRAMS (hereinafter “Participation Agreement”) is entered into between the VOLUSIA COUNTY TAX COLLECTOR, (hereinafter “Participant” or “Tax Collector”), and the COUNTY OF VOLUSIA, a body corporate and politic and political subdivision of the State of Florida (hereinafter “County”).

RECITALS

WHEREAS, the County is one of twenty charter counties in Florida and governed by the Volusia County Charter enacted by special act of the Florida Legislature, and adopted by Volusia County voters, in 1970;

WHEREAS, the Charter abolished the constitutional offices of property appraiser, sheriff, supervisor of elections, and tax collector and transferred those duties to County government;

WHEREAS, Amendment 10 to the Florida Constitution takes effect on January 5, 2021 (“Effective Date”), which will re-establish the constitutional offices of property appraiser, sheriff, supervisor of elections, and tax collector ;

WHEREAS, a portion of the functions of the Tax Collector are currently performed by an appointed department head of the County, but will transition to an independent county constitutional officer on January 5, 2021;

WHEREAS, on July 21, 2020, the Volusia County Council adopted Resolution 2020-127 (“Resolution”) which included a Transition Plan for Volusia County Tax Collector;

WHEREAS, the County and Tax Collector are committed to an orderly transition;

WHEREAS, pursuant to Florida Statute section 112.08, counties, municipalities, constitutional officers, and special districts of the State of Florida have authority to self-insure any plan for health, accident, and hospitalization coverage or enter into a risk management consortium to provide such coverage, subject to approval of the Florida Office of Insurance Regulation;

WHEREAS, pursuant to Florida Statute, section 768.28(16), the state, its agencies, and subdivisions are authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance for whatever coverage they may choose, or to have any combination thereof, in anticipation of any claim, judgment, and claims bill which they may be liable to pay pursuant to Florida Statutes, section 768.28;

WHEREAS, such units of local government have authority to enter interlocal agreements and exercise jointly with any other public agency of the state any power, privilege or authority

which they share in common and which each might exercise separately as provided in section 163.01, Florida Statutes;

WHEREAS, the County and Tax Collector desire to participate in a self-funded program for risk management (“Self-Insurance Program”), and health plan coverage and other employee benefits plans (“Employee Benefits Program”), for the mutual benefit of each and to provide for the payment of contribution amounts necessary to achieve and preserve adequate levels of funding and reserve balances to enable payment of the benefits and administrative costs incurred under such programs; and,

WHEREAS, the County and Tax Collector have successfully worked together to arrive at this Participation Agreement to begin on January 5, 2021;

NOW THEREFORE, the County and Tax Collector agree as follows:

I. EMPLOYEE BENEFITS PROGRAM.

- A. **PROGRAM.** The County Council by resolution shall establish the Employee Benefits Program and all procedures for the program. The County, in its sole discretion, shall determine the method and manner through which it provides the Employee Benefits Program under this agreement.
- B. **PURPOSE.** By this Participation Agreement, the parties intend to participate in the Employee Benefits Program for Employees of Participant, as well as certain eligible Dependents, retirees, and COBRA beneficiaries, all as set forth in the Plan Document, as such term is defined herein. The parties intend to bind themselves to the terms and conditions of this Participation Agreement in accordance with and to the fullest extent allowed by Florida law. The parties intend to establish this Employee Benefits Program for immediate participation by each of them as of the Effective Date.
- C. **DEFINITIONS APPLICABLE TO EMPLOYEE BENEFITS PROGRAM.** Unless the context otherwise requires, words and phrases attached hereto and incorporated herein as Exhibit A shall have the meanings set forth therein.
- D. **SCOPE OF COVERAGE.** This Participation Agreement shall govern the payment, reporting, and administrative obligations of the County and Participant relating to the Employee Benefits Program. This Participation Agreement also establishes a Benefits Review Team and outlines the program membership. Services for the self-funded health plan will be supplied through an "administrative services only" contract with an insurance company or a third party administrator in which such company will perform administrative services including, but not limited to: claims adjudication and payment; customer service; plan administration; provider network; disease management;

claims fiduciary responsibility; and reporting. For other employee benefit programs, coverage will be supplied through insurance carriers, specific to the program being offered, through a fully insured contract.

E. **WITHDRAWAL AND REENTRY OF PARTICIPANT FROM THE EMPLOYEE BENEFITS PROGRAM.**

1. Once admitted to participate in the Employee Benefits Program, Participant may not withdraw from the Self-Insurance Program without the consent of the County Council, unless provided otherwise herein.

2. Participant may petition County Council to re-enter the Self-Insurance Program two (2) years from the date of its removal from the Program. County Council retains the sole discretion to allow reentry and establishment of any terms and conditions upon reentry. Participant shall only be allowed to re-enter the Employee Benefits Program beginning 12:00 a.m., midnight January 1 and ending 11:59 p.m. December 31 of the reentry year. Should Participant desire to re-enter the Employee Benefits Program, Participant shall provide written notice of its request to the County Manager no later than 12 months in advance of its desired reentry date. Participant shall, upon request of County, timely provide all data requested for an actuarial study to determine the financial impact on the Employee Benefits Program and reimburse the County for any actuarial study and all related costs.

F. **TERM.** The initial term of this Employee Benefits Program begins at 12:00 a.m. midnight on January 5, 2021 and lasts through 11:59 p.m. on December 31, 2021. Each Plan Year thereafter shall begin at 12:00 a.m. midnight on January 1st through 11:59 p.m. on December 31st. Except as provided for herein, participation in this Employee Benefits Program shall be automatically renewed each subsequent Plan Year so long as this Participation Agreement remains in effect.

G. **MEMBERSHIP.** County shall be a participant as well as serve as the Plan Administrator for the Employee Benefits Program. In addition to the County, participants in this Program for the initial Plan Year are the Volusia County Sheriff, the Volusia County Tax Collector, and the Volusia County Property Appraiser. The Volusia County Tax Collector may also become a participant. The County may, at its option, add other participants. Changes in membership for subsequent terms shall not invalidate the Employee Benefits Program portion of this Participation Agreement for participants remaining or joining the Employee Benefits Program. Participants remaining in the Employee Benefits Program for subsequent terms shall not be required to enter into a new agreement as a result of such change in membership.

H. **REQUIRED PROGRAM CONTRIBUTIONS AND PREMIUMS.** County shall deduct required contributions from each employee's payroll for the Employee's chosen benefits plans. Participant will pay the annual budgetary amount per budgeted (filled and unfilled) position as well as employee and dependent calculated premiums for Employee's pay cycle, retiree, and COBRA monthly premiums as set by the County.

I. **EMPLOYEE ASSISTANCE PROGRAM (EAP) - FITNESS FOR DUTY (MANAGEMENT REFERRALS).**

1. Participant will contact the County's Human Resources Director to initiate a fitness for duty through the Employee Assistance Program (EAP) or the Occupational Health Clinic (OHC). Human Resources will initiate the fitness for duty on behalf of the Participant after being provided with all the information concerning the employee. A fit for duty evaluation is utilized when concerns about an employee's competence and/or safety on the job is questioned. It is used to evaluate an employee's ability to perform essential job functions and assess employee's imminent risk of violence to self or to others in the workplace. The fitness for duty evaluation helps the employer:

- a) Gain access to clinical information regarding an employee whose ability to function safely and productively in the work environment is in question;
- b) Obtain information on which to base critical workplace decisions; and,
- c) Provides a narrative report that addresses the County and Participant's questions about the employee's competence and/or safety on the job.

2. The cost of the fitness for duty evaluation for the EAP and/or the OHC will be charged back to the Participant, at its current rates, which are:

- (1) EAP
 - (a) \$3,300.00 - *Psychological evaluation*
 - (b) \$3,600.00 - *Psychiatric evaluation, and*
 - (c) \$4,600.00 - *Neurological evaluation*
- (2) OHC
 - (a) \$415.00 - *Physical examination*

3. The cost of the fitness for duty evaluation charged by the EAP and/or

OHC are subject to change and will be charged at the current rate at the time of the evaluation to the Participant.

J. ANNUAL OPEN BENEFITS ENROLLMENT.

1. The County shall provide an annual benefits open enrollment for Participant's employees.

a) **No Change to Benefits.**

(1) *Enrollment (roll over)*. If employee wishes to keep all of his/her benefits the same for the following plan year, he/she does not have to do anything; the current benefit selections will roll forward into the next plan year. This is inclusive of flexible spending accounts, which will be effective for the next plan year starting January 1 of each year. The Wellness Incentive Dollars and Dependent Health Care Subsidy will not roll over; employees will have to re-elect these selections each year.

b) **Change to Benefits.**

(1) If employee wants to make additions, deletions, or changes to enrollment in the medical, dental, vision, flexible spending account plans, and/or accident off the job insurances, he/she will have to log into the Employee Self Service (ESS). If Participant elects to not participate in the County payroll system, Participant will define how their participating employees will make additions, deletions, or changes in the medical, dental, vision, flexible spending account plans and/or accident off the job insurances.

(2) After the County conducts an annual open enrollment, if Participant is not utilizing the County's payroll system, Participant shall enter its employee's additions, deletions, or enrollments to the benefits vendors and enter the elected benefits enrollment employee information into its payroll system.

K. REQUIRED ELIGIBILITY INFORMATION.

1. If Participant is utilizing the County's payroll system, Participant will not be required to provide Human Resources with the following eligibility information:

a) Names of Employee and names of their Dependents, each

County employee ID number, social security numbers, addresses, dates of birth, gender, beneficiaries, coverage options, and tiers elected. Eligibility information is gathered at new employee orientations, qualifying events, terminations from employment, and during the annual open enrollment. This information is required to complete benefit selections at a new employee orientation, when a qualifying event is reported (birth, marriage, divorce, death, etc.), when a termination of employment takes place, after the annual open enrollment, and when an employee retires.

b) Any time an Employee adds a Dependent to a benefits plan a marriage certificate for spouse a birth certificate for child, and a social security card for the Dependent must be sent to Human Resources.

2. If Participant is not utilizing the County's payroll system, Participant is to submit the required eligibility information as outlined in subparagraph II.J.1. above directly to the applicable insurance companies of the County's benefits plans and the County's applicable administrative companies. Anytime an Employee adds a Dependent to a benefits plan, a marriage certificate, a birth certificate, and a social security card for Dependent must be sent to the Participant, if Participant is not utilizing the County's payroll system.

3. Each Participant shall utilize the County's applicable administrative vendors, which includes COBRA, retiree billing administrator, and Flexible Spending Account (FSA) administrator(s) used by the County and shall comply with all requirements of such COBRA, retiree and FSA administrator(s).

L. **FUNDING.** County shall develop premiums and budgetary amounts, and any plan changes for all employee benefits plan options. County will annually determine scheduled premium charges based, including, but not limited to, on claims experiences, program structure, coverage levels, administrative expenses, Claims Reserves requirements and other relevant factors. Subsequent to approval by the County, premiums, budgetary amounts, and benefit plan design shall be transmitted to Participant in July of each Plan Year as outlined herein.

M. **CONTRIBUTIONS.**

1. The County will pay the annual budgetary amount per budgeted (filled and unfilled) position, Employee and Dependent calculated premiums for Employee's pay cycle, retiree, and COBRA monthly premiums as set by the County for Participant if Participant is on the County

payroll system. If Participant is utilizing the County's payroll system, Participant does not have to perform audits of Employee's premiums for Employee's elected benefits.

2. If Participant is not utilizing the County's payroll system, Participant will have to pay the annual budgetary amount per (filled and unfilled) budgeted position, Employee and Dependent calculated premiums for Employee's pay cycle, retiree, and COBRA monthly premiums as set by the County and enter the premiums into their payroll system. If Participant is not utilizing the County's payroll system, Participant will also have to perform audits of Employee premiums for Employee elected benefits and is not entitled to any surplus or reserve in the Medical Benefits Fund nor responsible for funding any deficits.

N. **CLAIMS RESERVE.** County shall be responsible for maintaining the self-funded health plan Claims Reserves required by state laws and regulations and based on sound actuarial and accounting principles. The County may purchase stop loss insurance to protect against catastrophic claims of individuals enrolled in the Employee Benefits Program.

O. **DEFERRED COMPENSATION (457 PLAN).**

1. Employees of the Participant may participate in the County's deferred compensation plan ("457 Plan"), the 457 Plan is a retirement plan offered to public employees to set aside money from each paycheck toward retirement. The County does not match or provide any contributions into the 457 Plan.

2. The County retains a third party vendor to manage its retirement investments, including the 457 Plan. The County shall provide Participant's employees with the information regarding the vendor managing its 457 Plan.

3. Participants utilizing the County's payroll system will go through Human Resources for plan elections, terminations and changes to a participants deferred compensation account in the County's payroll system.

4. If Participant is not utilizing the County's payroll system, she will have to enter plan elections, terminations and changes to a participants deferred compensation account in to her own payroll system.

P. **PRE-TAX PREMIUM PLAN (IRS §125).**

1. The County has established a Pre-Tax Premium Plan ("IRS § 125 Plan"). Under the IRS § 125 Plan, premium expenses for Participant's enrolled employees and all enrolled eligible dependents will be paid with pre-tax dollars.

The documents required for the IRS § 125 Plan that govern the pre-tax benefits will include the Participant's agency name.

2. IRS Code §125 establishes what benefits are eligible for pre-tax plans. Currently, eligible pre-tax benefits include: Medical, Dental, Vision, and flexible spending accounts. All other insurances will be paid after taxes, including, but not limited to, short term disability, supplemental life insurance, off-the-job accident, cancer, critical illness, and heart stroke.

3. Once a participant elects to participate in the IRS § 125 Plan, they cannot add, drop or change coverages until the Annual Open Enrollment unless there is a Change in Status (qualifying event) such as marriage, divorce, death, birth, etc. In the case of a Change in Status, the Participant's employee will have thirty-one (31) days from the date of the event to make any changes.

Q. ACCOUNTING.

1. Accounting of the operations of the Employee Benefits Program shall be performed in accordance with generally accepted governmental accounting principles and Florida law.

2. The County will perform or cause to be performed a health plan claims audit of the ASO Contract Provider on an annual basis.

3. Human Resources shall prepare, or cause to be prepared, the annual self-funded health plan report required by Florida Statutes section 112.08 within three (3) months of the end of each Plan Year, with the required actuarial statement, prepared by an independent actuarial firm.

R. BENEFITS REVIEW TEAM.

1. The Benefits Review Team is comprised of representatives from the County Human Resources Department, who will serve as the Team Coordinator, and representatives from Participant and other participating Constitutional Officers of the County.

2. The Benefits Review Team will meet regularly to receive Employee Benefits Program updates, information on current and new benefit initiatives, annual costs of premiums and contributions, and benefits renewals. The County shall determine the schedule for these meetings.

S. **ASO CONTRACT PROVIDER.** The daily operations of the County's self-funded health plan will be conducted by the ASO Contract Provider in accordance with the terms of the administrative services contract in effect with the County. The ASO Contract Provider will process claims covered by this Agreement and provide other administrative services which may include: claims adjudication and payment; customer service; plan administration; provider network; disease management; claims fiduciary responsibility and claims reporting services. Health plan claims approved by the ASO Contract Provider shall be paid from the Medical Benefits Fund in accordance with the Plan Document.

T. **TERMINATION WITHDRAWAL AND REMOVAL.**

1. This Agreement may be terminated or the membership of any Participant, other than County, may be terminated as follows:

a) **Termination.** This Agreement may be terminated by the County. The County will provide notice of any such termination by June 1 of the then existing Plan Year. The effective date of such termination shall be 11:59 p.m. December 31 of the following Plan Year. (i.e. termination notice provided on June 1, 2021 would be effective at 11:59 p.m., December 31, 2022).

b) **Withdrawal.** Participant withdrawal from the Program and from this Participation Agreement. Written notice of withdrawal must be provided to the County on or before June 1 of the then existing Plan Year. The effective date of such withdrawal shall be effective 12:00 a.m. on January 1st of the following Plan Year. (i.e. notice of withdraw provided June 1, 2021 would be effective at 12:00 a.m. on January 1, 2022). Health plan claims incurred beyond this date by Participant's employees, in the event of withdrawal, shall not be paid from the Medical Benefits Fund. In the event of withdrawal, Participant shall remain liable for any contributions due on or prior to the effective date of withdrawal. Subsequent to withdrawal, Participant will receive no services of the Program.

c) **Removal.** Participant may be removed from the Program upon the action of the County Council. Reasons for removal including, without limitation, failure to timely remit contributions to the Medical Benefits Fund; failure to remit required premiums and/or applicable Program administrative fees; failure to timely submit required reports; or engagement in activities which adversely affect the operation of the Program. Prior to County Council action, notice of proposed removal

shall be delivered to the Participant in writing. The notice shall state the reasons for the proposed removal and provide a time period within which these may be corrected. Removal shall take effect on the first day of the next ensuing month following County Council action on the removal. Claims incurred beyond this date by expelled Participant shall not be paid from the Medical Benefits Fund. Following removal, Participant shall remain liable for any contributions due on or prior to the effective date of removal. Subsequent to removal, Participant will receive no services of the Program.

d) **Participant Reinstatement in Program.** If Participant withdraws from the Program, Participant will not be eligible to rejoin for a minimum of two (2) years from the date of withdrawal. If Participant is removed from the Program, Participant must petition the County Council for permission to rejoin the Program by August 31. Reinstatements will occur on January 1 of the Plan Year.

II. **ADDITIONAL AGREEMENTS.**

A. **ADDITIONAL AGREEMENTS.** After this Agreement is executed, the County or Tax Collector may determine that additional agreements or changes to this agreement may be appropriate to implement the intent of the Resolution or this agreement. The Tax Collector and County agree to enter into additional agreements or amend this agreement if appropriate.

B. **CONFLICTS BETWEEN AGREEMENTS.** If there are any conflicts between this Participation Agreement and the Resolution, the terms of this Agreement will prevail. If additional agreements are entered to between the Tax Collector and the County with regard to items addressed in the Resolution, the later agreement or amendment shall prevail over any prior agreement and the Resolution. As to all agreements, more specific provisions shall prevail over general provisions as to the specific subject of the provision. If an agreement is entered into between the Tax Collector and the County regarding a specific subject, the more specific agreement shall apply independently of all other agreements and the Resolution as to that specific subject.

III. **TERM AND RENEWAL.**

A. **TERM.** The Tax Collector and County recognize that the Council prepares its budget based on a fiscal year beginning on October 1 and ending September 30. This Participation Agreement shall be for successive terms of a full fiscal year, except for the first term which shall be less than a full fiscal year beginning on the Effective Date and ending on September 30, 2021.

B. **RENEWAL.** This Participation Agreement shall renew each year on October 1, unless terminated by either party as provided herein.

IV. INTERLOCAL AGREEMENT.

A. **STATUTE.** Pursuant to section 163.01, Florida Statutes, units of local government have the authority to enter interlocal agreements and exercise jointly with any other public agency of the state any power, privilege or authority which they share in common and which each might exercise separately.

B. **INTERLOCAL AGREEMENT.** This Participation Agreement shall be deemed an interlocal agreement for purposes of section 163.01, Florida Statutes, upon the transition of the Tax Collector from a county charter officer to an independent constitutional officer on January 5, 2021.

V. MISCELLANEOUS.

A. **NON-WAIVER.** Nothing herein shall be construed as waiving any liability limits or other protections or immunities provided by common law or Florida law to any Participant or to any officers or employees of Participant.

B. **MODIFICATIONS.** No provision of this Participation Agreement may be changed, altered, modified, or waived except in writing signed by both parties, which writing shall specifically reference this Participation Agreement and the specific provision which the parties intend to modify or waive.

C. **COMPLETE AGREEMENT.** This Participation Agreement sets forth the entire understanding related to the matters set forth herein between the parties and supersedes any and all prior oral or written agreements, understandings, representations, or warranties between the parties, except as specified herein.

D. **SEVERABILITY AND ENFORCEABILITY.** Should any provision of this Agreement, as set forth herein be declared illegal or unenforceable by any court of competent jurisdiction, such that it cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Participation Agreement in full force and effect.

E. **TERMS.** Common nouns and pronouns refer to the singular and plural, identity of the person or persons, firm or corporation as the context requires. Any reference to the Code or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

- F. **HEADINGS.** All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.
- G. **RECITALS.** The paragraphs outlined in the Recitals above are true and correct and made a part of this Participation Agreement.
- H. **NOTICES.** Notices, consents, and approvals, which any party shall be required or shall desire to make or give under this Agreement shall be in writing and shall be sufficient only when mailed by certified mail, first class postage affixed, addressed as follows:

County: County of Volusia ATTN: County Manager 123 West Indiana Avenue, Room 301 DeLand, Florida 32720-4613 With Copies to: County of Volusia ATTN: County Attorney 123 West Indiana Avenue, Room 301 DeLand, Florida 32720-4613	Participant: Volusia Tax Collector ATTN: Will Roberts 123 West Indiana Avenue, Room DeLand, Florida 32720
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SIGNATURE BLOCK ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have executed this PARTICIPATION AGREEMENT EMPLOYEE BENEFITS PROGRAMS between the Tax Collector and the County of Volusia as set forth below.

**VOLUSIA COUNTY
TAX COLLECTOR**

**COUNTY OF VOLUSIA,
FLORIDA**

By: _____
Will Roberts
Tax Collector

By: _____
Ed Kelley
County Chair

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____

[Printed name and title]

By: _____
George Recktenwald
County Manager

EXHIBIT A
EMPLOYEE BENEFITS PROGRAM
DEFINITIONS

- (a) *ASO Contract Provider*: Cigna Health and Life Insurance Company, or any subsequent insurance company, or health plan third party administrator, selected by the County, which shall function as the administrative entity for this Agreement and Program, and whose related expense will be provided accordingly as approved by the County.
- (b) *Benefits Review Team*: means a group comprised of representatives from the County Human Resources Department, who will serve as the Team Coordinator, and representatives from Participant and other Participating Independent Constitutional Officers of the County. The Benefits Review Team will meet regularly to receive: Program updates; information on current and new benefit initiatives; annual costs of premiums and contributions; and benefit renewals.
- (c) *Claims Reserve*: amount of funds set aside in a reserve account to meet the Florida Department of Financial Services actuarial requirements for approval of the Program, for catastrophic large claims protection, for unexpected claims trends, for County health promotion programs, and for funds to help stabilize future premiums.
- (d) *COBRA*: meaning ascribed to such term in the Plan Document.
- (e) *County*: County of Volusia (a body corporate and politic and a subdivision of the State of Florida) including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status.
- (f) *Dependent*: meaning ascribed to such term in the Plan Document
- (g) *Employee*: meaning ascribed to such term in the Plan Document.
- (h) *Employee Benefit Program*:
 - a. The County's self-funded program for medical/prescription drug plan coverage; and,
 - b. Other Employee benefit plans including but not limited to:
 - i. County paid plans:

- a. Basic Life and AD&D Insurance (1 times annual salary)
 - b. Long Term Disability (LTD)
 - c. Employee Assistance Program (EAP)
 - d. Dependent Health Care Subsidy
 - e. Wellness Incentive Program
 - f. Retirement Supplement Program
- ii. Employee paid (voluntary) plans:
- a. Dental
 - b. Vision
 - c. Supplemental Life Insurance
 - d. Short Term Disability
 - e. Critical Illness, Cancer, Heart/Stroke, Accident Insurance
 - f. Flexible Spending Accounts
 - g. Deferred Compensation Plan (457)
- (i) *Fiscal Year*: each budget year of the County, which begins on October 1 and ends September 30 of each year.
- (j) *Human Resources*: benefits office of the County.
- (k) *Medical Benefits Fund*: County fund used to account for the total amount of premium contributions by all participants in the self-funded health plan, pharmacy rebates received, all health plan reserves, any other funds pertaining to the self-funded health plan, and the investment earnings on all such monies and constitutes the source of money for all expenses of the self-funded health plan, including, without limitation, the payment of claims, plan management expenses, and administrative expenses subject to annual review by the County.
- (l) *Plan Administrator*: the County.
- (m) *Plan Document*: summary plan document setting forth the terms and conditions of health plan coverage and eligibility requirements. The term is also used for the benefit documents for other employee benefit plans setting forth the terms and conditions of benefit coverage and eligibility requirements.
- (n) *Plan Year*: the calendar year term of the Employee Benefits Program and any subsequent calendar year term.
- (o) *Employee Benefits Program*: County Employee Benefit Program.
- (p) *Retiree*: meaning ascribed to such term in the Plan Document.

**PARTICIPATION AGREEMENT FOR
FACILITIES MAINTENANCE AND SERVICES**

THIS PARTICIPATION AGREEMENT FOR FACILITIES MAINTENANCE AND SERVICES (hereinafter “Participation Agreement”) is entered into between the VOLUSIA COUNTY TAX COLLECTOR, (hereinafter “Participant” or “Tax Collector”), and the COUNTY OF VOLUSIA, a body corporate and politic and political subdivision of the State of Florida (hereinafter “County”).

RECITALS

WHEREAS, the County is one of twenty charter counties in Florida and governed by the Volusia County Charter enacted by special act of the Florida Legislature, and adopted by Volusia County voters, in 1970;

WHEREAS, the Charter abolished the constitutional offices of property appraiser, sheriff, supervisor of elections, and tax collector and transferred those duties to County government;

WHEREAS, Amendment 10 to the Florida Constitution takes effect on January 5, 2021 (“Effective Date”), which will re-establish the constitutional offices of property appraiser, sheriff, supervisor of elections, and tax collector;

WHEREAS, a portion of the functions of the Tax Collector are currently performed by an appointed department head of the County, but will transition to an independent county constitutional officer on January 5, 2021;

WHEREAS, on July 21, 2020, the Volusia County Council adopted Resolution 2020-127 (“Resolution”) which included a Transition Plan for Volusia County Tax Collector;

WHEREAS, the County and Tax Collector are committed to an orderly transition;

WHEREAS, such units of local government have authority to enter interlocal agreements and exercise jointly with any other public agency of the state any power, privilege or authority which they share in common and which each might exercise separately as provided in section 163.01, Florida Statutes;

WHEREAS, the County and Tax Collector desire to participate in a facilities maintenance and services agreement for the mutual benefit of each and to provide for the payment of contribution amounts necessary to achieve and preserve adequate levels of funding and reserve balances to budget and appropriate the costs incurred under such agreement; and,

WHEREAS, the County and Tax Collector have successfully worked together to arrive at this Participation Agreement to begin on the Effective Date;

NOW THEREFORE, the County and Tax Collector agree as follows:

I. RETENTION FOR SERVICES.

A. **SERVICES GOAL.** Volusia County Facilities Management (“Facilities Management”) currently provides facilities management services to the Tax Collector as a county charter officer. Facilities Management is committed to providing the same high level of service to the Tax Collector as an independent constitutional officer. Facilities Management is committed to providing safe, secure, accessible, well-maintained, economical, and environmentally friendly county facilities that meet the needs of the Tax Collector and expectations of our citizens.

B. **RETENTION.** Tax Collector retains Facilities Management to provide all management, personnel, materials, supplies, and equipment necessary to manage, operate, and provide services to maintain the facilities of the Tax Collector as provided for in this Participation Agreement. Facilities Management agrees to provide the services set forth in this Participation Agreement.

C. **FACILITIES.** Facilities Management shall perform the agreed upon services set forth in this Participation Agreement at the four (4) facilities occupied by the Tax Collector which are currently located at:

1. **Tax Collector Principal Office – 123 West Indiana Avenue, DeLand, Florida 32720. (PA Headquarters)**
2. **101 Canal Street, New Smyrna Beach, Florida 32168 (Canal Street Property)**
3. **1845 Holsonback Drive, Daytona Beach, Florida (Holsonback Property)**
4. **2744 Enterprise Road, Orange City, Florida 32763 (Enterprise Road Property)**

(Collectively, “TC Facilities”). In accordance with applicable state laws, TC Facilities may be changed by the County Council.

D. **BUDGETING FOR SERVICES.** The Memorandum of Agreement assigns the responsibility for all costs associated with maintaining and equipping the TC Facilities with the Tax Collector. Facilities Management will assist the Tax Collector to budget for these costs by providing timely and accurate cost estimates for the services provided under this Participation Agreement.

II. **SERVICES.**

A. **AUTHORITY.** Tax Collector retains Facilities Management, subject to the terms and conditions set forth in this Participation Agreement, to manage and maintain the TC Facilities. Tax Collector delegates to Facilities Management the discretion and authority to determine, implement, and take actions, in the exercise of its expertise in managing and operating local government facilities, to manage said TC Facilities.

B. **COUNTY RESPONSIBILITIES.** Facilities Management agrees to provide the Tax Collector with facilities management services for the TC Facilities.

1. **Contract Management.** For the facilities management services provided to the Tax Collector via a third-party contract, Facilities Management shall manage such contracts, by including, but not limited to:

- a) Developing and defining scope of work;
- b) Assisting with bid process;
- c) Negotiating contracts for services;
- d) Facilitating the bid process;
- e) Monitoring performance and compliance by contracting parties;
- f) Processing invoice or contract payments;
- g) Negotiating and implementing any change work orders;
- h) Processing close out and warranty issues under contracts; and
- i) Consulting with Tax Collector regarding scope of work, if appropriate.

2. **Principal Office.** Article VIII, Section 1, of the Florida Constitution provides that in every county there shall be a county seat at which shall be located the principal offices and permanent records of all county officers.

- a) County currently provides a principal office, TC Headquarters, in the Thomas C. Kelley Administration Center located at 123 West Indiana Avenue, DeLand, Florida.
- b) If the County Council determines that a facility should be leased for the Tax Collector's principal office, the County shall negotiate the terms of the lease, manage any buildout projects, and provide maintenance repairs as negotiated in the lease, including, coordinating any major repairs with the lessor.

3. **Lease Management for Other Premises.** For leases of any other premises occupied by Tax Collector, Facilities Management will negotiate the terms of the lease, manage any buildout projects, and provide maintenance or repairs of the premises as negotiated in the lease, including coordinating any major repairs with the lessor.

a) Tax Collector's office at 101 Canal Street, New Smyrna Beach, Florida is located on County owned property. As to the Canal Street Property, Facilities Management shall manage any buildout projects, and provide maintenance repairs as appropriate, including, performing or contracting for any major repairs.

b) For any future leases of other premises, the County shall negotiate the terms of the lease, manage any buildout projects, and provide maintenance repairs as negotiated in the lease, including, coordinating any major repairs with the lessor.

4. Maintenance Services for Holsonback and Enterprise Road Properties. Facilities Management shall provide maintenance services for the Holsonback and Enterprise Road Properties as required under the terms of the leases for those properties to be performed by the lessee.

a) Holsonback Property - Facilities Management shall perform repairs and maintenance including, but not limited to: repairs of the floor coverings, interior partitions, interior doors, interior side of demising walls; repairs to electric, fiber, phone and data cabling; repair of equipment that is installed by or for the Tax Collector for its exclusive use; replacement of interior light bulbs, ballasts, emergency lights, and exit lights and annual certification of fire extinguishers.

Facilities Management shall serve as the first point of contact for any repairs that are the responsibility of the landlord under the Holsonback Property lease, including, but not limited to, repairs to structural elements; repairs to mechanical systems, including HVAC, electrical, plumbing, and fire safety; repairs to the common areas, including the sidewalks and parking lot; repairs to exterior windows and repairs to the roof.

b) Enterprise Road Property - Facilities Management shall perform repairs and maintenance including, but not limited to: repairs of the floor coverings, interior partitions, interior doors, interior side of demising walls; repairs to electric, fiber, phone and data cabling; repair of equipment that is installed by or for the Tax Collector for its exclusive use; replacement of interior light bulbs, ballasts, emergency lights, and exit lights and annual certification of fire extinguishers.

Facilities Management shall serve as the first point of contact for any repairs that are the responsibility of the landlord under the Enterprise Road Property lease, including, but not limited to, repairs to structural elements; repairs to mechanical systems, including HVAC, electrical, plumbing, and fire safety; repairs to the common areas, including the sidewalks and parking lot; repairs to exterior windows and repairs to the roof.

5. Maintenance Services for Canal Street Property. Facilities

Management shall provide all maintenance services as required to be performed by the County.

- a) Maintenance service charges for County facilities are calculated by a formula based on the square footage cost to provide for upkeep, repair, and replacement of minor building structural components, building grounds, parking lots, HVAC systems, electrical systems, and plumbing.
- b) The maintenance service charge to the Tax Collector for all buildings other than the primary office at TCK for Fiscal Year 2020-2021 shall be \$2.00 per square foot to assist the Volusia County Tax Collector in the development of an annual budget. On a quarterly basis, the Tax Collector will be billed for the actual cost of contracted work and materials used in maintenance of the Canal Street Property.
- c) During the budgeting process for each fiscal year, Facilities Management shall notify the Tax Collector in writing of any changes to the maintenance service charge for the Canal Street Property for the upcoming fiscal year.

6. Large Scale Maintenance and Capital Improvements on County Owned Premises. Facilities Management shall provide all large scale maintenance projects and capital improvement projects on county owned premises occupied by the Tax Collector.

- a) Large scale maintenance projects are non-routine projects that require limited design and are outside the standard workload of Facilities Management's staff. Any large scale maintenance project requested by the Tax Collector shall be requested by the Tax Collector by processing a work order in the County work order tracking system. Facilities Management shall coordinate all large scale maintenance projects with the Tax Collector. When a large scale maintenance project is requested, Facilities Management shall provide the Tax Collector with a quote for the cost of the project requested. Upon approval of the quote by the Tax Collector, Facilities Management shall administer the project and invoice the Tax Collector for the costs of said project.
- b) Capital improvement projects are large scale projects typically requiring full engineered drawings. Any capital improvement project shall be planned and coordinated between Facilities Management and the Tax Collector at least three (3) months prior to the fiscal year in which the project is planned to start. Facilities Management shall assist the Tax Collector with the development of the scope of work for the project; preparing a cost estimate for the project; and developing a preliminary schedule of work for the project. Once the project is awarded, Facilities Management may act as the project manager for the Tax Collector to ensure

all contract requirements and specifications are met for the project.

7. **Janitorial Services.** Facilities Management shall provide janitorial services to the TC Facilities.

a) The janitorial services to be provided to the Tax Collector at TC Facilities shall be complete building cleanings three (3) times per week to be performed after office hours. A complete building cleaning is understood to include the following janitorial services: sweeping, mopping, vacuuming, dusting, wipe down of common areas, wipe down of high touch surfaces, emptying of trash cans, and cleaning and restocking restrooms. Any janitorial services in excess of normal services provided may be requested by the Tax Collector by processing a work order in the County work order tracking system.

b) For Fiscal Year 2020-2021, Facilities Management will provide janitorial services to the Tax Collector through a third party contract with AJI Services at the rate of \$8,445.60 annually for TC Headquarters, \$602.70 annually for the Canal Street Property, \$6,613.08 annually for the Holsonback Property and \$2,460.00 annually for the Enterprise Road Property. Said service charge shall be invoiced to the Tax Collector on a quarterly basis.

c) The County will take reasonable efforts to annually contract for and provide janitorial services; however, the County cannot guarantee that the cost of said services will not change during a fiscal year. If during a fiscal year the costs to provide janitorial services changes, the County will advise the Tax Collector of the change in cost thirty (30) days prior to the next scheduled invoice.

d) During the budgeting process for each fiscal year, Facilities Management shall notify the Tax Collector in writing of any changes to the janitorial service charges.

8. **Flooring Replacement.** Facilities Management shall coordinate the replacement and repairs to damaged flooring as required in the respective leases for the TC Facilities.

a) Tax Collector shall notify Facilities Management in writing of any requested flooring replacement due to normal wear and tear or unexpected damage through a work order in the County work order tracking system.

b) Flooring replacement on a large scale due to lifecycle expiration will be coordinated between the Tax Collector and Facilities Management.

c) The cost of lifecycle replacement of the flooring for the TC Headquarters shall be funded by the County in advance of the fiscal year the work is planned for. The cost of flooring replacement due to lifecycle expiration at all of the other TC Facilities shall be a cost of the Tax Collector and shall be budgeted for in advance of the fiscal year in which the flooring replacement occurs. The cost of flooring replacement for any reason, including, normal wear and tear, accident, or negligence, shall be a cost of the Tax Collector and shall be invoiced to the Tax Collector, along with the costs of labor. Flooring replacement at the Enterprise Road Property will be governed by the terms of the lease for that facility.

d) Facilities Management shall coordinate with the Tax Collector for any flooring replacement work.

9. **Pest Control.** Facilities Management shall provide pest control services to the TC Facilities of the Tax Collector.

a) Pest control services to be provided to the Tax Collector at TC Facilities shall be routine spraying. Any pest control services in excess of routine services provided may be requested by the Tax Collector by processing a work order in the County work order tracking system.

b) For Fiscal Year 2020-2021, Facilities Management will provide pest control services to the Tax Collector through a third party contract at the rate of \$5.00 per month for the Canal Street Property, \$40.00 per month for the Holsonback Property, and \$5.00 per month for the Enterprise Road Property and will be invoiced quarterly. Pest control services at the TC Headquarters will be provided at the County's expense.

c) The County will take reasonable efforts to annually contract for and provide pest control services; however, the County cannot guarantee that the cost of said services will not change during a fiscal year. If during a fiscal year the costs to provide pest control services changes, the County will advise the Tax Collector of the change in cost thirty (30) days prior to the next scheduled invoice.

d) During the budgeting process for each fiscal year, Facilities Management shall notify the Tax Collector in writing of any changes to the pest control service charges.

10. **Signage.** Repairs to existing signage are covered under the facilities maintenance service charges. Any modification or addition to current signage will be at a direct cost to the Tax Collector. Facilities Management will be the point of contact for sign requests and installations.

11. **Window Cleaning / Pressure Washing.** Facilities Management shall provide window cleaning and pressure washing services to the TC Facilities of the Tax Collector.

- a) Facilities Management shall provide to the Tax Collector at TC Facilities window cleaning and pressure washing services. Any window cleaning or pressure washing services must be requested by the Tax Collector by processing a work order in the County work order tracking system.
- b) For Fiscal Year 2020-2021, Facilities Management will provide window cleaning services to the Tax Collector through a third party contract on an as needed basis.
- c) When pressure washing services or window cleaning services are requested, Facilities Management shall provide the Tax Collector a quote for the cost of the services requested. Upon approval of the quote by the Tax Collector, Facilities Management shall provide the services and invoice the Tax Collector for the costs of said services.
- d) During the budgeting process for each fiscal year, Facilities Management shall notify the Tax Collector in writing of any changes to the window cleaning or pressure washing service charges.

12. **Printers and Copiers.** Facilities Management shall provide printer and copier services to TC Facilities.

- a) Facilities Management contracts with a third party to provide printer and copier services to the Tax Collector at TC Facilities. Facilities Management will continue to provide the Tax Collector with the copiers and printers. Facilities Management shall continue to serve as the intermediary between the vendor and the Tax Collector. Tax Collector shall be provided direct contact information for the vendor to conduct routine service or repair service requests.
- b) For Fiscal Year 2020-2021, Facilities Management will provide printer and copier services to the Tax Collector through a third party vendor at the rate of \$0.034799 per color print/copy and \$0.018799 per black and white print copy. Facilities Management shall invoice the Tax Collector quarterly for all printing / copying charges.
- c) The County will take reasonable efforts to annually contract for and provide printer and copier services; however, the County cannot guarantee that the cost of said services will not change during a fiscal year. If during a fiscal year the costs to provide printer and copier services changes, the County will advise the Tax Collector of the change in cost thirty (30) days prior to the next scheduled invoice.

d) During the budgeting process for each fiscal year, Facilities Management shall notify the Tax Collector in writing of any changes to the printer and copier service charges.

e) Tax Collector shall notify Facilities Management in writing of any changes he wishes to make to the copiers or printers provided. Facilities Management will work with its third party provider to determine the feasibility and cost of meeting any requests. Tax Collector agrees to be responsible for any additional costs associated meeting any such a request.

13. **Vending Services.** Facilities Management shall provide vending services to the Tax Collector.

a) Facilities Management contracts with a third party to provide vending services to the Tax Collector at TC Facilities. Facilities Management shall continue to serve as the intermediary between the vendor and the Tax Collector. Tax Collector shall be provided direct contact information for the vendor to address any equipment issues.

b) For Fiscal Year 2020-2021, Facilities Management will provide vending services to the Tax Collector through a third party vendor at no charge to the Tax Collector.

c) During the budgeting process for each fiscal year, Facilities Management shall notify the Tax Collector in writing of any changes for vending services.

14. **Security Services.** Facilities Management shall provide security services to the TC Facilities of the Tax Collector.

a) Facilities Management contracts with a third party to provide security services to the Tax Collector at TC Facilities. Facilities Management shall continue to serve as the intermediary between the vendor and the Tax Collector. Tax Collector shall be provided direct contact information for the vendor for immediate security issues.

b) For Fiscal Year 2020-2021, Facilities Management will provide security services to the Tax Collector through a third party vendor. Facilities Management shall invoice the Tax Collector quarterly for security service charges.

- c) The County will take reasonable efforts to annually contract for and provide security services; however, the County cannot guarantee that the cost of said services will not change during a fiscal year. If during a fiscal year the costs to provide security services changes, the County will advise the Tax Collector of the change in cost thirty (30) days prior to the next scheduled invoice.
- d) During the budgeting process for each fiscal year, Facilities Management shall notify the Tax Collector in writing of any changes to any security service charges.

C. **TAX COLLECTOR RESPONSIBILITIES.** Tax Collector agrees to cooperate with Facilities Management in the performance of its duties under this Participation Agreement.

1. **Work Orders.** Tax Collector shall notify Facilities Management of any additional work requested related to the maintenance of her Facilities by processing a work order via the County's work order tracking software. The parties agree that this is the exclusive method of requesting such additional work.
2. **Issues with Work.** If the Tax Collector believes there is an issue with any of the work performed by Facilities Management under this Participation Agreement, the Tax Collector shall provide Facilities Management with a written notice describing the issue in detail including the nature of the issue and the dates during which the issue occurred.
3. **Leases.** The Tax Collector has been provided with a copy of the leases for TC Facilities and agrees to comply with the obligations set forth therein as the organization utilizing the premises. Additionally, the Tax Collector agrees to notify Facilities Management, as soon as possible, of any issues affecting the premises.
4. **Payments.** For any costs to be paid by the Tax Collector pursuant to this Participation Agreement, the County shall invoice for the costs. Invoices shall be due upon receipt.
5. **Non- Interference.** It is expressly understood and agreed that so long as this Participation Agreement is in force and effect, the Tax Collector shall not interfere with Facilities Management in the day-to-day operations of TC Facilities and shall at no time give or communicate orders or instructions to employees or sub-contractors of the County or Facilities Management working on-site at TC Facilities.

III. **ADDITIONAL AGREEMENTS.**

A. **ADDITIONAL AGREEMENTS.** After this Agreement is executed, the County or Tax Collector may determine that additional agreements or changes to this agreement may be appropriate to implement the intent of the Resolution or this agreement. The Tax Collector and County agree to enter into additional agreements or amend this agreement if appropriate.

B. **CONFLICTS BETWEEN AGREEMENTS.** If there are any conflicts between this Participation Agreement and the Resolution, the terms of this Agreement will prevail. If additional agreements are entered to between the Tax Collector and the County with regard to items addressed in the Resolution, the later agreement or amendment shall prevail over any prior agreement and the Resolution. As to all agreements, more specific provisions shall prevail over general provisions as to the specific subject of the provision. If an agreement is entered into between the Tax Collector and the County regarding a specific subject, the more specific agreement shall apply independently of all other agreements and the Resolution as to that specific subject.

IV. **TERM, RENEWAL, AND TERMINATION OF AGREEMENT.**

A. **TERM.** The Tax Collector and County recognize that the Council prepares its budget based on a fiscal year beginning on October 1 and ending September 30. This Participation Agreement shall be for successive terms of a full fiscal year, except for the first term which shall be less than a full fiscal year beginning on the Effective Date and ending on September 30, 2021.

B. **RENEWAL.** This Participation Agreement shall renew each year on October 1, unless terminated by either party by written notice.

C. **NOTICE OF TERMINATION.** The Tax Collector shall continue to utilize and/or participate in the services and programs set forth in this Participation Agreement, unless the Tax Collector provides written notice to the County Manager before 5:00 PM on April 1. The County shall continue to provide to the Tax Collector the services and programs set forth in this Participation Agreement unless the County Manager provides written notice to the Tax Collector before 5:00 PM on April 1.

D. **TERMINATION.** Upon receipt of a timely notice of termination, the services and programs set forth in this Participation Agreement will end on September 30 of the fiscal year in which the notice of termination was given.

V. **INTERLOCAL AGREEMENT.**

A. **STATUTE.** Pursuant to section 163.01, Florida Statutes, units of local government have the authority to enter interlocal agreements and exercise jointly with any other public agency of the state any power, privilege or authority which they share in common and which each might exercise separately.

B. **INTERLOCAL AGREEMENT.** This Participation Agreement shall be deemed an interlocal agreement for purposes of section 163.01, Florida Statutes, upon the transition of the Tax Collector from a county charter officer to an independent constitutional officer on January 5, 2021.

VI. MISCELLANEOUS.

A. **NON-WAIVER.** Nothing herein shall be construed as waiving any liability limits or other protections or immunities provided by common law or Florida law to any Participant or to any officers or employees of Participant.

B. **MODIFICATIONS.** No provision of this Participation Agreement may be changed, altered, modified, or waived except in writing signed by both parties, which writing shall specifically reference this Participation Agreement and the specific provision which the parties intend to modify or waive.

C. **COMPLETE AGREEMENT.** This Participation Agreement sets forth the entire understanding related to the matters set forth herein between the parties and supersedes any and all prior oral or written agreements, understandings, representations, or warranties between the parties, except as specified herein.

D. **SEVERABILITY AND ENFORCEABILITY.** Should any provision of this Participation Agreement be declared illegal or unenforceable by any court of competent jurisdiction, such that it cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Participation Agreement in full force and effect.

E. **TERMS.** Common nouns and pronouns refer to the singular and plural, identity of the person or persons, firm or corporation as the context requires. Any reference to the Code or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

F. **HEADINGS.** All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

G. **RECITALS.** The paragraphs outlined in the Recitals above are true and correct and made a part of this Participation Agreement.

H. **NOTICES.** Notices, consents, and approvals, which any party shall be required or shall desire to make or give under this Participation Agreement shall be in

writing and shall be sufficient only when mailed by certified mail, first class postage affixed, addressed as follows:

<p>County:</p> <p>County of Volusia ATTN: County Manager 123 West Indiana Avenue, Room 301 DeLand, Florida 32720-4613</p> <p>With Copies to: County of Volusia ATTN: County Attorney 123 West Indiana Avenue, Room 301 DeLand, Florida 32720-4613</p>	<p>Participant:</p> <p>Volusia Tax Collector ATTN: Will Roberts. 123 West Indiana Avenue, Room DeLand, Florida 32720</p>
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IN WITNESS WHEREOF, the parties hereto have executed this PARTICIPATION AGREEMENT FOR FACILITIES MANAGEMENT between the Tax Collector and the County of Volusia as set forth below.

**VOLUSIA COUNTY
TAX COLLECTOR**

**COUNTY OF VOLUSIA,
FLORIDA**

By: _____
Will Roberts
Tax Collector

By: _____
Ed Kelley
County Chair

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____

[Printed name and title]

By: _____
George Recktenwald
County Manager