

MEMORANDUM OF UNDERSTANDING
BETWEEN VOLUSIA COUNTY AND BREVARD COUNTY
RELATING TO PUBLIC SAFETY RADIO COMMUNICATIONS
INTEROPERABILITY

THIS MEMORANDUM OF UNDERSTANDING (referred to as the "MOU") is made and entered into by and between **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, whose principal address is 2725 Judge Fran Jamieson Way, Melbourne, Florida 32940, (in this MOU referred to as "BREVARD,") and **COUNTY OF VOLUSIA**, a body corporate and politic, and a political subdivision of the State of Florida, whose principal address is 123 West Indiana Avenue, DeLand, Florida 32720, (in this MOU referred to as "VOLUSIA."). BREVARD and VOLUSIA may be collectively referred to herein as the "Parties."

W I T N E S S E T H:

WHEREAS, this MOU is authorized by the "Florida Intergovernmental Cooperation Act of 1969," Section 163.01, Florida Statutes, *et seq.*, (the "Act") which authorizes the joint exercise by two or more public agencies of any power common to them and is authorized under other applicable laws of Florida; and

WHEREAS, the Act permits local government units to make the most efficient use of their powers by enabling them to cooperate with other units of government on the basis of mutual advantage; and

WHEREAS, BREVARD and VOLUSIA, along with other governmental agencies, are currently interoperable for public safety communications systems to respond to emergencies, communicate during those emergencies, and better coordinate emergency responses amongst the Parties and other governmental agencies; and

WHEREAS, BREVARD owns property upon which a communications tower is located; and

WHEREAS, the Parties have agreed to establish a direct link between BREVARD and VOLUSIA public safety radio systems; and

WHEREAS, the first responders in both counties, which serve the citizens in the counties and surrounding areas will be better served by the addition of the link; and

WHEREAS, the Volusia County Council is acting under the authority of its County Home Rule Charter in operating an 800 MHz Radio System for emergency services; and

WHEREAS, VOLUSIA will provide the necessary microwave link between VOLUSIA and BREVARD; and

WHEREAS, BREVARD will provide space on BREVARD's Tower for the microwave antenna and in BREVARD's radio equipment shelter, as described in Exhibit B, to place the supporting equipment; and

WHEREAS, the collocation provided for in this MOU significantly enhances public safety on a more cost-effective basis than if both parties separately located their wireless communication facilities.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this MOU, BREVARD and VOLUSIA agree as follows:

Section 1. Recitals.

The foregoing recitals are true and correct and form a material part of this MOU upon which the Parties have relied.

Section 2. Definitions.

The following definitions apply to this MOU:

(a) "Collocation" means the mounting and installation of microwave equipment on an existing tower, building, or structure for the purpose of transmitting or receiving radio frequency signals for communications purposes.

(b) "Facilities" mean utility lines, transmission lines, microwave antennas, and supporting equipment.

(c) "Antenna Space" means the allocated microwave dish placement elevation space on the Tower.

(d) "Connection Space" means all the necessary space to accommodate attendant cabling, the space within BREVARD's equipment shelter allocated for related electronic transmission and reception equipment, and certain right to pedestrian and vehicular access to and from the Property.

(e) "Property" means the property located at 4950 Highway 1, Mims, Florida, more particularly identified by the legal description set forth in Exhibit A, attached to this MOU and incorporated by referenced.

(f) "Premise" means the BREVARD-owned telecommunications tower, the shelter, the Antenna Space and Connection Space.

(g) "Tower" means the BREVARD-owned telecommunications tower with Federal Communications Commission Registration Number 1289099 located at 4950 US Highway 1, Mims, Brevard County, Florida.

Section 3. Purpose.

The primary purpose of this MOU is to provide connectivity between Brevard's public safety radio system and Volusia County's public safety radio system through improved interface and connection. Additionally, this MOU will enhance and increase radio coverage for BREVARD and VOLUSIA's 800 MHz Public Safety radio systems for the benefit of the citizens within Brevard, Volusia County, and the surrounding areas.

Section 4. Effective Date and Term.

(a) The term of this MOU shall commence upon the date this fully executed MOU is filed with the BREVARD County Clerk of Court in accordance with Section 163.01(11), Florida Statutes, (the "Effective Date"). The initial term shall be for ten (10) years ("Initial Term") commencing on the Effective Date and will expire on the anniversary of the Effective Date.

(b) This MOU will automatically renew for up to four (4) additional five (5) year terms (each 5-year renewal period shall be defined as an "Extension Term"), upon the same terms and conditions as provided herein, unless either party notifies the other party, in writing of its intent not to renew this MOU at least ninety (90) days prior to the expiration of the then existing Extension Term.

Section 5. Due Diligence Period.

(a) VOLUSIA will have one-hundred-twenty (120) days from the Effective Date, or the date of BREVARD's delivery to VOLUSIA of the written request(s) for technical and engineering data, as described in this Section 5(a), whichever is later, for undertaking due diligence as to the suitability of the structure for its collocation and level of service signal

coverage needs (the "Due Diligence Period"). VOLUSIA is permitted to enter the Property for the purpose of making appropriate engineering and other reasonably necessary investigations and RF signal analyses (collectively "Investigations and Tests") that VOLUSIA may deem necessary to determine the long-term suitability of the Tower collocation. Upon VOLUSIA's request, but such request must be made prior to the expiration of the Due Diligence Period, BREVARD shall within thirty (30) days of such request provide VOLUSIA with copies of its latest Tower structural analysis and technical drawings showing the allocated space for VOLUSIA's supporting equipment. VOLUSIA shall provide BREVARD a new structural analysis with VOLUSIA's proposed load, for BREVARD's review and approval. BREVARD is not responsible for any portion of VOLUSIA's costs of collocation or feasibility Investigations and Tests.

(b) If VOLUSIA, in its sole discretion, determines at any time during the Due Diligence Period that the Premise will not be appropriate for VOLUSIA's intended use, or if for any other reason or no reason, VOLUSIA decides not to proceed as agreed, then VOLUSIA will have the right to terminate this MOU upon written notice to BREVARD no later than the expiration of the Due Diligence Period, or any extensions thereof.

(c) BREVARD shall ensure that any proposed, future collocations will not interfere with either party's 800 MHz radio communications. BREVARD will not bear any liability to VOLUSIA whatsoever for any interference or the costs for remedying any interference that may result from future collocations so long as all such precautions have been undertaken and timely shared with VOLUSIA.

Section 6. Consideration.

For the occupation, utilities, and use of the Premise and the non-exclusive access rights across the Property incidental to such occupancy, use, and enjoyment, VOLUSIA shall not pay any fees to BREVARD. BREVARD shall not pay any fees to VOLUSIA for the use of the microwave link between VOLUSIA's and BREVARD's public safety radio systems. The consideration for the MOU shall be the mutual benefits to both parties as the collocation provided for in this MOU significantly enhances public safety radio communications on a more cost-effective basis than if both Parties separately located their wireless communication facilities.

Section 7. Right of Entry, Use, and Quiet Enjoyment of the Property.

(a) BREVARD covenants that it owns the Premise and that it has the full legal authority to enter into this MOU with VOLUSIA.

(b) From and after the Effective Date, VOLUSIA will have the ongoing right to the use and quiet enjoyment of the Premise under the terms of this MOU. BREVARD shall cooperate with VOLUSIA in making an application for and obtaining all licenses, permits, and any and all other necessary approvals that may be required for VOLUSIA's intended use of the Premise. VOLUSIA shall bear all expenses connected with any such licenses, permits, and approvals for its use of the Premise.

(c) VOLUSIA has the right, within the terms and constraints of this MOU, to maintain, test, replace, remove, operate, and upgrade its Facilities. In connection with its Facilities, VOLUSIA has the right to do all work necessary to prepare, maintain, and alter the Connection Space for VOLUSIA's operations and to install transmission lines connecting the

antennas to the transmitters and receivers. All of VOLUSIA's construction and installation work must be performed at VOLUSIA's sole cost and expense and in a good and workmanlike manner, following industry standards, and approved by BREVARD. All persons performing any such installation, construction, and removal work must be properly licensed and insured, and approved by BREVARD. VOLUSIA will hold title to its Facilities and all of its Facilities will remain VOLUSIA's personal property and are not fixtures. VOLUSIA has the right to remove its Facilities, at its sole expense, on or before the expiration or termination of this MOU. VOLUSIA shall, at its own expense, repair any damage to the Property or Premise caused solely by its activities. Within ninety (90) days of the expiration or termination of this MOU, VOLUSIA shall remove its Facilities from the Premise at no cost to BREVARD.

(d) VOLUSIA shall have twenty-four (24) hour access to the Premise, and VOLUSIA's Facilities for the purpose of installing, repairing, and maintaining its equipment. BREVARD shall be notified at least twenty-four (24) hours before any scheduled access. During any emergency access, VOLUSIA shall notify BREVARD as soon as possible within the next twenty-four (24) hours of the emergency. All notifications to BREVARD shall be sent via e-mail to emergmt_800mhzradio@brevardfl.gov. BREVARD reserves its right to review and grant approved VOLUSIA agents, employees, and contractors pedestrian and vehicular ingress and egress across the Property. BREVARD shall maintain all access from the nearest public roadway to and within the Property in a manner sufficient to allow pedestrian and vehicular access at all times.

(e) The rights granted under this MOU are for the installation, operation, repair, and maintenance of VOLUSIA's Facilities in accordance with the site plan attached to this MOU as Exhibit C and for no other purpose. VOLUSIA has the responsibility for supplying

the most current and accurate versions of the information provided in Exhibit C, the Description and Inventory of Volusia County, within thirty (30) days of the Effective Date to BREVARD. If such information is not provided, BREVARD shall make a written request to VOLUSIA for the information and VOLUSIA shall have twenty (20) days to provide the information. Failure to provide such information after written request may result in termination of this MOU. VOLUSIA shall not add additional antennas or other related facilities or relocate its antenna and related facilities different from the locations set forth in Exhibit C without the prior, written approval of BREVARD.

(f) VOLUSIA's antennas and all equipment must be properly grounded from lightning strikes in accordance with industry standards, i.e., Motorola R56 Standards, and must be approved by BREVARD. VOLUSIA shall submit a grounding report to BREVARD utilizing Motorola R56 Standards within ten (10) business days after completion of the antenna, antenna array structure, and line work.

(g) Prior to commencing any initial or subsequent, collocation activities under this MOU, VOLUSIA shall submit all of its architectural, engineering, and RF analyses for review and approval or disapproval by BREVARD. At a minimum, VOLUSIA will be required to submit: (i) a Co-channel Analysis Report; (ii) an Adjacent Channel Report; (iii) a site-specific EMI Study; and (iv) a Structural Analysis (SA) reflecting VOLUSIA's proposed load; provided, however, that BREVARD may, at its sole discretion, waive the requirement for VOLUSIA to submit any one or more of these reports, if deemed unnecessary.

Section 8. Maintenance.

VOLUSIA shall keep and maintain its Facilities, and any other of its personal property

located on the Premises in good condition, reasonable wear and tear, and damage from the elements excepted. BREVARD shall maintain and repair the Tower, the Property, and its equipment shelter located on the Property, and access to them in good and tenable condition, subject to reasonable wear and tear and damage from the elements. Nothing in this MOU may be construed as requiring BREVARD to make capital improvements or enhancements to any portion of the Premises or the access road beyond their condition as of the Effective Date.

Section 9. Utilities and Related Easements.

VOLUSIA's use of the Premises currently requires a minimal amount of utilities. BREVARD will provide the electricity consumed by both BREVARD's and VOLUSIA's operations. The cost of any other utility service shall be borne by VOLUSIA. BREVARD agrees to sign such documents or grant such Connection Space across BREVARD-owned real properties as may be required by such utility companies to provide fiber optic services to VOLUSIA's Facilities on the Premises at no cost to VOLUSIA. Any Connection Space across or under BREVARD-owned real property which are necessary for such other utilities must be at a location reasonably acceptable to BREVARD and the servicing utility company. The acquisition and costs of any easements that VOLUSIA may need to acquire across, over, or under adjacent properties not owned by BREVARD will be the sole responsibility of VOLUSIA.

Section 10. Signal Interference.

(a) VOLUSIA shall operate its Facilities in compliance with all FCC regulations and in a manner that will not cause interference to BREVARD's general government, public

safety, and emergency wireless communications services or other collocated licensees on the Tower.

(b) VOLUSIA acknowledges that the collocation of wireless communications systems can sometimes result in direct and serious interference with public safety and emergency telecommunications systems of other public agencies and that the Tower and surrounding Property houses BREVARD's emergency and non-emergency wireless communications system. Accordingly, if at any time during the Due Diligence Period or thereafter during the term of this MOU, BREVARD experiences any interference or blackout of its public safety, emergency, or general government radio communications systems as a result of VOLUSIA's operation of its Facilities, BREVARD has the unilateral right to suspend VOLUSIA's operation of its Facilities to stop the interference. Prior to suspending VOLUSIA's operation, BREVARD shall notify VOLUSIA of the interference issue and request that VOLUSIA immediately address the issue. Brevard will be allowed thirty (30) days to correct the interference problem or such longer time as may be warranted by the circumstances and agreed upon by the parties. If at the end of thirty (30) days, the problems cannot be remedied to BREVARD's reasonable satisfaction, VOLUSIA will have reasonable time, not to exceed an additional sixty (60) days, to remove its personal property and equipment from the Premises, and this MOU will be deemed terminated at that time.

Section 11. Equipment Upgrade.

Subject to Sections 7 and 10 of this MOU, VOLUSIA may modify, update, or replace its Facilities from time to time; provided that if the replacement Facilities are greater in size than the existing Facilities or the replacement Facilities require changes in their location on

the Tower or the Connection Space. VOLUSIA shall submit a detailed proposal for any such replacement, modification, update, or upgrades to its Facilities. Approval for such replacement, modification, update, or upgrade must be coordinated with BREVARD and subject to BREVARD's review and approval after prior, written notification, which approval will not be unreasonably withheld, delayed, or conditioned by BREVARD. BREVARD will require VOLUSIA to provide additional structural analyses, with the equipment upgrade proposal indicating sufficient loading capacity. This Section is meant to apply in conjunction with Section 14, below (Fitness for Use).

Section 12. Default and Remedies.

It is an event of default under this MOU if: (i) if VOLUSIA fails in the performance of any covenant or condition of this MOU and does not cure such default within thirty (30) days after written notice from BREVARD specifying the default complained of; or (ii) if VOLUSIA abandons or vacates the Premise for more than ninety (90) consecutive days. Delay in curing a default may be excused if due to causes beyond the reasonable control of VOLUSIA.

Section 13. Termination and Removal of Property.

(a) Conditions upon which this MOU may be terminated by VOLUSIA are the following: (i) upon thirty (30) days prior, written notice to BREVARD if VOLUSIA is unable to obtain or maintain any license, permit, or other governmental approval necessary for the construction or operation of its Facilities; (ii) at any time during the Due Diligence Period or, if after the Due Diligence Period, upon thirty (30) days prior, written notice to BREVARD if the Premise is not adequate for VOLUSIA's intended use and purpose; (iii) upon thirty (30) days prior, written notice to BREVARD, if VOLUSIA is unable to occupy and utilize the

Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; (iv) upon thirty (30) days prior written notice to BREVARD, if BREVARD fails to obtain or maintain any permit or license required to operate the Property; (v) upon forty-five (45) days written notice if the Property, including the Tower located on it, is destroyed or damaged beyond repair, or is condemned or transferred in lieu of condemnation; or (vi) upon thirty (30) days prior, written notice to BREVARD for any other reason.

(b) This MOU may be terminated by BREVARD: (i) upon ninety (90) days written notice if BREVARD decides, in its sole and absolute discretion and for any reason other than that related to interference with BREVARD's emergency and non-emergency communications systems, to discontinue use of the Tower; however, BREVARD shall make a good faith effort to allow VOLUSIA to relocate its Facilities to an alternative BREVARD site, if available, and which BREVARD has determined to be suitable for an antennae array of the type used by VOLUSIA; (ii) upon forty-five (45) days written notice, if BREVARD determines, in its sole and absolute discretion, that the Tower is structurally unsound, damaged beyond the point of an economically viable repair, and not suitable for VOLUSIA's continued use, and a new Tower has not been or cannot be constructed and brought into service, except, that VOLUSIA will first be afforded an opportunity to improve the Tower, at its sole cost and expense, as an option for continued use and occupancy of the Tower subject to Section 14 below; (iii) upon thirty (30) days written notice with a reasonable opportunity to cure such violation if BREVARD determines that continued use of the Tower or Property, or any activities on them by VOLUSIA, violate any applicable statute, regulation, or ordinance; (iv) if VOLUSIA defaults in the performance of any covenant under this MOU when due and does

not cure such default in accordance as provided in this MOU; (v) upon thirty (30) days written notice without cure if VOLUSIA abandons or vacates the Leased Premises for more than ninety (90) consecutive days; and (vi) upon conditional, thirty (30) days' written notice for interference problems pursuant to subsection 10(b) of this MOU.

(c) Upon the expiration or termination of this MOU for any reason, VOLUSIA shall, at its sole cost and expense, remove its Facilities within ninety (90) days after the expiration or termination of this MOU, unless the parties agree to an extension of time. Such removal must be done in a workmanlike and careful manner and without interference or damage to any other equipment, structures, or operations on the Property and Tower including, but not limited to the use of the Property and Tower by BREVARD or other collocated licensees. If, however, VOLUSIA requests permission not to remove all or a portion of its Facilities, and BREVARD gives written consent to such non-removal, title to the identified Facilities will thereupon transfer to BREVARD and the identified Facilities thereafter will be the sole and entire property of BREVARD, and VOLUSIA will be relieved of its duty to otherwise remove the identified Facilities. Upon removal of its Facilities, VOLUSIA shall restore the affected area of the Premises to their condition at the commencement of this MOU, reasonable wear and tear excepted. Any personal property, equipment, or other improvements which are not removed within ninety (90) days following the expiration or termination of this MOU, unless the parties agreed to an extension of time, and left on-site without permission of BREVARD will become the property of BREVARD, at its option. VOLUSIA shall bear all costs and expenses for the removal and restoration to be performed by VOLUSIA pursuant to this Section, and VOLUSIA expressly affirms that BREVARD will not be responsible for any

portion of these costs and expenses.

(d) Notice of termination pursuant to this Section must be given in accordance with Section 20 of this MOU and will be effective upon receipt of such notice.

Section 14. Fitness for Use.

(a) BREVARD makes no warranties or representations as to the present or continued fitness of the Tower in particular, or the Premises in general, for the uses intended by VOLUSIA. To the extent that VOLUSIA, with prior approval of BREVARD pursuant to Section 11, above alters the Tower mounted antennae array from the configuration in place as of the date of this MOU, VOLUSIA, at its sole expense, shall present the new structural analysis with the proposed changes to be evaluated by BREVARD.

(b) BREVARD is responsible for compliance with all Tower marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC .

Section 15. Indemnification.

The parties shall be responsible for their own negligence and shall indemnify each other and hold the other harmless for their own negligence in conjunction with any and all manner of action and actions, causes of action, losses and damages, costs and expenses of any kind whatsoever, including reasonable attorney's fees and court costs which may be claimed by any third party to have resulted from or arisen out of the intentional or negligent acts of either of the party's employees, officers, or agents under this MOU.

The Parties' indemnity and liability obligations hereunder shall be subject to BREVARD's and VOLUSIA's right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes.

Nothing in this MOU is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing herein shall constitute a waiver of the Parties' sovereign immunity. The Parties acknowledge specific consideration has been exchanged for this provision.

Section 16. Insurance.

(a) Each Party shall maintain adequate insurance coverage to protect its own interests and obligations under this MOU, whether by maintenance of one or more appropriate policies or coverages or through a self-insurance program.

(b) Parties to this MOU shall provide, maintain, and keep in force their own insurance or program of insurance or self-insurance covering their liabilities as prescribed by Section 768.28, Florida Statutes. Nothing in this MOU shall be deemed as a waiver of sovereign immunity by either Party beyond any statutorily limited waiver adopted by the Florida Legislature, and nothing in this MOU shall inure to the benefit of any third party for the purpose of allowing any claims that would otherwise be barred under the doctrine of sovereign immunity. The Parties agree that nothing contained in this MOU shall be construed or interpreted as denying to either Party any legal remedy or defense available under the laws of the State of Florida. The waiver of any provision herein or a right available to a Party shall not operate as a further waiver or continuing waiver of said provision or right or any other provision of this MOU.

(c) Each Party agrees to provide the other with written notice of any claim subject to these provisions within ten (10) days of its receipt of notice that a claim may exist. Notice

of a claim shall be deemed given on the date of mailing it to the other Party. The term “claim,” as used in this section, shall include all demands, damages, expenses, fees, penalties, suits, proceedings, or actions. Persons employed by one Party in the performance of services and functions pursuant to this MOU shall have no claim against the other Party hereto for salary, wages, pension, workers’ compensation, civil service, or other employee rights or privileges.

Section 17. Hazardous Substances and Environmental Degradation.

VOLUSIA represents and warrants that its use of the Premises will not generate any hazardous substance or material, or any substance that would degrade the environment and that VOLUSIA will not bring on to, store, or dispose of such material or substance on or near the Property. To the extent permitted by Section 768.28, Florida Statutes, as this statute may be amended from time to time, VOLUSIA is solely responsible for any damages and liability claims against VOLUSIA or BREVARD arising from any release caused solely by VOLUSIA, its agents, employees, contractors, or subcontractors of any such hazardous substance or material or any substance that would degrade the environment and any damage, loss, expense, or liability resulting directly from such release including, but not limited to all reasonable costs and penalties incurred as a result of such claims. "Hazardous substance or material or any substance that would degrade the environment" is interpreted broadly to mean pollutants, contaminants, oil, or other petroleum products, flammables, or any substance or material defined or designated as hazardous or toxic waste, explosives, hazardous or toxic material, radioactive substance, or other similar term by any Federal, State, or local environmental law, regulation, or rule presently in effect or promulgated in the future as such laws, regulations, or rules may be amended from time to time, or any substance, material, or agent which is

reasonably likely to cause harm to natural resources or the environment. The terms are meant to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause damage, harm, sickness, injury, death, or disease.

Section 18. Notices.

Any notice delivered with respect to this MOU must be in writing and will be deemed to be delivered (whether or not received) when (i) hand-delivered to the person(s) designated below, or (ii) when received in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address for the party as set forth below, or such other address or to such other person as the party may have specified by written notice to the other party delivered in according to this section:

For BREVARD: BREVARD County Emergency Management
ATTN: Emergency Management Director
1751 Huntington Ln.
Rockledge, Florida 32955
(321) 637-6670

For VOLUSIA: County of Volusia
ATTN: Director of Purchasing & Contracts
123 W. Indiana Ave., Rm. 302
DeLand, Florida 32720
(386)736-5935

with copies of legal notices to:

County of Volusia
ATTN - County Attorney
123 W. Indiana Ave., Rm. 301
DeLand, Florida 32720
386-736-5950

with copies of claim notices to:

County of Volusia

ATTN -Risk Management Director
230 N. Woodland Blvd., Rm. 250
DeLand, Florida 32720
386-736-5963

Section 19. Assignment and Subletting.

(a) VOLUSIA shall not assign or otherwise transfer all or any part of its interest in this MOU or in the Premises.

(b) BREVARD may assign this MOU provided that the assignee assumes all of BREVARD's obligations in this MOU pursuant to a written assignment and consent to assignment executed by BREVARD, VOLUSIA, and the assignee. Nothing in this MOU precludes BREVARD from licensing other Tower space for communications equipment to any other party, subject to the terms of this MOU. In the event of such an assignment or of a change in ownership, transfer, or sale of the Property, within ten (10) days of such transfer, BREVARD or its successor will send the documents listed below to VOLUSIA: (i) old deed to Property; (ii) new deed to Property; (iii) Assignment documentation, Bill of Sale, or Transfer; and (iv) full contact information for the new landlord including all phone number(s).

(c) VOLUSIA shall not sublet its assigned space on the Tower or any portion of the Premises to any third party.

Section 20. Conflict of Interest.

(a) Each party agrees that it shall not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this MOU with the other party or which would violate or cause third parties to violate the provisions of Part III, Chapter 112, Florida Statutes, as this statute may be amended from time to time, relating to ethics in

government. Each party hereby certifies that no officer, agent, or employee of that party has any material interest (as defined in Section 112.312(15), Florida Statutes, as over 5%) either directly or indirectly, in the business of the other party to be conducted here and that no such person will have any such interest at any time during the term of this MOU.

(b) Each party has the continuing duty to report to the other party any information that indicates a possible violation of this Section.

Section 21. Rights At Law Retained.

The rights and remedies of BREVARD and of VOLUSIA provided for under this MOU are in addition to any other rights and remedies provided by law.

Section 22. Alternative Dispute Resolution.

If any dispute or issue of non-performance arises under this MOU, the parties agree to resolve the issue at the lowest management level of each party. In the event the issue remains unresolved, the parties agree to immediately escalate the issue to upper-level management for their consideration. In all events, the parties will negotiate, in good faith, a mutually agreeable solution. In the event all parties cannot agree on a solution, the issue shall be directed to the Bevard County Board of Commissioners and the Volusia County Council for resolution.

Section 23. Equal Opportunity Employment.

VOLUSIA and BREVARD agree that they shall not discriminate against any employee or applicant for employment for work under this MOU because of race, color, religion, sex, age, disability, or national origin. VOLUSIA and BREVARD shall take steps to ensure that applicants are employed, and employees are treated fairly during employment, without regard to race, color, religion, sex, age, disability, or national origin. This provision

must include but is not limited to, the following: employment; advancement, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Section 24. E-Verify

(a) In accordance with Chapter 448.095, Florida Statutes, Parties shall register and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Parties during the term of this MOU. Parties shall expressly require any subcontractors performing work or providing services pursuant to this MOU to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this MOU.

(b) Parties agree to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the other Party consistent with the terms of the MOU. This includes maintaining a copy of proof of the Parties' and subcontractors' enrollment in the E-Verify Program.

(c) Compliance with the terms of this section is made an express condition of this MOU and the Parties may treat a failure to comply as a material breach of this MOU.

(d) A Party who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E verify program, the Party hires or employs a person who is not eligible for employment.

(e) Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

Section 25. Public Records – exemptions and Homeland Security

In performance of this MOU, Parties shall keep books, records, and accounts of all activities related to the MOU, in compliance with generally accepted accounting procedures. All documents, papers, books, records, and accounts made or received by the Parties in conjunction with the MOU and the performance of this MOU shall be open to inspection during regular business hours by an authorized representative and shall be retained by each party for a period of three (3) years after termination of this MOU, unless such records are exempt from Section 24(a) of Article I of the State Constitution and Chapter 119, Florida Statutes. All records or documents created by the Parties or provided to the Parties in connection with the activities or services provided herein are public records unless exempt/confidential, Parties agree to comply with any request for such public records made in accordance with Chapter 119, Florida Statutes.

Section 26. Joint Preparation.

This MOU has been jointly negotiated by the Parties and their respective counsel. This MOU will be interpreted in accordance with its terms. Any ambiguity will not be construed against either party.

Section 27. Survival of Provisions.

All provisions of this MOU, which by their nature would reasonably be expected to continue after the termination of this MOU, including but not limited to Sections, 13, 17, and 22, will survive any termination of this MOU.

Section 28. Representations.

BREVARD and VOLUSIA represent to each other that they have done all things necessary as conditions precedent to enter into this MOU and that the persons whose signatures appear below have full right, power, and authority to execute this MOU.

Section 29. Entire Agreement and Modifications

This MOU constitutes the entire agreement and understanding of the Parties and supersedes all correspondence, offers, negotiations, and other prior agreements of any kind, and no subsequent oral promises or representations are binding. There are no representations or understandings of any kind not set forth in this MOU. Any modification of, or amendment to, this MOU must be in writing, specifically referencing the provision being modified or amended, and executed by both Parties.

Section 30. Governing Law and Waiver of Jury Trial.

The laws of the State of Florida, without regard to conflicts of law provisions, shall govern the validity, enforcement, and interpretation of this MOU. The Parties hereby consent to venue in the Judicial Circuit Court of whichever party is named as the plaintiff or petitioner in any legal or equitable proceeding as to actions arising under state law. PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS MOU.

Section 31. Severability.

If any provision of this MOU or the application of this MOU to any person or circumstance is held invalid, it is the intent of the Parties that the invalidity will not affect other provisions or applications of this MOU which can be given effect without the invalid

provision or application, and to this end, the provisions of this MOU are declared severable.

Section 32. Headings and Captions.

All headings and captions contained in this MOU are provided for convenience only, do not constitute a part of this MOU, and may not be used to define, describe, interpret, or construe any provision of this MOU.

Section 33. Parties Bound.

The provisions of this MOU are binding upon and inure to the benefit of the successors and assigns of the Parties, but this provision will in no way alter the restrictions in this MOU concerning assignment by VOLUSIA.

[This space intentionally left blank. Signature page to follow.]

MOU SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals on the day and year written below.

**BREVARD COUNTY BOARD OF
COUNTY COMMISSIONERS**

By: _____

Name: Jason Steele

Title: Chair

As approved by the Board on: October 22, 2024

Date: _____

REVIEWED FOR LEGAL FORM AND CONTENT:

OFFICE OF THE COUNTY ATTORNEY

By: 

Name: Heather Baker

Date: 10-17-24

VOLUSIA COUNTY

ATTEST:

George Recktenwald, County Manager

APPROVED AS TO FORM:

County Attorney

VOLUSIA COUNTY COUNCIL

Jeffrey S. Brower, Chair

As approved by the Volusia County Council at
its duly noticed meeting conducted on _____
_____ 2024

Attachments:

- Exhibit A Legal Property Description
- Exhibit B Supporting Equipment Location
- Exhibit C Property Site Plan and Elevation Drawings
- Exhibit D Description and Inventory of Volusia County