

**Joint Project Agreement
for the Construction of a Roundabout at
Gateway Boulevard and Commerce Lakes Drive**

THIS Joint Project Agreement for the Construction of a Roundabout at Gateway Boulevard and Commerce Lakes Drive ("*JPA*") is made and entered into this ____ day of _____, 2020, by and between **Lee County**, a Charter County and a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida 33902-0398 ("*County*"); and the **Gateway Services Community Development District**, an independent single-purpose specialized unit of local government created under Florida Statutes Chapter 190, whose address is c/o District Offices, 13240 Griffin Drive, Fort Myers, Florida 33913; ("*District*"). Collectively the foregoing may be referred to as the "*Parties*".

WHEREAS, the County owns and maintains certain portions of Gateway Boulevard, West Commerce Lakes Drive and Griffin Drive, all located within Lee County, Florida, and having been acquired as a result of the conveyances recorded in the Public Records of Lee County, Florida, in Instrument Numbers 2017000195008 and 2017000197797 ("*County's Roads*"); and

WHEREAS, the Parties have previously entered into an agreement setting forth the ability of the District to own, repair, replace and maintain roadside and median landscaping, signs, street lighting, drainage, irrigation water, potable water and wastewater utilities and other appurtenant improvements within the County Roads ("*Existing Road Improvements*"), as set forth in that agreement entitled "Landscape, Sign, Drainage, Utilities and Street Lighting Maintenance and Hold Harmless Interlocal Agreement", dated February 21, 2017, and recorded in the Public Records of Lee County, Florida, on December 19, 2017, in Instrument Number 2017000263968 (the "*Agreement*"), a copy of which is attached hereto as **Exhibit "A"**; and

WHEREAS, the District is the owner of a portion of Commerce Lakes Drive, a roadway lying in Section 18, Township 45 South, Range 26 East, extending easterly from its intersection with Gateway Boulevard, and being more particularly described in Exhibit "A-1" in the Special Warranty Deed of WCI Communities, LLC, to the District, dated March 5, 2018, and recorded in the Public Records of Lee County, Florida, on April 18, 2018, in Instrument Number 2018000092487, which description in the aforesaid Special Warranty Deed is incorporated herein by reference (the "*District's Roadway*"); and

WHEREAS, the County intends to improve the intersection of Gateway Boulevard and Commerce Lakes Drive with the construction of a roundabout in the approximate configuration graphically depicted on attached **Exhibit "B"** and incorporated herein by reference (the "*Roundabout*"); and

WHEREAS, a portion of the Roundabout will extend into the District's Roadway, presently intended to be conveyed to the County, affecting the District's Existing Road Improvements and Utilities as described herein; and

WHEREAS, the District intends to donate the District's Roadway to the County for both ownership and maintenance as a County-owned and maintained roadway, however, such conveyance will be subject to the District retaining ownership of certain improvements located within the District's Roadway, consisting of, but not limited to, street lighting facilities, landscaping and signage, and constructed facilities for surface water management, irrigation, potable water and wastewater (the "*District's Existing Road Improvements and Utilities*"), under the same terms and conditions as found in the above-referenced Agreement; and

WHEREAS, upon acceptance of ownership of the District's Roadway by the County, the Parties intend to join the District's Roadway with the County's Roads under the terms of the above-referenced Agreement and intending to execute the First Amendment to the above-mentioned Agreement of even or near even date ("*First Amendment*"), a copy of which is attached hereto as **Exhibit "C"**, whereby the District's Roadway will become subject to the terms and conditions of the above-referenced Agreement; and

WHEREAS, the Parties wish to facilitate the most efficient method of the County's construction of the Roundabout, as well as the reconstruction, repair and improvement of any existing District-owned utility lines and facilities ("*District's Utility Lines*") physically located within the area of the Roundabout, collectively, the foregoing two projects may be referred to singularly as the "*Project*"; and

WHEREAS, the Parties have determined that it serves a public purpose and is in the public interest to enter into this JPA to facilitate the construction of the Project.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The above recitals are true and correct and incorporated herein as though fully set forth below.
2. The engineering plans for the construction, reconstruction, or other modifications to the District's Utility Lines (the "*Utility Plans and Specifications*") will be prepared by or at the direction of the District and will be reviewed by both the District and the County, with the above-described utility reconstruction and relocation to be designated as the District's "*Utility Work*".

3. The District, at its expense, will furnish all engineering inspection and supervision for the installation of pipe, valves and appurtenances, placement of pipe bedding, and all pipe testing of the District's Utility Lines as part of the Utility Work within the Project. The District also agrees to furnish the County with progress reports for daily records, approved quantities and amounts for weekly, monthly and final estimates. The County, in coordination with the District's authorized Project representative, will provide the necessary engineering supervision to assure construction of the Roundabout and the District's Utility Work is in compliance with the Utility Plans and Specifications hereinabove referred to.
4. The District will be responsible for the subsequent repair and maintenance of the District's Utility Lines. A permit pursuant to Lee County Administrative Code AC-11-12 will be required; however, the County will waive the permit fee and bond requirements for the District as a governmental entity.
5. The County's design consultant will, at the District's request and expense, incorporate the Utility Plans and Specifications and Utility Work for all of the District's necessary Utility Work specified above, into the County's plans and will furnish to both County and District complete original plans on standard size sheet 11" x 17" and in an electronic format, all suitable for the Utility Work. Final Utility Work plans must be complete in every detail and will include a "Summary of Quantities" sheet and construction cost estimate. It will be the responsibility of District to coordinate the development of the District's Utility Work plans with County's design consultant.
6. All of the work on the Project will be performed according to the plans and specifications of both Parties, which plans and specifications, including the Utility Plans and Specifications are, by reference hereto, made a part hereof.
7. The County will bid the District's Utility Work as an alternate to the construction of the Roundabout and will coordinate with District on the award of the bid alternate to the combined lowest most responsive and responsible bidder. The coordination of District's Utility Work with the District's authorized Project representative under the contract between the County and the bidder awarded the District's Utility Work with that of the County's Roundabout contractor, their subcontractors, other utility relocation contractors associated with the Project and/or other County contractors and other utilities and/or their contractors will be the responsibility of County, and the District agrees to cooperate fully in the matter. All information required for change orders or supplemental agreements pertaining to District's Utility Work or otherwise related to subject matter of this JPA must be promptly furnished to the County by the District. The District must approve change orders or supplemental agreements pertaining to District's Utility Work within 5 business days, subject to any limitations resulting from the application of Florida's "Sunshine Laws".

8. The District will have the right to reject any bids on the portion of the District's Utility Work with just cause, which may include but not be limited to an "unbalanced bid", to the detriment of the District. For the purpose of this JPA, an "unbalanced bid" may include: excessive unit pricing, other unfair pricing for materials or labor, or a disproportionate allocation of cost to the District for the actual construction performed.
9. All adjustments, relocations, repairs and incidentals required to be performed to the existing District Utility Lines within this Project and not included in the District's Utility Work in the Project Contract, will be the sole responsibility of the District. All such work will be coordinated with the construction of this Project in a manner that will not cause delay to the County's Roundabout contractor.
10. The District agrees that it will, upon the execution of this JPA and notification of the costs (bid) for District's Utility Work, set aside and hold in trust in an appropriate District Utilities Account, the proposed (bid) cost, plus a 10% District-controlled contingency of the bid amount to perform the District's Utility Work. After the commencement of the District's Utility Work by the County's contractor, every 30 days thereafter the County will submit a detailed progress report and proper invoice to the District detailing the District's Utility Work performed, in sufficient detail for a pre and post audit thereof. Upon review and approval of the work performed and approval of a proper invoice by the District, the District will pay said proper invoice to the County within 30 days and transfer funds to the County.
11. Upon completion and acceptance of the District's Utility Work, the District will own, control, maintain and be responsible for all District Utility Lines (including appurtenant facilities). The District further agrees that it will maintain and keep in repair, or cause to be maintained and kept in repair, all of such constructed District Utility Lines within the area of the District's Roadway as conveyed to the County and to comply with all provisions of applicable law.
12. Upon completion of the Project the County will, at the earliest date practicable, furnish the District with two (2) copies of its final and complete billing of all costs incurred in connection with the District's Utility Work performed hereunder, such statement to follow as closely as possible the order of the items contained in the District's portion of the resulting construction contract for the Project. The final billing must show the description and site of the Project; the date on which the first work was performed; the date on which the earliest item of billed expenses was incurred; the date on which the last work was performed or the last item of billed expenses was incurred; and the location where the records and accounts bill can be audited. Adequate reference must be made in the billing to the County records, accounts or other relevant documents. All cost records and accounts will be subject to audit by a representative of either the County or the District.

13. Notwithstanding the terms and conditions contained herein and in the Agreement with respect to the construction of the Roundabout, the following will apply to certain existing or planned infrastructure to be constructed as part of the Project within the District's Roadway:
 - A. Pursuant to the terms and conditions of the Agreement the District will maintain all streetlights that presently exist, except for those new lights for the Roundabout that will be installed by the County as part of the Project.
 - B. The County will initially install new landscaping for the Roundabout according to County specifications as part of the Project. Thereafter, such landscaping will be maintained by the District according to terms and conditions of the Agreement. The District will have the option and right in the future to install additional enhanced landscaping, which additional and enhanced landscaping will be maintained by the District according to the terms and conditions of the Agreement.
 - C. The County will install certain new signposts as part of the Project. The District will be responsible for the additional cost attributable to the decorative nature of the new signposts.
14. To facilitate the conveyance of the District's Roadway to the County:
 - A. The County will pay for the following:
 1. Title work adequate to obtain a Title Insurance Commitment and final issuance of an Owner's Title Insurance Policy for the District's Roadway.
 2. An ALTA/NSPS (American Land Title Association/National Society of Professional Surveyors) survey ("*Survey*") of the District's Roadway.
 3. Title insurance premium for the issuance of an Owner's Title Insurance Policy covering the conveyance of the District's Roadway in an amount as determined by the County to be appropriate.
 - B. The District will make information and records available to assist in the preparation of the Survey.
 - C. The District will pay for the preparation of a Warranty Deed to convey the District's interest in the District's Roadway to the County.
 - D. The District will execute a title affidavit or similar instrument necessary for the issuance of a final Title Insurance Policy.

15. This JPA constitutes the entire understanding between the Parties, and any previous agreements whether written or oral, will be superseded by the JPA, except to the extent referenced or incorporated herein.
16. This JPA may be amended upon the concurrence of the Parties and executed with the same formalities as this original JPA.
17. The Parties agree that by execution of this JPA, no Party will be deemed to have waived its statutory defense of sovereign immunity, or increased its limits of liability as provided for by §768.28, Florida Statutes.
18. The term of this JPA as to the design and construction of the Project will be from the date first written above, and will continue until the Project is completed. Notwithstanding the foregoing, until such time as the contractor begins working on the Project, either Party. Either Party may terminate this JPA by giving the other Party 90 days written notice.
19. The terms, conditions, rights, duties and obligations under this JPA that are to continue after completion and acceptance of the Project and the District's Utility Work will be deemed to survive the completion of the Project and the District's Utility Work.
20. The terms of this JPA are binding upon and will inure to the benefit of the Parties' successors and assigns, and will not be invalidated, impacted or altered by any subsequent incorporation or annexation.
21. If any part of this JPA is declared invalid by a court of competent jurisdiction, such part or parts will be deemed to be severable, and the remaining part or parts will continue to be in full force and effect.
22. This JPA will be construed in accordance with the laws of the State of Florida.

(End of provisions – signature pages follow)

IN WITNESS WHEREOF, the Parties hereto have signed this JPA intending to be bound as of the date first above written.

Signed, sealed and delivered
in the presence of:

(Two separate witnesses required)

Chris S. Schemm

[1st Witness' Signature]

CHRIS S. SCHEM

[Type or Print Name]

Frank Coffey

[2nd Witness' Signature]

FRANK COFFEY

[Type or Print Name]

**Gateway Services Community
Development District**

BY: Margaret Fineberg

[Signature]

MARGARET FINEBERG

[Type or print name]

Chair, Board of Supervisors

Approved as to form for reliance
of the Gateway Services Community
Development District only:

By: [Signature]

District Counsel

Approved and accepted for and on behalf of Lee County, Florida, intending to be bound as of the date first written above.

ATTEST:
LINDA DOGGETT, CLERK

**Board of County Commissioners
of Lee County, Florida**

BY: _____
Deputy Clerk

[Type or print name]
Deputy Clerk

BY: _____

[Type or print name]
Chair/Vice-chair

Approved as to form for
reliance of Lee County only:

By: _____
Office of the Lee County Attorney

Attachments:

- Exhibit "A" Landscape, Sign, Drainage, Utilities and Street
 Lighting Maintenance and Hold Harmless
 Interlocal Agreement dated February 21, 2017
- Exhibit "B" Graphic depiction of the approximate
 configuration of the Roundabout
- Exhibit "C" First Amendment to the Landscape, Sign, Drainage,
 Utilities and Street Lighting Maintenance and Hold
 Harmless Interlocal Agreement

(121319/0830)

EXHIBIT "A"

INSTR # 2017000263968, Pages 14
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Linda Doggett, Lee County Clerk of Circuit Court
Rec. Fee \$120.50
Deputy Clerk DMAYS
#1

This Instrument was prepared by:

Lee County Attorney's Office
P.O. Box 398
Fort Myers, Florida 33902

Strap Nos.: 07-45-26-01-00001.00CE; 07-45-26-04-0000E.0000;
06-45-26-00-00001.1000; 06-45-26-00-00001.1140;
31-44-26-25-000A1.00CE; 07-45-26-05-0000E.0010
05-45-26-00-00001.0000; 18-45-26-00-00001.1010;
18-45-26-00-00001.106B and 18-45-26-08-000R1.00CE

LANDSCAPE, SIGN, DRAINAGE, UTILITIES AND
STREET LIGHTING MAINTENANCE
and
HOLD HARMLESS INTERLOCAL AGREEMENT

THIS Landscape, Sign, Drainage, Utilities and Street Lighting Maintenance and Hold Harmless Interlocal Agreement ("*Agreement*") is entered into this 21st day of February, 2017, by and between Lee County, a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida 33902-0398 ("*County*"); the Gateway Services Community Development District, an independent single-purpose specialized unit of local government created under Florida Statutes Chapter 190, whose address is c/o District Offices, 13240 Griffin Drive, Fort Myers, Florida 33913; ("*District*"), and collectively called the parties ("*Parties*").

WHEREAS, upon the County's acceptance of the conveyances of the real property interests described in attached Exhibit "A," the descriptions of which are incorporated herein by reference, the County will own the fee title to the roadways located within the boundaries of the Gateway Services Community Development District known as Gateway Boulevard, West Commerce Lakes Drive and Griffin Drive (the "*Roads*," "*Roadways*" or "*Rights-of-way*"); and

WHEREAS, it is the intent of the Parties that the obligations contained in this Agreement will not become effective nor commence until the Roads have been formally accepted for ownership and maintenance by the County, at that point the Agreement will be executed; and

WHEREAS, over the years various developers of the Gateway community ("*Developers*") and the District have received State and County permits and approvals for the construction of the Roads, including the roadways, drainage, water, wastewater, irrigation, street lighting, signs, landscaping, sidewalks and appurtenant improvements; and

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WHEREAS, over the years the Developers and District constructed, repaired, modified and maintained the Roads and installed landscaping, drainage, water, wastewater, irrigation, sidewalks, signs, street lighting and appurtenant improvements ("*Improvements*"); and

WHEREAS, those existing Improvements as of the date of conveyance of the Roadways to the County have been examined, inspected and inventoried and are now described, drawn and depicted on a series of surveys, as-built plans or photographic depictions/illustrations set forth in or attached as Exhibit "B," the contents of which is incorporated herein by reference (the "*Existing Road Improvements*"); and

WHEREAS, the County acknowledges the District will retain ownership of certain other improvements located within the Roads that may not be identified as Existing Road Improvements on attached Exhibit "B," consisting of, but not limited to, street lighting facilities, landscaping and signage, and additional facilities for surface water management, irrigation, potable water and wastewater; and

WHEREAS, the drainage, water, wastewater and irrigation facilities have been installed and constructed within drainage and utility easements in favor of the District; and,

WHEREAS, certain landscaping, signs and street lighting exceed the level of improvement otherwise provided by the County as a "Core Service" or the requirements of Lee County Land Development Code ("*LDC*"); and

WHEREAS, some of the signs installed may not meet the County's minimum standards for right-of-way signs; and

WHEREAS, the County's road design standards require the area abutting the edge of the road pavement (traveled way) to be free from vegetation, non-breakaway objects and other improvements that may otherwise cause injury to motor vehicles and their occupants ("*Clear Zone*"); and

WHEREAS, there are areas along the Roads where there is a less than optimal area of Clear Zone; and

WHEREAS, the County has agreed to allow the Existing Road Improvements, and those subsequently allowed under the terms of this Agreement, within the Roadways to remain as now constructed or installed, provided that the landscaping and other improvements are maintained and replaced as necessary in accordance with this Agreement and applicable County regulations, and at no cost to the County however, notwithstanding the foregoing, the County may, at its sole and absolute discretion reconstruct, improve or expand any portion of the Roads and/or remove, reconfigure, relocate or modify any Road Improvement(s), when it deems it necessary to advance, preserve or protect the public health, safety and welfare for vehicular and pedestrian purposes; and

WHEREAS, the County, as the owner of the sidewalks within the Roadways, has also agreed to maintain the sidewalks within the Roadways, subject to them being brought up to all applicable and current County and Americans with Disabilities Act ("ADA") standards as described in attached Exhibit "B," and further subject to the District's agreement to be responsible for damage to the sidewalks as a result settling or upheaval caused by vegetation and landscaping to be maintained by the District; and

WHEREAS, the District is to maintain and replace, as necessary, the roadside landscaping, irrigation, signs and street light improvements in accordance with the terms and provisions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The above recitals are true and correct and incorporated herein as though fully set forth below.

2. The County authorizes the continued existence of the Existing Road Improvements located in the Roadways as described in attached Exhibit "B," provided these Improvements comply with certain County-approved project specifications for roads, as those specifications may be amended from time to time, and further subject to the terms and conditions of this Agreement.

3. The District accepts sole responsibility to obtain all appropriate Federal, State and local permits necessary to install and maintain the Improvements. At minimum, when required, a Lee County Right-of-Way Permit must be obtained for any work within the Roadway. Notwithstanding the foregoing, the District is not required to obtain individual daily permits for daily routine maintenance activities if the activities will not block traffic. The District also agrees to give all required notices associated with work on the project, including those outlined in Lee County Administrative Code (AC) AC-11-12, Construction and Maintenance Activities in County-owned or Maintained Roadway or Drainage Right-of-way and Easements; Residential Driveway Connections on County Roads ("AC-11-12").

4. To the extent permitted by law and without waiver of the right of the District to claim immunity under §768.28, Florida Statutes, and without extending or altering the District's liability beyond the limits established in §768.28, Florida Statutes, the District hereby agrees to indemnify and hold harmless the County from any losses, damages or awards arising out of personal injury or death or property damage resulting solely from the placement, replacement or maintenance of landscaping, irrigation, signs and street lighting contemplated which are the District's responsibility pursuant to and as contemplated by this Agreement. The County agrees to provide notice of any claim against County sought to be indemnified against the District via certified mail within 10 days of County obtaining knowledge of such claim. When requested by the County, the District hereby agrees to defend such claims on behalf of the County. If such defense is undertaken, the County must consent to the representation of District and County by the attorney chosen by the District.

The District may undertake to settle any such claims imposing liability on the County only upon terms and conditions specifically acceptable to the County. This provision is not intended to waive any right or claim of sovereign immunity held by the County or District pursuant to Florida law, including but not limited to §768.28, Florida Statutes.

5. Subject to the provisions of Paragraph 8 below as to signs, the District agrees to maintain all Improvements (landscaping, irrigation, signs and street lights, including plant materials, sod, lighting and other items incidental to the landscaping, including the replacement of dead sod or plant materials) in accordance with the authorization identified in paragraph 2 above and future modifications submitted to, and approved by, the County and in a manner that will prevent the creation of obstructions or conditions that may become dangerous to the traveling public.

The District will provide the County with current names, addresses and phone numbers for persons responsible for repairs and maintenance.

Further, the District will continue to operate and maintain those surfacewater and stormwater management systems and facilities located outside of the Roadways that serve the Roadways conveyed to the County. The County will be responsible for the operation and maintenance of surfacewater and stormwater management systems and facilities located within the Roadway that serve the Roadways conveyed to the County.

6. The District has the right to plant, replant, alter or change the landscaping scheme and the number, species or location of plant material within the rights-of-way provided that District first obtains a County Right-of-Way Permit pursuant to AC-11-12, if needed. Any alteration must also comply with the Lee County Roadway Landscape Master Plan (known as "Lee Scape") and must be approved by the Lee County Department of Transportation. (See also Lee County Administrative Code AC-11-11, Roadway Landscaping Policy.) The District's exercise of this right will not diminish the District's responsibility to maintain the Improvements (landscaping, signs and standard street lighting) in accordance with this Agreement. Notwithstanding the foregoing requirements, the District may request County approval to install new or additional signage to identify new communities and install new or additional landscaping within the Roadways or complete median landscaping in a manner consistent with other existing landscaping (including types of landscaping required under the terms of the zoning approvals for the Gateway Planned Unit Development and the Gateway PUD Ordinance, as amended), for which approval by the County will not be unreasonably withheld.

7. In all events, the County may, at its sole and absolute discretion, without notice to, or consent by, the District, reconstruct, improve or expand any portion of the Roads and/or remove, reconfigure, relocate or modify any Rights-of-way when it deems it necessary to advance, preserve or protect the public health, safety and welfare for vehicular and pedestrian purposes.

8. The District is responsible for the maintenance of all non-standard signs and non-county standard sign posts or supports located in the Road right-of-way. The County will maintain all properly permitted standard traffic signs and standard sign posts within the Rights-of-way.

9. The District must identify on its Website the District's responsibility to maintain landscaping, signs and lighting within the Rights-of-way for Gateway Boulevard, West Commerce Lakes Drive and Griffin Drive. A contact phone number(s) for use by residents must also be included on the Website.

10. All directional "traffic signs" depicted on the Existing Road Improvement plan (attached as Exhibit "B") may remain for as long as the District provides proper maintenance and replacement of such signs. If the Lee County Department of Transportation ("LCDOT") determines that a directional traffic sign is a hazard, the District must remove or relocate the sign within seven calendar days of written notice from the County. LCDOT has the sole discretion to determine whether the sign may be relocated or must be removed without replacement. Removal and relocation costs will be at the District's sole cost or expense.

11. Traffic control signs reported to the County as bent, damaged, vandalized or missing will be replaced by the County with standard traffic signs and, when in the discretion of LCDOT, standard sign posts. Notwithstanding the foregoing, the District may replace and/or retrofit standard sign posts with decorative sign posts of a break-away design approved by LCDOT.

12. The District agrees to prevent obstructions or conditions that may be dangerous to the public while exercising its right to install and maintain the landscaping, irrigation, sidewalks, signs and street lighting. This includes preventing settling or upheaval to the Roadways and sidewalks caused by vegetation and landscaping being maintained by the District, providing clear visibility for vehicle operators and pedestrians and the avoidance of wetting the adjacent roadway or bike paths/sidewalks.

13. Upon being notified of a street light outage, and without extending or altering the District's liability beyond the limits established in §768.1382, Florida Statutes, the District must make required repairs within 96 hours. The District must maintain and provide the County with current information as to the name and phone number of the contact person designated by the District to receive reports of street light outages.

14. The District is and must remain a member in good standing of Sunshine 811 and provide the utility line locates ("Locates") in accordance with the Sunshine 811 requirements. The County, its successors and assigns will not be held liable for mismarked or unmarked conduits resulting in damage including, but not limited to, conduits, cables, pull boxes and other facilities should a contractor or utility damage District facilities. The District must also restore any affected portion of the Right-of-way to all applicable standards should damage occur, to the extent the damage was through acts of the District or its contractors. In no event shall the District be liable or responsible for acts or damage caused by third parties not under contract with the District for activities in the Roadways. Upon mutual written agreement between the District and the LCDOT Director or designee, the County may elect to provide Locates of the street lighting in accordance with established County procedures.

15. Without waiver of the right of the District to claim immunity under §768.28, Florida Statutes, and without extending or altering the District's liability beyond the limits established in §768.28, Florida Statutes, the District assumes the risk and responsibility for any loss or injury to property or persons occasioned by failure to properly maintain the street lighting, signs or landscaped areas or due to negligence, neglect or accident occurring during the maintenance process.

The District also agrees to repair all damage that may occur to any adjoining or surrounding structures, utility facilities, roadways, sidewalks or private property precipitated by the District's maintenance activity.

16. The District agrees that if the County undertakes to improve the Roadways, including but not limited to, road widening to add capacity, bicycle or pedestrian improvements, repair and reconstruction, the District must, at no cost to the County, move or remove landscaping, signs, street lighting, water and sewer lines and associated improvements to the extent such District improvements will interfere with or conflict with such proposed County improvements upon 90 days written notice. The Parties also agree that the District will be responsible for the cost of replacing the street lighting and landscaping removed as a result of the County's proposed improvements set forth above. Sidewalks within the Roadways are part of the County's responsibility and will be replaced, if necessary, by the County. The foregoing shall not be construed or utilized to require the District to undertake any such work which otherwise would be performed by a developer or owner of property adjacent to the right of way as site related improvements under the Lee County Land Development Code or relieve such owner or developer of the obligation to restore the district facilities they impact.

17. To the extent permitted by law and without waiver of the District's claim to immunity under §768.28, Florida Statutes, and without extending or altering the District's liability beyond the limits established in §768.28, Florida Statutes, the District agrees to maintain liability insurance covering the street lighting, signs and landscaping maintenance in accord with the amount determined appropriate by Lee County Risk Management requirements attached as Exhibit "C," and naming Lee County as a "loss payee."

18. In the event the County closes, abandons, vacates or discontinues all or a portion of the Rights-of-way herein as a public road, the County will convey its interest in any portion of the public road so closed, abandoned, vacated or discontinued to the District. If the District terminates this agreement, the County has the option to require the removal all or a portion of the street lighting, signs and landscaping improvements at no cost to the County.

19. The Parties recognize and agree that this Agreement is of a unique nature inuring to the benefit of both parties and that money damages may not be an adequate or appropriate remedy for either party for breach of the Agreement terms. Therefore, the parties specifically agree that a non-defaulting party may raise in any pleading, without objections from the alleged defaulting party, the extraordinary remedy of specific performance in order to protect the public's interest in this Agreement.

20. Upon the County's receipt of a complaint or discovery of the District's failure to maintain an Improvement (District landscaping, signs or street lighting), the County will provide notice to the District of the condition, and the District will have 20 days from the date of notification to correct the condition, after which the County may remove landscaping or make repairs and invoice the District for the cost.

Notwithstanding the foregoing, if the County, in its sole discretion, determines the complained of condition constitutes a threat to public health, safety or welfare, the County may immediately make the necessary correction or repair and invoice the District for the cost of the repair. The District agrees to pay the invoice within 30 days of receipt.

21. Upon the County's receipt of a complaint or discovery of damage to a sidewalk as a result of settling or upheaval caused by vegetation and landscaping being maintained by the District the foregoing, County has the sole discretion to immediately close the affected portion of the sidewalk and repair the damage and invoice the District for the cost. Alternatively, the County may provide notice to the District of the condition, and the District will have 10 days from the date of notification to correct the condition, after which the County may repair the sidewalk and invoice the District for the cost of the repair. The District agrees to pay the invoice within 30 days of receipt.

22. Failure of the District to maintain insurance as required by this Agreement and as evidenced by notice of a lapsed Certificate of Insurance. In the event the County receives notice of a lapse in the insurance required herein, the County will provide notice to the District of the lapse of insurance, and the District will have 10 days from the date of notification to reinstate the lapsed policy of insurance or obtain a new policy, in each instance naming the County as a "loss payee." In the event the lapsed policy of insurance is not reinstated, or a new policy of insurance is not issued as required herein, the County may, at its sole discretion, secure a replacement policy of insurance meeting the terms of coverage required pursuant to attached Exhibit "C" and invoice the District for the cost of the replacement insurance policy. The District agrees to pay the invoice within 30 days of receipt.

23. A notice required to be provided to the District by the County under the terms of this Agreement may be either by e-mail or regular mail (postage prepared), to a current e-mail or postal address maintained by the District and provided or made available to the County by the District.

24. In the event of a termination of this Agreement, the County shall tender the Roadways to the District. If the District refuses to accept the re-conveyance of the Roadways, then the County may remove the Improvements (in whole or in part) and invoice the District for the removal and restoration costs. The District agrees to pay the invoice within 30 days of receipt.

25. The terms of this Agreement are binding upon and inure to the benefit of the Parties' successors and assigns, and will not be invalidated, impacted or altered by any subsequent incorporation or annexation.

25. This Agreement is intended to be construed in accordance with the laws of the State of Florida.

26. In the event of a default by either party, the non defaulted party shall be entitled to request mediation to resolve the issue. Upon such a request being made the parties shall then be required to participate in mediation, and shall choose a mutually acceptable mediator. If mediation is not successful, then enforcement may be in the Courts to remedy the default. If applicable, the parties may utilize the provisions of Chapter 164, Florida Statutes, to resolve a dispute under the terms of this Agreement. The agreement nonetheless shall remain in full force and effect until terminated by agreement of the parties.

27. If any part of this Agreement is declared invalid by a court of competent jurisdiction, such part or parts shall be severable, and the remaining part or parts shall continue to be in full force and effect.

28. This Agreement is the entire agreement between the Parties and may not be amended or modified except by written instrument executed with the same formality.

29. This Agreement may only be terminated by mutual agreement of the Parties.

[End of provisions — Signature pages follow]

IN WITNESS WHEREOF, the parties have signed below.

**GATEWAY SERVICES COMMUNITY
DEVELOPMENT DISTRICT**

[Signature]
1st Witness Signature
Cheryl Sidomman
Printed Name

[Signature]
2nd Witness Signature
Chuck Lewis
Printed Name

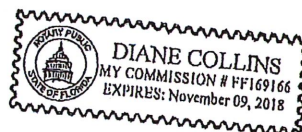
By: [Signature]
Signature
MARGARET FINEBERG
Type or print name
Chair, Board of Supervisors

STATE OF FLORIDA
COUNTY OF LEE

The foregoing Agreement was acknowledged before me this 6th day of July 2017, by Margaret Fineberg as the Chair of the Board of Supervisors of the Gateway Services Community Development District, on behalf of the District. He/she is personally known to me or has produced the following _____ as identification.

My Commission Expires:
November 9, 2018

[Signature]
Notary Public
[Stamp/seal] DIANE COLLINS



Approved and accepted for and on behalf of Lee County, Florida, the day first written above..

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

ATTEST:
Linda Doggett, Clerk

By: Chris Du
Deputy Clerk



By: John Manning
John Manning
Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

By: John J. Fredyma
John J. Fredyma
Senior Assistant County Attorney
Office of County Attorney

Attachments:

- Exhibit "A" – Conveyances to Lee County
- Exhibit "B" – Existing Road Improvements - Listed Surveys and As-built Plans
- Exhibit "C" – Minimum Insurance Requirement

Exhibit "A"

Landscape, Sign, Drainage, Utilities and Street Lighting Maintenance and Interlocal Agreement

Conveyances to Lee County

Real property interests have been conveyed to Lee County in the following instruments:

1. Warranty Deed of Gateway Services Community Development District, f/k/a the Gateway Services District, to Lee County, Florida, dated August 24, 2017, and recorded in the Public Records of Lee County, Florida, on September 21, 2017, in Instrument Number 2017000197797.
2. Warranty Deed of WCI Communities, LLC, to Lee County, Florida, dated July 21, 2017, and recorded in the Public Records of Lee County, Florida, on September 19, 2017, in Instrument Number 2017000195008.

Exhibit "B"

Landscape, Sign, Drainage, Utilities and Street Lighting Maintenance and Interlocal Agreement

Existing Road Improvements – Listed Surveys and As-built Plans

1. Those portions of Gateway Boulevard and Griffin Drive as shown the 11-sheet ALTA/NSPS Land Title Survey of Gateway Roads, prepared by Thomas M. Murphy, Florida Professional Surveyor and Mapper, of Hole Montes, 950 Encore Way, Naples, Florida 34110, date of Map 8/3/16, being Project Number 2016526, and recorded in the Public Records of Lee County, Florida, on November 30, 2017, in Right-of-way Maps Instrument Number 2017000248315.

Fee Title to the foregoing roads having been derived from the Warranty Deed of WCI Communities, LLC, to Lee County, Florida, dated July 21, 2017, and recorded in the Public Records of Lee County, Florida, on September 19, 2017, in Instrument Number 2017000195008.

2. Those portions of Gateway Boulevard, Commerce Lakes Drive and Griffin Drive as shown on the 6-sheet ALTA/NSPS Land Title Survey of Gateway Roads, prepared by Thomas M. Murphy, Florida Professional Surveyor and Mapper, of Hole Montes, 950 Encore Way, Naples, Florida 34110, dated 9/2016, last revised 4/10/17, being Project Number 2016530, and recorded in the Public Records of Lee County, Florida, on November 30, 2017, in Right-of-way Maps Instrument Number 2017000248316.

Fee Title to the forgoing roads having been derived from the Warranty Deed of Gateway Services Community Development District, f/k/a the Gateway Services District, to Lee County, Florida, dated August 24, 2017, and recorded in the Public Records of Lee County, Florida, on September 21, 2017, in Instrument Number 2017000197797.



Major Insurance Requirements

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. Commercial General Liability - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products and completed operations
\$1,000,000 personal and advertising injury

- b. Business Auto Liability - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL)
\$500,000 bodily injury per person
\$1,000,000 bodily injury per accident
\$500,000 property damage per accident

- c. Workers' Compensation - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident
\$500,000 disease limit
\$500,000 disease - policy limit

"The required minimum limit of liability shown in a. and b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."



Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

- a. The certificate holder shall read as follows:

Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902

- b. *"Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials"* will be named as an "Additional Insured" on the General Liability policy, including Products and Completed Operations coverage.

Special Requirements:

1. An appropriate "Indemnification" clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to insure that all subcontractors comply with all insurance requirements.

EXHIBIT B

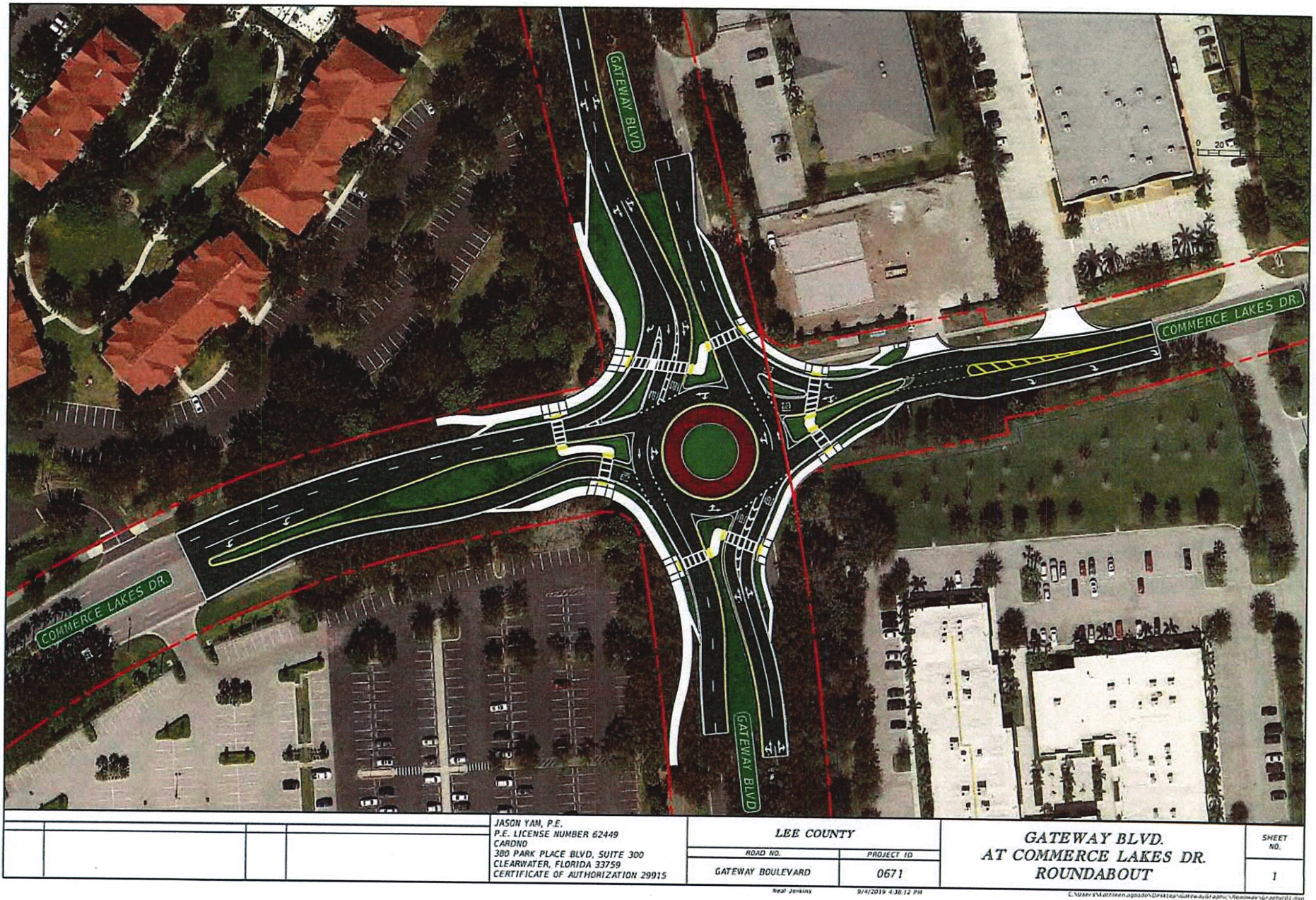


EXHIBIT "C"

This Instrument was prepared by:

Lee County Attorney's Office
P.O. Box 398
Fort Myers, Florida 33902

Strap No.: 18-45-26-00-00001.106B

FIRST AMENDMENT **TO THE** **LANDSCAPE, SIGN, DRAINAGE, UTILITIES AND** **STREET LIGHTING MAINTENANCE** **and** **HOLD HARMLESS INTERLOCAL AGREEMENT**

THIS First Amendment to the Landscape, Sign, Drainage, Utilities and Street Lighting Maintenance and Hold Harmless Interlocal Agreement ("*First Amendment*") is entered into this _____ day _____ of 20____, by and between **Lee County**, a Charter County and a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida 33902-0398 ("*County*"); and the **Gateway Services Community Development District**, an independent single-purpose specialized unit of local government created under Florida Statutes Chapter 190, whose address is c/o District Offices, 13240 Griffin Drive, Fort Myers, Florida 33913; ("*District*"). Collectively the foregoing may be referred to as the "*Parties*".

WHEREAS, the County owns and maintains certain portions of Gateway Boulevard, West Commerce Lakes Drive and Griffin Drive, all located within Lee County, Florida, and having been acquired as a result of the conveyances recorded in the Public Records of Lee County, Florida, in Instruments Numbered 2017000195008 and 2017000197797 ("*County's Roads*"); and

WHEREAS, the District is the owner of a portion of Commerce Lakes Drive, a roadway lying in Section 18, Township 45 South, Range 26 East, extending easterly from its intersection with Gateway Boulevard, and being more particularly described in Exhibit "A-1" in the Special Warranty Deed of WCI Communities, LLC, to the District, dated March 5, 2018, and recorded in the Public Records of Lee County, Florida, on April 18, 2018, in Instrument Number 2018000092487, which description in the aforesaid Special Warranty Deed is incorporated herein by reference (the "*District's Roadway*"); and

WHEREAS, the Parties have previously entered into an agreement setting forth the ability of the District to own, repair, replace and maintain roadside and median landscaping, irrigation, signs, street lighting, and other appurtenant improvements within the County Roads ("*Existing Road Improvements*"), as set forth in that agreement entitled "*Landscape, Sign, Drainage, Utilities and Street Lighting Maintenance and Hold Harmless Interlocal Agreement*", dated February 21, 2017, and recorded in the Public Records of Lee County, Florida, on December 19, 2017, in Instrument Number 2017000263968 (the "*Agreement*"), the terms and conditions of which are incorporated fully herein by reference; and

WHEREAS, the County is desirous of acquiring ownership of the District's Roadway for inclusion in the County's roadway transportation network; and

WHEREAS, the District is willing to donate a portion of the District's Roadway to the County for use in the construction of the Project, provided the County will accept the balance of the District's Roadway for both ownership and maintenance as a County-owned and maintained roadway; and

WHEREAS, such conveyance by the District to the County is further subject to the District retaining ownership of certain improvements located within the District's Roadway, consisting of, but not limited to, street lighting facilities, landscaping and signage, and constructed facilities for surface water management, irrigation, potable water and wastewater (the "*District's Existing Road Improvements and Utilities*"); and

WHEREAS, it is the intent of the Parties that the obligations contained in this First Amendment will not become effective nor otherwise commence until the District's Roadway has been formally accepted for ownership and maintenance by the County, at that point the terms and conditions of this Amendment will become fully effective.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The above recitals are true and correct and incorporated herein as though fully set forth below.

2. The District agrees to convey, and the County agrees to accept, the District's conveyance of the District's Roadway for both ownership and maintenance, subject to the terms and conditions of both the above-referenced Agreement and as further recited herein. Upon the County's acceptance of the District's conveyance of the District's Roadway for both ownership and maintenance, the District's Roadway will be subject to the terms and conditions of the above-referenced Agreement, as amended hereby.

3. The Agreement is further amended to provide that if a permit pursuant to Lee County Administrative Code (AC) AC-11-12 is required for work in the roadways owned by Lee County that are subject to the Agreement, the County will waive the permit fee and bond requirements for the District as a governmental entity where the District is both the project applicant and contractor.

4. The terms of this First Amendment are binding upon and will inure to the benefit of the Parties' successors and assigns, and will not be invalidated, impacted or altered by any subsequent incorporation or annexation.

5. If any part of this First Amendment is declared invalid by a court of competent jurisdiction, such part or parts shall be severable, and the remaining part or parts shall continue to be in full force and effect.

6. This first Amendment is intended to be construed in accordance with the laws of the State of Florida.

[End of provisions – Signature pages follow.]

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement intending to be bound as of the date first above written.

Signed, sealed and delivered
in the presence of:

(Two separate witnesses required)

CHRIS SUCEMAKER

[1st Witness' Signature]

CHRIS SUCEMAKER

[Type or Print Name]

Frank Coffey

[2nd Witness' Signature]

FRANK COFFEY

[Type or Print Name]

**Gateway Services Community
Development District**

BY:

Margaret Fineberg

[Signature]

MARGARET FINEBERG

[Type or print name]

Chair, Board of Supervisors

State of Florida
County of Lee

The foregoing instrument was acknowledged before me this 7th day of January, 2020, by Margaret Fineberg as the Chair of the Board of Supervisors of the Gateway Services Community Development District, on behalf of the District. He/she is personally known to me or has provided the following as identification: personally known to me



Approved as to form for reliance
of the Gateway Services Community
Development District only:

By:

[Signature]

District Counsel

Approved and accepted for and on behalf of Lee County, Florida, intending to be bound as of the date first written above.

ATTEST:
LINDA DOGGETT, CLERK

**Board of County Commissioners
of Lee County, Florida**

BY: _____
Deputy Clerk

[Type or print name]
Deputy Clerk

BY: _____

[Type or print name]
Chair/Vice-chair

Approved as to form for
reliance of Lee County only:

By: _____
Office of the Lee County Attorney

(121319/0830)