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**AGENDA ITEM
ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS**

Deadline for Submission - Wednesday 9 a.m. – Thirteen Days Prior to BCC Meeting

7/18/2023

BCC MEETING DATE

TO: County Administration

DATE: May 4, 2023

FROM: David Migut, County Attorney

PHONE: 904-209-0815

SUBJECT OR TITLE: Interlocal Agreement by and between the City of Jacksonville and St. Johns County regarding the terms and conditions for improvements on property located on the municipal boundary within both the City and County.

AGENDA TYPE: Consent Agenda, Resolution

BACKGROUND INFORMATION:

NWIC, LLC is the owner of real property in Nocatee. A portion of the property is in St. Johns County, and another portion is in Duval County, within the City of Jacksonville. NWIC intends to construct improvements on the property, potentially including a grocery store. Due to the fact that the property is located in both counties, a proposed Interlocal Agreement between St. Johns County and the City of Jacksonville has been negotiated, which will address the parties' respective duties and obligations regarding permitting, emergency services, allocation of ad valorem taxes, payment of sales tax, building plan and construction review, and other similar issues. Approval of the proposed Interlocal Agreement will allow for an orderly development of the property and benefit residents of St. Johns County and the City of Jacksonville.

1. IS FUNDING REQUIRED? No

2. IF YES, INDICATE IF BUDGETED. No

IF FUNDING IS REQUIRED, MANDATORY OMB REVIEW IS REQUIRED:

INDICATE FUNDING SOURCE:

SUGGESTED MOTION/RECOMMENDATION/ACTION:

Motion to adopt Resolution 2023-_____, authorizing the Chair to execute an interlocal agreement, in substantially the same form and format as attached, with the City of Jacksonville, approving the terms and conditions for improvements on property located on the municipal boundary within both the City of Jacksonville and St. Johns County County.

For Administration Use Only:

Legal: DM 6/5/2023

OMB: N/A

Admin: Brad Bradley 6/8/2023

RESOLUTION NO. 2023 - _____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE CHAIR TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE CITY OF JACKSONVILLE FOR NOCATEE WEST COMMERCIAL RETAIL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, NWIC, LLC (“NWIC”) is the owner of real property in Nocatee. A portion of the property is in St. Johns County, and another portion is in Duval County, within the City of Jacksonville; and

WHEREAS, NWIC intends to construct improvements on the property, potentially including a grocery store; and

WHEREAS, Due to the fact that the property is located in both counties, a proposed Interlocal Agreement between St. Johns County and the City of Jacksonville has been negotiated which will address the parties’ respective duties and obligations regarding permitting, emergency services, allocation of ad valorem taxes, payment of sales tax, building plan and construction review, and other similar issues; and

WHEREAS, Section 163.01, Florida Statutes authorizes the County and the City of Jacksonville to enter into said Agreement.

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida, that:

1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as legislative findings of fact.
2. The Chair of the Board of County Commissioners is hereby authorized to execute the Interlocal Agreement on behalf of the County in substantially the same form and format as attached hereto.
3. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners of St. Johns County.

PASSED AND ADOPTED by the Board of Board of County Commissioners of St. Johns County, Florida this _____ day of July 2023.

**BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA**

By: _____
Christian Whitehurst, Chair

ATTEST: Brandon J. Patty, Clerk of the Circuit Court and Comptroller

By: _____
Deputy Clerk

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF JACKSONVILLE
AND
ST. JOHNS COUNTY, FLORIDA
FOR
NOCATEE WEST COMMERCIAL RETAIL**

THIS INTERLOCAL AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2023, by and between the **CITY OF JACKSONVILLE, FLORIDA** (the “City”) and **ST. JOHNS COUNTY, FLORIDA** (the “County”), and is joined by **NWIC, LLC**, a Florida limited liability company (“NWIC”).

WITNESSETH:

WHEREAS, Section 163.01, Florida Statutes, authorizes the joint exercise through interlocal agreement by two or more public agencies of any power, privilege or authority common to them and which each might exercise separately.

WHEREAS, NWIC is the fee simple owner of the property described on **Exhibit “A”** attached hereto (the “**Property**”).

WHEREAS, the Property is located on the municipal boundary between the City and County such that a portion of the Property is located within the City and another portion in the County.

WHEREAS, the parties wish to enter into this Agreement in order to set forth the covenants, terms and conditions for the permitting and approval of certain improvements to be constructed on the Property, the provision of emergency services for the Property, the allocation and distribution of taxes between the City and County, and such other matters as set forth below.

WHEREAS, the parties recognize the mutual benefits that may be afforded by implementing this Agreement.

NOW THEREFORE, in consideration of the mutual covenants expressed herein, and other good and valuable consideration, the sufficiency of which the parties hereby acknowledge, the County and the City agree as follows:

1. **Recitals**. The County and the City agree that the above recitals are true and correct and are incorporated herein.

2. **Review and Approval of Project**.

(a) The County and the City agree that they will administratively process and, as appropriate, approve an integrated development of the Property in accordance with **[INSERT**

NAME OF PLANS] (the “Proposed Site Plan”), which plans are on file with the City and the County. The Proposed Site Plan shall comply with all land use, zoning and building code criteria and requirements of both the City and the County.

(b) The City and the County acknowledge and agree that an approximately 48,387 square foot grocer storeroom as generally shown on **Exhibit “B”** attached hereto (the “Grocer Storeroom”) is proposed to be developed and constructed on the Property. The City shall review, process and consider the approval of all development and construction of all improvements associated with the Property located within the City. The County shall review, process and consider the approval of all development and construction of all improvements associated with the Property located within the County; provided that, as to the Grocer Storeroom, the County’s review and approval shall be limited to solely the horizontal improvements serving the Grocer Storeroom. The City shall have exclusive jurisdiction to review, process and consider the approval of all development and construction of all vertical improvements related to or associated with the Grocer Storeroom.

(c) The City shall charge for and receive any and all process, permit, mobility fees or other fees normally charged by the City for the development and construction of any improvements in the City. The County shall charge for and receive any and all process, permit, impact fees or other fees normally charged by the County for the development and construction of any improvements in the County.

(d) Notwithstanding that the Property is located within the municipal boundaries of both the City and the County, the entire Property will be issued City addresses.

3. **Emergency Services.** Given that the Property will be issued City addresses, the City will provide primary 9-1-1 services for the Property based on the City’s standard systems and protocols. The Jacksonville Sheriff’s Office and the Jacksonville Fire and Rescue Department shall provide all primary and first response services to the Property. Nothing in this section shall modify, limit, or alter that certain Mutual Aid Agreement Between St. Johns County Sheriff’s Office and the Jacksonville Sheriff’s Office or that certain Interlocal Agreement Between the City of Jacksonville and St. Johns County, Florida For Automatic and Mutual Aid. The City and the County may, at their discretion, enter into additional service and/or cooperation agreements relating to police and fire services and/or procedures relating to the Property.

4. **Allocation of Ad Valorem Taxes.**

(a) The City and the County stipulate and agree that 16,674 square feet of such Grocer Storeroom will be located in the City (“City Square Footage”) and 31,713 square feet of such Grocer Storeroom will be located in the County (“County Square Footage”); provided that the foregoing City Square Footage and County Square Footage shall be subject to certification by the Duval County Property Appraiser and St. Johns County Property Appraiser at such time that a certificate of occupancy is issued for the Grocer Storeroom.

(b) The City and the County acknowledge and agree that (i) the Duval County Property Appraiser will issue a City real property folio number for the City Square Footage; and

(ii) the St. Johns County Property Appraiser will issue a County real property folio number for the County Square Footage. All ad valorem taxes relating to the portion of the Property located in the City shall be paid to the Duval County Tax Collector, and all ad valorem taxes relating to the portion of the Property located in the County shall be paid to the St. Johns County Tax Collector.

(c) The City and the County acknowledge and agree that the Duval County Property Appraiser and St. Johns County Property Appraiser will each issue a tangible personal property folio number for those parties whose business occupies portions of the Property located in both the City and County (each business that occupies portions of the Property located in both the City and County is referred to herein as a “**Submitting Party**”). Each Submitting Party will submit to the Duval County Property Appraiser and St. Johns County Property Appraiser their tangible personal property returns for each tax roll year. The returns will be based on a single asset listing consisting of all assets located within the leased location of the Property. The Duval County Property Appraiser and the St. Johns County Property Appraiser shall rely on the City Square Footage and County Square Footage numbers in determining the percentage of square footage lying in the City and County. Each Submitting Party will bifurcate asset cost based on the single asset listing between Duval County Property Appraiser and St. Johns County Property Appraiser pro-rated on the City Square Footage and County Square Footage numbers. Each Submitting Party will pay to the Duval County Tax Collector and St. Johns County Tax Collector the applicable tax due based on applying the respective millage rates for each jurisdiction to the value bifurcated on the single asset listing.

(d) The City and County acknowledge and agree that any non ad valorem taxes and the filing of any and all tax returns related to the non ad valorem taxes shall be based on the rates of and filed with the City’s appropriate taxing authorities. The City and County shall enter into an agreement as to the allocation of such non ad valorem taxes between them in a separate agreement.

5. **Payment of Sales Taxes.**

(a) The City and the County agree that all taxable sales occurring in or originating from any portion of the Grocer Storeroom (whether or not such transfer occurred in the City or the County) and all rent charged for the renting, leasing, or granting of a license to use the Grocer Storeroom (or any portion thereof) (collectively, the “Grocer Storeroom Taxable Transactions”) shall be based on the rates promulgated by and paid to the City. Accordingly, all discretionary sales surtax as to the Grocer Storeroom Taxable Transactions shall also be based on the rates promulgated by the City and paid to the City. The City and County shall enter into a separate agreement as to the allocation between them of such sales tax payable on the Grocer Storeroom Taxable Transactions. Upon written request delivered from the City or the County to NWIC, NWIC shall request that the tenant of the Grocer Storeroom (“Tenant”) provide to NWIC the “white paper” detail from the Consolidated Sales and Use Tax Return to document sales tax paid by Tenant to the Florida Department of Revenue on all taxable sales occurring in or originating from any portion of the Grocer Storeroom. Subject to the protections set forth in Section 213.053, Florida Statutes, regarding tax return information confidentiality, NWIC shall (i) provide Tenant’s sales tax return information to both to City and County upon five (5)

business days' of receipt of such information from Tenant, and (ii) upon five (5) business days' of receipt of written request therefor from the City or County, provide to both the City and the County NWIC's "white paper" detail from its Consolidated Sales and Use Tax Return as to all rent charged for the renting, leasing, or granting of a license to use the Grocer Storeroom, so that City and County may accurately allocate sales tax revenues from the Grocer Storeroom Taxable Transactions between themselves. The City and County shall not be permitted to request such sales tax information from NWIC more frequently than once per calendar quarter. Notwithstanding anything herein to the contrary, in no event shall this Agreement obligate NWIC to pay sales taxes (including, without limitation, discretionary sales surtax) as to any taxable sales occurring in or originating from any portion of the Grocer Storeroom. NWIC shall include a provision in its lease with Tenant as to Grocery Storeroom requiring Tenant to provide to NWIC the sales tax information required under this Section. Notwithstanding the foregoing, for so long as Publix Super Markets, Inc. ("Publix") is the Tenant of the Grocer Storeroom, (i) the City and the County shall request, directly from Publix, such sales tax return information as to all taxable sales occurring in or originating from any portion of the Grocer Storeroom; and (ii) Publix shall timely provide such sales tax return information directly to the City and the County.

(b) The City and the County shall coordinate, in good faith, and comply with the rules of and effectuate the payment to the Florida Department of Revenue of any Discretionary Sales Surtaxes on their respective discretionary sales.

6. **Amendments.** This Agreement may be amended only by written instrument specifically referring to this Agreement and executed by the City, County, and NWIC. NWIC, and any successor or assign of NWIC as the owner of the Property, is an express third party beneficiary of the terms and provisions of this Agreement.

7. **Severability of Invalid Provisions.** If any one or more of the agreements, provisions, covenants, conditions and terms of this Agreement shall be contrary to any express provision of law or contrary to the policy of express law, though not express prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such agreements, provisions, covenants conditions or terms shall be null and void with no further force or effective and shall be deemed separable from the remaining agreements, provisions, covenants, conditions and terms of this Agreement and shall in no way affect the validity of any other provisions hereof.

8. **Notices.** Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

If to City:

With a Copy to: Office of General Counsel
Attn: Corporation Secretary
117 W. Duval Street, Suite 480
Jacksonville, Florida 32202

If to County: _____

If to NWIC: NWIC, Inc.
4310 Pablo Oaks Court
Jacksonville, Florida 32224

If to Publix: Publix Super Markets, Inc.
3300 Publix Corporate Parkway
Lakeland, Florida 33811

9. **Public Records.** The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this Interlocal Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), as well as other applicable State and/or Federal law. Access to such public records, may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

10. **Governing Law and Venue.** This Agreement shall be construed according to the laws of the State of Florida.

11. **Severability.** If any word, phrase, sentence, part, subsection, section, or other portion of this Agreement, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid shall remain in full force, and effect.

12. **Entire Agreement.** This Agreement contains the entire agreement between the respective parties hereto and supersedes any and all prior agreements and understanding between the respective parties hereto relating to the subject matter hereof. No statement or representation of the respective parties hereto, their agents or employees, made outside of this Agreement, and not contained herein, shall form any part hereof or bind any respective party hereto. This Agreement shall not be supplemented, amended or modified except by written instrument signed by the respective parties hereto.

13. **Authority to Execute.** Each party covenants to the other party that it has the lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

14. **Execution of Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original thereof.

[Remainder of page left blank intentionally. Signature pages follow.]

IN WITNESS WHEREOF, the parties, by and through their lawfully authorized representatives, have executed this Agreement on the day and year first above written.

ATTEST:

CITY OF JACKSONVILLE

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTEST:

ST. JOHNS COUNTY, FLORIDA

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

NWIC, LLC, a Florida limited liability company

By: _____

Name: _____

Title: _____

Publix Super Markets, Inc. joins herein for the purpose of agreeing to the terms and provisions of Section 5 of this Agreement.

PUBLIX SUPER MARKETS, INC., a Florida corporation

By: _____

Name: _____

Title: _____

EXHIBIT "A"

THE PROPERTY

A portion of Tract "E", as depicted on Southwest Quad – Duval Segment, recorded in Plat Book 77, pages 147 through 160, of the current Public Records of Duval County, Florida, together with a portion of Tract "A", as depicted on Southwest Quad – St. Johns Segment, a plat recorded in Map Book 108, pages 36 through 43, of the Public Records of St. Johns County, Florida, being more particularly described as follows:

For a Point of Reference, commence at the Northerly corner of the Easterly terminus of Burbank Avenue as depicted on said Southwest Quad – St. Johns Segment; thence Westerly along the Northerly right of way line of said Burbank Avenue the following 3 courses: Course 1, thence South $58^{\circ}40'39''$ West, 15.56 feet; Course 2, thence North $76^{\circ}19'21''$ West, 30.32 feet to the point of curvature of a curve concave Southerly having a radius of 464.00 feet; Course 3, thence Westerly along the arc of said curve, through a central angle of $10^{\circ}32'31''$, an arc length of 85.37 feet to the Point of Beginning, said arc being subtended by a chord bearing and distance of North $81^{\circ}35'36''$ West, 85.25 feet.

From said Point of Beginning, thence continue along the Northerly and Easterly right of way lines of said Burbank Avenue the following 7 courses: Course 1, thence Westerly along the arc of a curve concave Southerly having a radius of 464.00 feet, through a central angle of $09^{\circ}04'45''$, an arc length of 73.53 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of South $88^{\circ}35'46''$ West, 73.45 feet; Course 2, thence South $84^{\circ}03'23''$ West, 379.94 feet to the point of curvature of a curve concave Northerly having a radius of 100.00 feet; Course 3, thence Westerly along the arc of said curve, through a central angle of $33^{\circ}33'26''$, an arc length of 58.57 feet to a point of compound curvature, said arc being subtended by a chord bearing and distance of North $79^{\circ}09'53''$ West, 57.74 feet; Course 4, thence Northwesterly along the arc of a curve concave Northeasterly having a radius of 160.00 feet, through a central angle of $15^{\circ}54'04''$, an arc length of 44.40 feet to a point of compound curvature, said arc being subtended by a chord bearing and distance of North $54^{\circ}26'08''$ West, 44.26 feet; Course 5, thence Northwesterly along the arc of a curve concave Northeasterly having a radius of 200.00 feet, through a central angle of $40^{\circ}32'29''$, an arc length of 141.52 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of North $26^{\circ}12'52''$ West, 138.58 feet; Course 6, thence North $05^{\circ}56'37''$ West, 541.75 feet to the point of curvature of a curve concave Westerly having a radius of 440.00 feet; Course 7, thence Northerly along the arc of said curve, through a central angle of $00^{\circ}51'19''$, an arc length of 6.57 feet to a point on said curve, said arc being subtended by a chord bearing and distance of North $06^{\circ}22'17''$ West, 6.57 feet; thence North $84^{\circ}26'11''$ East, departing said Easterly right of way line, 481.01 feet to the point of curvature of a curve concave Northwesterly having a radius of 50.00 feet; thence Northeasterly along the arc of said curve, through a central angle of $112^{\circ}48'02''$, an arc length of 98.44 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of North $28^{\circ}08'23''$ East, 83.29 feet; thence North

28°15'38" West, 213.22 feet to a point lying on the Westerly prolongation of the Easterly line of said Southwest Quad – Duval Segment; thence North 58°04'17" East, along said Westerly prolongation and along said Easterly line, 263.00 feet to a point lying on the Westerly right of way line of Valley Ridge Boulevard, a variable width right of way as presently established; thence South 31°55'43" East, along said Westerly right of way line, 66.00 feet; thence South 58°04'17" West, departing said Westerly right of way line, 185.01 feet to the point of curvature of a curve concave Easterly having a radius of 40.00 feet; thence Southerly along the arc of said curve, through a central angle of 90°13'18", an arc length of 62.99 feet to a point of reverse curvature, said arc being subtended by a chord bearing and distance of South 12°57'37" West, 56.68 feet; thence Southeasterly along the arc of a curve concave Southwesterly having a radius of 1250.00 feet, through a central angle of 13°19'12", an arc length of 290.59 feet to a point on said curve, said arc being subtended by a chord bearing and distance of South 25°29'26" East, 289.94 feet; thence Easterly along the arc of a non-tangent curve concave Northerly having a radius of 54.50 feet, through a central angle of 57°06'24", an arc length of 54.32 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of South 78°25'30" East, 52.10 feet; thence North 73°01'18" East, 131.42 feet to the point of curvature of a curve concave Northwesterly having a radius of 59.50 feet; thence Northeasterly along the arc of said curve, through a central angle of 53°40'18", an arc length of 55.74 feet to a point lying on said Westerly right of way line of Valley Ridge Boulevard, said arc being subtended by a chord bearing and distance of North 46°11'09" East, 53.72 feet; thence Southerly along said Westerly right of way line and along the arc of a non-tangent curve concave Westerly having a radius of 1475.00 feet, through a central angle of 02°20'25", an arc length of 60.25 feet to a point on said curve, said arc being subtended by a chord bearing and distance of South 17°21'09" East, 60.24 feet; thence Westerly, departing said Westerly right of way line and along the arc of a non-tangent curve concave Southerly having a radius of 44.50 feet, through a central angle of 27°23'40", an arc length of 21.28 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of South 86°43'08" West, 21.07 feet; thence South 73°01'18" West, 178.36 feet to the point of curvature of a curve concave Southeasterly having a radius of 34.50 feet; thence Southwesterly along the arc of said curve, through a central angle of 49°44'26", an arc length of 29.95 feet to a point on said curve, said arc being subtended by a chord bearing and distance of South 48°09'05" West, 29.02 feet; thence Southerly along the arc of a non-tangent curve concave Westerly having a radius of 1250.00 feet, through a central angle of 07°17'10", an arc length of 158.96 feet to a point on said curve, said arc being subtended by a chord bearing and distance of South 12°03'55" East, 158.85 feet; thence South 00°28'29" East, along a non-tangent line, 168.97 feet to a point on a non-tangent curve concave Westerly having a radius of 1238.00 feet; thence Southerly along the arc of said curve, through a central angle of 11°43'49", an arc length of 253.46 feet to the Point of Beginning, said arc being subtended by a chord bearing and distance of South 05°12'43" West, 253.02 feet.

EXHIBIT "B"

SITE PLAN

