

**INTERLOCAL AGREEMENT BETWEEN ALACHUA COUNTY, FLORIDA AND  
UNION COUNTY, FLORIDA**

THIS Interlocal Agreement, entered into when executed by all parties this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between Alachua County, a charter county and political subdivision of the State of Florida, by and through its Board of County Commissioners, (hereinafter referred to as “Alachua County”) and Union County, a political subdivision of the State of Florida, by and through its Board of County Commissioners, (hereinafter referred to as “Union County”) for purposes of establishing a funding and reimbursement mechanism in litigation for which both parties have a mutual interest.

**WITNESSETH:**

WHEREAS, Union County is currently in litigation with HPS Enterprises II, LLC (Case No. 63-2019-CA-0023 in the Circuit Court for the Eighth Judicial Circuit in and for Union County, Florida) regarding a proposed phosphate mine in Bradford County, Florida and Union County, Florida; and

WHEREAS, Alachua County has an interest in the shared resource of the Santa Fe River, and as a downstream user of the Santa Fe River, Alachua County has an interest in preserving the natural health and scenic beauty of the River and its ecosystems due to concerns for the environment, as well as to protect the local eco-tourism industry supported by a protected Santa Fe River; and

WHEREAS, Alachua County has retained the professional services of de la Parte & Gilbert, P.A. (hereinafter referred to as the “Firm”) for purposes of monitoring the same proposed phosphate mine and representing Alachua County’s interests; and

WHEREAS, Alachua County, Union County, and the Firm entered into an agreement allowing the Firm to provide professional services to Union County in the aforementioned litigation; and

WHEREAS, Alachua County desires to pay the upfront litigation costs incurred by Union County conditioned upon Union County’s agreement to seek attorneys’ fees and costs in the litigation and reimburse Alachua County for expenses if fees and costs are awarded; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Alachua County and Union County mutually agree as follows:

Section 1. Term. This Agreement shall commence upon execution by all parties, and end upon, unless terminated earlier, as provided for herein.

Section 2. Payment for Professional Services. Pursuant to a separate agreement entered into by Alachua County, Union County, and the Firm, the Firm shall invoice Union County for services provided and costs incurred related to Case No. 63-2019-CA-0023 in the Circuit Court for the Eighth Judicial Circuit in and for Union County, Florida (the "Litigation").

For services rendered by the Firm and costs incurred during the term of this Agreement, Alachua County shall pay the full cost of any invoice from the Firm to Union County for professional services rendered in the Litigation.

For Alachua County to pay the cost of an invoice, Union County must review and approve the invoice and then submit the invoice to Alachua County within 14 calendar days of receipt with a request for payment under the terms of this Agreement. Alachua County may choose to withhold payment of an invoice until Union County reviews and approves an invoice as in compliance with the terms of Union County's professional services agreement with the Firm.

Section 3. Recovery of Fees and Costs and Reimbursement. If Union County is the prevailing party in the Litigation, and in exchange for the Payment of Professional Services outlined in section 2 of this Agreement, then Union County agrees to seek the full extent of attorneys' fees and costs associated with the services provided by the Firm. Union County shall seek recovery of fees and costs associated with the services of the Firm under any reasonable legal theory available to it as the prevailing party in the Litigation.

In the context of this Agreement, "prevailing party" shall be broadly read to include any outcome in which Union County may seek the recovery of fees and costs associated with the Litigation.

If any court grants Union County attorneys' fees and costs associated with the services provided by the Firm in the Litigation, or if Union County recovers any fees and costs for legal services as part of a settlement agreement in this matter, then Union County shall pay Alachua County the full extent of fees and costs awarded up to, and not to exceed, the total amount paid by Alachua County under the terms of this Agreement. Union County shall pay Alachua County any amount due under this section within 30 calendar days of receipt.

If Union County fails to reimburse Alachua County pursuant to the terms of this Agreement, Alachua County may seek recovery and reimbursement from Union County by any means available.

Section 4. Coordination with County staff. Union County designates Russ Wade, Union County Attorney, to serve as a liaison with the Alachua County Attorney's Office and Alachua County Office of Management and Budget to coordinate the services provided for in this

Agreement.

Section 5. Termination:

a. Alachua County may terminate this Agreement at any time, without cause, by giving written notice to Union County specifying the termination date, which shall not be less than 20 calendar days from the date said notice is received. If Alachua County terminates this Agreement for any reason, it shall pay for any outstanding invoice from the Firm for services provided through the date of notice of termination, but will not be liable for any additional fees and costs incurred by Union County from the date of notice of termination to the actual termination date. After notice of termination, Union County shall review and approve any such invoices and provide them to Alachua County for payment prior to the termination date.

b. Union County may terminate this Agreement at any time by giving written notice to Alachua County. Alachua County shall not pay for any services rendered by the Firm after the notice of termination is given. Termination will be effective 24 hours after notice of termination.

c. This Agreement is expressly conditioned upon the availability of funds lawfully appropriated and available for the purposes set out herein as determined in the sole discretion of Alachua County. In the event funds to finance this Agreement become unavailable, Alachua County may terminate this Agreement upon no less than 24 hours' notice, written and delivered to Union County. Said notice of termination shall be delivered by certified mail, return receipt requested, electronic mail, or in person with signed proof of delivery. Alachua County shall be the sole and final authority as to the availability of funds.

Section 6. Notices. Except as otherwise provided herein, any notice, acceptance, request, or approval from either party to the other party shall be in writing and sent by certified mail, return receipt requested, and shall be deemed to have been received when either deposited in a United States Postal Service mailbox or personally delivered with signed proof of delivery. Alachua County's and Union County's representatives are:

Alachua County:

County Attorney  
Alachua County Attorney's Office  
12 SE 1<sup>st</sup> Street  
Gainesville, Florida 32601

Union Attorney:

County Attorney  
Union County Attorney's Office  
15 NE 1<sup>st</sup> Street  
Lake Butler, Florida 32054

Section 7. Non-assignment. Neither party may assign, convey, pledge, sublet, or otherwise

dispose of any interest in this Agreement and shall not transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party.

Section 8. Amendments. This Agreement may be amended only by mutual written agreement of the parties hereto.

Section 9. Severability. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

Section 10. No Waiver of Sovereign Immunity. Nothing contained herein shall constitute a waiver by Union County or Alachua County of sovereign immunity or the provisions or limitation of liability of Sec. 768.28, Fla. Stat.

Section 11. Governing law and venue. This Agreement shall be construed in accordance with the laws of the State of Florida. Venue shall be in Alachua County.

Section 12. Entire agreement.

a. It is understood and agreed that the entire Agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof, as well as any previous agreements presently in effect between the parties relating to the subject matter hereof.

b. Any alterations, amendment, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties.

**IN WITNESS WHEREOF**, Alachua County and Union County have caused this Agreement to be executed for the uses and purposes therein expressed, on the day and year first above written.

ALACHUA COUNTY, FLORIDA

\_\_\_\_\_  
Ken Cornell, Chair  
Alachua County Board of County Commissioners

Date: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
Alachua County Attorney

UNION COUNTY, FLORIDA

\_\_\_\_\_  
Richard Helms, Chair  
Union County Board of County Commissioners

Date: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
Union County Attorney