

**DRAFT 12-31-13 AGREEMENT FOR LAW ENFORCEMENT SERVICES
BY AND BETWEEN
THE FLAGLER COUNTY SHERIFF'S OFFICE
AND
THE CITY OF PALM COAST**

THIS INTERLOCAL AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into by and between the City of Palm Coast, Florida, a municipal corporation of the State of Florida (hereinafter referred to as the "CITY"), and James Manfre, in his official capacity as Sheriff of Flagler County (hereinafter referred to as the "SHERIFF").

W I T N E S S E T H

WHEREAS, the CITY is a municipality within the boundaries of Flagler County, Florida, and wishes to procure professional law enforcement services for that area of land within its legal boundaries (hereinafter, said boundaries shall be referred to as the "Palm Coast District") in addition to the base level of countywide services required to be provided by the SHERIFF, as an elected constitutional officer, to citizens of Flagler County, including the citizens of the CITY;

WHEREAS, the CITY has requested that the SHERIFF furnish law enforcement services to its citizens beyond those services to which they are entitled as citizens of Flagler County;

WHEREAS, the CITY desires that the SHERIFF furnish law enforcement services on a full-time basis and duly perform any and all necessary and appropriate functions, actions, and responsibilities of a police and law enforcement force for the CITY in addition to the SHERIFF's countywide responsibilities;

WHEREAS, the SHERIFF has indicated his desire and willingness to accept and fulfill the responsibilities herein before mentioned;

WHEREAS, this Agreement for provision of law enforcement services is not intended by the parties to be a transfer, consolidation or merger within the meaning of those terms for constitutional or statutory purposes, or pension purposes, or for any other purpose whatsoever;

WHEREAS, the parties recognize that this Agreement shall, at all times, be interpreted and administered to be in harmony with the intent of the parties that no transfer, consolidation or merger shall be accomplished by the terms of this Agreement;

WHEREAS, the SHERIFF is an independent constitutional officer of the State of Florida;

WHEREAS, it is further the desire of the CITY that the full, complete and entire responsibility for law enforcement services within the CITY be performed by the SHERIFF; and

WHEREAS, this Agreement is specifically authorized by State law, including, but not necessarily limited to, the provisions of Section 125.0101, Florida Statutes; Chapter 163, Florida Statutes, and Chapter 166, Florida Statutes.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows: **ARTICLE**

1 - RECITATIONS

The recitations set forth above (i.e., the “Whereas” clauses) are incorporated herein by reference in their entirety and form a material part of this Agreement upon which the parties have relied.

ARTICLE 2 - LEGAL AUTHORITY

2.1 This Agreement is entered into pursuant to the provisions of Section 163.01, Florida Statutes, the Florida Interlocal Cooperation Act of 1969 and other applicable law.

2.2 The parties entering into this Agreement are fully cognizant of the constitutional limitations on the transfer of powers set forth in Article VIII, Section 4 of the Constitution of the State of Florida and it is the express purpose of this Agreement only

to enter into a contract for the provision of supplemental police/law enforcement/public safety services for certain functions and shall not be deemed in any manner whatsoever to authorize the delegation of the constitutional or statutory duties of either of the parties pursuant to the provisions of Section 163.01 (14), Florida Statutes. This Agreement at all times shall be construed consistent with such constitutional and statutory limitations.

- 2.3 The duties and responsibilities set forth in this Agreement to be performed by the parties shall be interpreted and administered in such a manner that it will not constitute a transfer, merger or consolidation as those terms are used in the Constitution of the State of Florida or in any statute of the State of Florida and as is further set forth in recitations of this Agreement.

ARTICLE 3 – LAW ENFORCEMENT SERVICES

3.1 Patrol Services.

A. The SHERIFF shall provide 24-hour comprehensive law enforcement services within the municipal boundaries of the CITY and exercise sound professional discretion in the enforcement of all laws and ordinances. All dispatching shall be handled by the SHERIFF. It is the specific understanding of the parties that in no event will any staff conditions at the Flagler County Sheriff's Office ("FCSO") lead to any reduction of level of service provided in this Agreement, or increase the overtime charge to the CITY under this Agreement. The SHERIFF shall not utilize a third-party provider for the provisions of service referenced in this Agreement unless approved by the City Council in its sole and absolute discretion.

The parties acknowledge that it is important for the CITY to have the SHERIFF's personnel who are acquainted with the general make-up of the CITY and are familiar with the geography, its industrial business, educational, and residential composition, and its crime problems.

- B. Nevertheless, the parties understand that from time to time emergencies may require the transfer of personnel to or from the municipal limits of the CITY on a temporary basis, to the same extent contemplated in a mutual aid agreement between any two independent law enforcement agencies.
 - C. No deputy shall perform for the CITY any function not within the scope of duties of such deputy in performing the same kind of services for the SHERIFF.
 - D. The SHERIFF shall furnish to and maintain for the benefit of the CITY, except as provided herein, all necessary labor, supervision, and supplies necessary and proper for the purpose of performing the services, duties and responsibilities set forth and contemplated herein and as necessary to maintain the level of service to be provided under this Agreement (hereinafter the “Palm Coast Unit”).
 - E. The SHERIFF agrees to provide the personnel and equipment at the level of service reflected herein. Should the CITY desire that the SHERIFF provide services either different in kind, or at a higher level than that contemplated herein, the City Manager shall have the authority to negotiate with the SHERIFF regarding modification of the Agreement and shall bring any modification to which the SHERIFF agrees to the City Council for appropriate action.
 - F. The SHERIFF shall provide uniformed deputy sheriffs to provide law enforcement services at all City Council meetings at no additional cost to the CITY. Uniformed deputy sheriffs shall also provide law enforcement services at City Council workshops when requested by the City Manager at no additional cost to the CITY.
- 3.2 The FCSO Commander assigned to the CITY (hereinafter referred to as the “Palm Coast Coordinator”) shall meet and confer with the City Manager or his/her designee as necessary to discuss the provision of law enforcement services to the CITY.

- 3.3 The SHERIFF will provide monthly written reports to the CITY consisting of data and analysis of CITY law enforcement service activity, which will include, but is not limited to, the number and type of arrests, calls for service, response times and other standard statistical data and information.
- 3.4 The staffing structure of the Palm Coast Unit will be as follows:
1. Minimum base Sheriff staffing assigned to Palm Coast District:
16 Sworn patrol personnel (i.e. those law enforcement services provided to the CITY independent of this Agreement.)
 2. City supported ADDITIONAL (i.e. in addition to 3.4.1) staffing assigned to Palm Coast District:
22 Sworn personnel (as reflected in Exhibit "A").
- 3.5 Utilizing the staffing structure as provided in Section 3.4 above (i.e. minimum of 38 sworn personnel), the Palm Coast Coordinator will provide the CITY with a minimum of nine (9) sworn personnel per shift (three (3) shifts). Sworn personnel assigned to specialized functions will be scheduled at the discretion of the Palm Coast Coordinator in consultation with the City Manager and the SHERIFF in order to achieve maximum effectiveness and at no additional cost of expense to the CITY, except as provided herein.
- 3.6 If at any time any shift of the Palm Coast District is staffed with less than nine (9) sworn officers, the CITY will deduct the equivalent dollars from the next month's payment to the SHERIFF equal to the number of hours times the number of officers that the staffing level fell below nine (9) sworn officers per shift. The hourly rate shall be that of the average Deputy salary as established in Exhibit A attached hereto and as may be amended in the future. The SHERIFF will provide to the CITY monthly accountings of staffing levels of the Palm Coast District.

- 3.7 Other Services. The following additional services shall be provided for the CITY at no additional cost to the CITY when the SHERIFF believes such are necessary or desirable:
- A. Crime scene investigation and support.
 - B. Aviation and helicopter unit (through mutual aid agreements).
 - C. Prisoner and jail services.
 - D. Criminal Investigations.
 - E. Marine Patrol.
 - F. Other support services, such as Traffic Homicide, Canine, etc. (as available to other SHERIFF districts or law enforcement jurisdictions).
- 3.7 Except as otherwise specifically set forth in this Agreement, such professional police services shall encompass all those duties and functions of the type coming within the jurisdiction of and customarily rendered by municipal police departments and the Office of the Sheriff of Flagler County and the Statutes of the State of Florida. Any section in Article 3 herein relative to personnel schedules may be adjusted by the Palm Coast Coordinator with the approval of the City Manager and the SHERIFF. Nothing herein is intended to usurp the authority of the SHERIFF's policies and procedures and any applicable collective bargaining agreements between the SHERIFF and his employees. In addition, nothing herein is intended to usurp the authority of the CITY, its policies, procedures or Charter.
- 3.8 The SHERIFF's responsibilities for the delivery of law enforcement services to unincorporated areas shall not diminish service to the CITY except in instances of mutual assistance.
- 3.9 It shall be the responsibility of the SHERIFF to fund and staff positions for the unincorporated patrol.

- 3.10 CITY agrees to provide the SHERIFF with access to the CITY's utility records, tax roll records, and any other records maintained by the CITY where access would enable the SHERIFF to investigate possible criminal activity and/or provide the expected level of law enforcement service to the residents of the CITY.
- 3.11 SPECIAL DETAILS. The SHERIFF's personnel will be assigned to CITY Special Event details held within the CITY at no additional cost or expense to the CITY, except as provided in this Agreement. The SHERIFF agrees that FCSO personnel already assigned to the CITY will be offered the opportunity to work special details so designated by the City Manager. The City Manager will notify the Palm Coast Coordinator at least five (5) days prior to an event in which the SHERIFF's personnel are requested. All such personnel shall be assigned by the Palm Coast Coordinator in accordance with the SHERIFF's policies and procedures and subject to approval of the City Manager.
- 3.12 OTHER DISPATCH SERVICES.
- A. SHERIFF agrees to provide all dispatching services required for Public Works related matters within the corporate City limits during the City's non-business hours. City business hours are generally 8:00 A.M. to 5:00 P.M., Monday through Friday except City holidays. Public Works related matters will include, but not be limited to, all street and water/wastewater utility calls for service. The SHERIFF's Dispatch will contact the CITY's on call Manager/Technician to address all Public Works related matters. SHERIFF may cancel this service for convenience after sixty (60) days written notice to the CITY.
- B. SHERIFF agrees to respond to all burglar alarms at all CITY facilities twenty-four (24) hours a day, seven (7) days a week. To the extent possible, the burglar alarms will be programmed to dial Dispatch directly only in the event of forcible entries at

CITY facilities. SHERIFF may cancel this service if, in his sole discretion, the alarms are excessive after sixty (60) days written notice to the CITY.

ARTICLE 4 - PALM COAST COORDINATOR

- 4.1 The SHERIFF shall provide, pursuant to this Agreement, a Palm Coast Coordinator. The Palm Coast Coordinator shall be devoted full-time to the CITY and shall provide direct supervision of activities at the CITY's precinct offices and personnel provided pursuant to this Agreement. The Palm Coast Coordinator shall, among other specified duties, act as a liaison between the SHERIFF and the CITY. The Palm Coast Coordinator shall also function as a member of the CITY's staff with regard to law enforcement issues and report to the City Manager in that capacity. The SHERIFF will be responsible for all law enforcement-related emergency management duties performed for the CITY. The Palm Coast Coordinator will be assigned to assist the CITY's emergency operations whenever the County EOC is activated for emergency operations.
- 4.2 The CITY currently has a Palm Coast Coordinator. In the event that either the SHERIFF or the CITY has concerns or issues regarding the current Palm Coast Coordinator, then such party will confer with the other party in good faith before there is a change in the position of the current Palm Coast Coordinator. The SHERIFF agrees to not change the current Palm Coast Coordinator without conferring with the City Manager and providing written notice to the City Manager. Any such change must be made in good faith by the SHERIFF and in the best interest of the CITY.
- 4.3 In the event the position of Palm Coast Coordinator becomes vacant, the parties agree that they will confer and select three (3) candidates to interview together. After such interviews and communications between the SHERIFF and the City Manager, the SHERIFF agrees to consider the recommendations and requests of the Palm Coast City Manager prior to making the selection of the replacement Palm Coast Coordinator. Such

selection again, shall be made in the good faith and in the best interest of the CITY. The SHERIFF shall provide the CITY with written notification of the selected candidate and his qualifications.

- 4.4 In the event the CITY becomes dissatisfied with the performance of the Palm Coast Coordinator, the CITY shall provide notification to the SHERIFF. Thereafter, the SHERIFF and the CITY Manager shall meet to discuss possible remedies of the problems experienced by the CITY. The SHERIFF agrees to act in good faith in resolving any problems experienced by the CITY. If the problems are not resolved to the CITY's satisfaction, the City Manager may request the removal of the Palm Coast Coordinator, with or without cause. If the City Manager requests the removal of the Palm Coast Coordinator, with or without cause, the SHERIFF shall do so immediately.

ARTICLE 5 – VEHICLES, EQUIPMENT, AND FACILITIES

- 5.1 The SHERIFF shall furnish to and maintain for the benefit of the CITY, all necessary equipment, vehicles, communication facilities and related supplies necessary and proper for the purpose of performing the services, duties and responsibilities set forth and contemplated herein and as necessary to maintain the level of service to be rendered hereunder.
- 5.2 Upon termination of this Agreement, all such equipment, supplies, and vehicles furnished by the SHERIFF, shall remain the property of the SHERIFF.
- 5.3 The SHERIFF shall provide a minimum of one precinct office within the CITY as well as all fixtures, furnishings, equipment, radios and facilities necessary for the operation of law enforcement services.

ARTICLE 6 – EMPLOYMENT AND PERSONNEL RESPONSIBILITIES

- 6.1 Employment Responsibility

- A. All deputy sheriffs and other persons employed by the SHERIFF in performance of such services, functions and responsibilities as described and contemplated herein for the CITY are deemed FCSO employees or appointees.
- B. The SHERIFF shall be responsible for providing at his sole cost and expense, all insurance benefits, compensation and/or any status or right to his employees, during the course of their employment with the SHERIFF. Accordingly, the CITY shall not be called upon to assume any liability for or direct payment for any salaries, wages, contribution to pension funds, insurance premiums, workers' compensation benefits under Chapter 440 of the Florida Statutes or any other amenities of employment to any employee of the SHERIFF who are performing services, duties and responsibilities hereunder for the benefit of the CITY and the residents thereof.
- C. Likewise, unless specifically provided to the contrary herein, the CITY shall not be liable for compensation, contribution or indemnity to the SHERIFF or the employees thereof for any injury or illness of any kind whatsoever, arising out of such employment with the SHERIFF and the performance of the services, duties and responsibilities contemplated herein.

6.2 Employment: Right of Control.

- A. The SHERIFF shall have and maintain the responsibility for and control of the delivery of services, the standards of performance, the discipline of personnel, and other matters incident to the performance of the services, duties, and responsibilities as described and contemplated herein.
- B. The Palm Coast Coordinator will notify the City Manager of the removal, transfer, or replacement of any personnel assigned to the CITY.

ARTICLE 7 - ASSIGNMENT OF POLICE POWERS

- 7.1 The CITY does hereby vest in each sworn deputy of the SHERIFF to the extent allowed by law, the police powers of the CITY which are necessary to implement and carry forth the services, duties, and responsibilities imposed upon the SHERIFF hereby, for the sole limited purpose of giving official and lawful status and validity to the performance thereof by such sworn deputies.
- 7.2 The City acknowledges that each sworn deputy of the FCSO is hereby vested with the City's police powers, that is, the powers to: enforce the ordinances of the CITY; to make arrests incident to the enforcement of such ordinances; and to do such other things and to perform such other acts as are necessary with respect thereto.

ARTICLE 8 – CONSIDERATION

- 8.1 The total amount due for all services beginning October 1, 2013, through September 30, 2014, shall be as set forth in Exhibit "A".
- 8.2 The total amount due for all services beginning October 1, 2014, through September 30, 2015, shall be as set forth in Exhibit "B".
- 8.3 The total amount due for all law enforcement services for subsequent fiscal years shall be based on the actual cost per officer assigned to the CITY, the increase for which shall not exceed three percent (3%) for any given fiscal year. The aforementioned cap may be subject to modification upon Notice to the CITY by the SHERIFF of exigent circumstances and mutual agreement to such a modification
- 8.4 The CITY agrees to pay the SHERIFF in equal monthly installments on or before the 25th day of the month proceeding the month of service.
- 8.5 The consideration recited herein constitutes the entire consideration to be paid hereunder and upon the payment thereof, in the manner and at the times prescribed herein.

8.6 The SHERIFF shall provide the CITY with staffing as provided in this Agreement and Exhibit "A" The CITY and the SHERIFF shall conduct an accounting at the end of each fiscal year. Such accounting will set forth the SHERIFF's budget for the services provided by this Agreement and also the actual annual expenses received by the SHERIFF for these services. If the actual expenditures are less than ninety-seven percent (97%) of the budgeted amount then the CITY shall receive a credit for such amount calculated into the amount due for these services in the next fiscal year.

8.7 The credit described in paragraph 8.5 shall be calculated on an annual basis for each fiscal year.

ARTICLE 9 – CRIMINAL AND TRAFFIC FINES, INVESTIGATIVE COSTS, RESTITUTION

9.1 All fines, costs, or restitution of any kind rendering in any Court as a result of charges made by the SHERIFF shall be distributed as provided by Federal or State laws, and/or the applicable Rules of Court, and the CITY shall be paid the funds derived from fines as provided by applicable laws or rules.

9.2 The CITY and the SHERIFF do hereby acknowledge, one to the other, that nothing contained herein shall in anyway be construed to impair the CITY's right to the disposition of fines and forfeitures to which the CITY would be entitled, pursuant to Section 316.660 F.S., as the same may be amended from time to time, or as to proceeds and forfeitures arising under the sale or disposition of unclaimed property or under any statutory or common law proceeding to which the CITY would otherwise be entitled, except as limited herein.

9.3 All law enforcement education funds levied and collected by the Clerk of the Court and earmarked for CITY pursuant to Section 943.25, Florida Statutes, may be assigned over

to the SHERIFF and used by the SHERIFF for the law enforcement education purposes authorized in said statute.

ARTICLE 10 – INSURANCE

10.1 The SHERIFF is a self-insured entity pursuant to Chapter 768, Florida Statutes, and will continuously maintain general liability and automobile liability self-insurance funds as required by law. The SHERIFF agrees to provide the CITY with a Certificate of Insurance evidencing said Program, and agrees that said Program will include at least the following:

General Liability *\$1,000,000/\$2,000,000*

Automobile Liability *\$100,000/\$200,000*

10.2 Self-insurance funds necessary to cover general liability and automobile liability will remain throughout the term of this Agreement, and the same may be extended in accordance with provisions hereof.

10.3 The CITY shall during the Term, at its sole cost and expense, maintain its own comprehensive general liability insurance or maintain a self-insuring fund for the term of this Agreement in the amount determined by the CITY to adequately insure the CITY's liability assumed herein, but in no event shall such coverage be less than the statutory waiver of sovereign immunity. In the event such coverage is modified, in any regard, before the expiration date of this Agreement, the CITY will provide at least thirty (30) day's prior written notice to the SHERIFF.

10.4 The costs of all policies of insurance required for the SHERIFF hereunder shall be the obligation of the SHERIFF, and the CITY shall in no way be responsible therefore. The costs of all policies of insurance required for the CITY hereunder shall be the obligation of the CITY, and the SHERIFF shall in no way be responsible therefore.

10.5 In the event the program is modified during the term of this Agreement, the SHERIFF shall provide the CITY with at least thirty (30) days prior written notice.

ARTICLE 11 – INDEMNIFICATIONS

11.1 To the extent and limits permitted by controlling law, the SHERIFF will indemnify and hold harmless the CITY against any claims, and the cost of defending such claims, arising directly or indirectly, as a result of, or in connection with any negligent acts or omissions of the SHERIFF's office or its deputies', agents', or employees' performance of the services required by this Agreement.

11.2 To the extent and limits implemented under controlling law, the CITY will indemnify and hold the SHERIFF harmless against any claims, and the cost of defending such claims, arising directly or indirectly, or as a result of, or in connection with any negligent acts or omissions of the CITY, its agents', or employees' related to this Agreement.

11.3 Nothing contained herein shall be construed to limit or modify the provisions of Section 768.28, Florida Statutes, as it applies to the CITY and the SHERIFF. Nothing herein shall abrogate or expand the sovereign immunity enjoyed by the SHERIFF or the CITY' pursuant to the provisions of Chapter 768, Florida Statutes, nor shall any third party receive any benefit whatsoever from the indemnification provided herein.

11.4 The parties hereto agree that nothing contained herein shall in any way waive the sovereign immunity that they enjoy presently under the Constitution or statutes of the State of Florida and particularly with respect to Chapter 768, Florida Statutes. The parties agree that the CITY's determination to cause the provision of services by this Agreement is an exercise of the legislative function of and by the CITY and that at no time will the CITY exercise any specific operational control over the activities of any of the members of the SHERIFF's office.

11.5 For purposes of this provision, the CITY's employees shall not be deemed agents or servants of the SHERIFF and the SHERIFF's employees shall not be deemed agents or servants of the CITY. The SHERIFF will at all times be entitled to the benefits of sovereign immunity as provided in Florida Statutes, Section 768.28, and common law. Nothing contained in this Agreement shall be construed as a waiver of sovereign immunity.

ARTICLE 12 – INDEPENDENT CONTRACTOR

The SHERIFF, for the purposes of this Agreement, is and shall remain an independent contractor; provided, however, such independent contractor status shall not diminish the power and authority vested in the SHERIFF and his Deputies pursuant to Article 7.

ARTICLE 13 – TERM

This Agreement shall remain in full force and effect commencing October 1, 2013 (applied retroactively), and ending January 31, 2017, all dates inclusive, unless the Agreement is otherwise extended or terminated in accordance with the terms thereof. Either party may request renewal of this Agreement for an additional four year period, by providing the other party with written notice of its intent to seek renewal of this Agreement at least 60 days prior to the date of its expiration. Any such renewal of this Agreement shall be dependent upon successful negotiation of those terms and conditions mutually agreed upon by and between the parties. This Agreement may only be terminated as provided for herein or otherwise agreed upon in writing by the parties.

ARTICLE 14 – TERMINATION

14.1 The CITY or the SHERIFF may terminate this Agreement with or without cause by serving written notice to the other party of this Agreement; provided, however, that such termination shall not be effective until the one hundred and twentieth (120th) day after

receipt of the written notice. This written notice must be hand-delivered and/or sent by Certified Mail, Return Receipt Requested, to the SHERIFF or the City Manager.

- 14.2 Notwithstanding any provision herein to the contrary, if funds are not sufficiently appropriated for this Agreement, then the CITY shall be entitled to immediately terminate this Agreement, without penalty or liability. In the event of such termination by the CITY, SHERIFF'S responsibilities to provide services pursuant to this Agreement shall immediately terminate and SHERIFF shall be compensated for those services rendered through the date of termination.
- 14.3 This Agreement shall be deemed automatically terminated and of no further force and effect if the CITY has filed or consented to the filing of a petition for reorganization or bankruptcy or is otherwise adjudicated insolvent. In such event, the CITY consents and acknowledges that the SHERIFF shall have the right to provide such level of police service to the CITY as the SHERIFF deems appropriate and shall be entitled to recover the reasonable costs of providing such service.
- 14.4 This Agreement provides in Article 17, "Default" for the judicial remedy of specific performance to cause either party to perform its obligations in accordance with the terms and conditions herein. In the event a court was to determine that either party was in default in the performance of its obligations pursuant to this Agreement and that specific performance was not an adequate remedy to cause the other party to perform its obligations herein, in addition to all other remedies available to the parties, the parties shall be entitled to request a judicial order seeking rescission of this Agreement.
- 14.5 In the event of termination or expiration of this Agreement, the SHERIFF and the CITY shall cooperate in good faith in order to effectuate a smooth and harmonious transition from the SHERIFF to a CITY police department or other such transition as negotiated and to maintain during such period of transition the same high quality of police service as

contemplated by this Agreement. In the event of such termination or expiration and in the further event that the CITY is unable to provide the same level of police protection through its own police force at the time of such termination or expiration, then the pending term of this Agreement shall be deemed automatically extended for a period of 180 days or until CITY is capable of rendering such police service, whichever occurs sooner. The remunerations to be paid to the SHERIFF during the transition period shall be based upon the actual cost of providing such services during the transition period, but shall not exceed the prorata cost of the most recent contract.

- 14.6 Either party may terminate this Agreement effective on January 31st of any year with no fewer than 120 days' written notice to the other party. The CITY agrees that upon any termination or expiration of this Agreement, it shall consider the SHERIFF personnel who may be displaced by such termination or expiration for positions within the CITY's Police Department or other replacement services, but shall be under no obligation to hire such personnel.
- 14.7 In the event of termination or upon the expiration of this Agreement, the CITY may request to purchase from the SHERIFF any piece of equipment, including police vehicles owned by the SHERIFF that is directly attributable to or in use by the CITY at the time of such termination or expiration in connection with the services contemplated herein.
- 14.8 The purchase price for such equipment shall be determined by mutual agreement of the parties based on the fair market value of such equipment at the time of the CITY's election to purchase.
- 14.9 In the event the parties cannot agree on the fair market value, that value shall be determined by arbitration. Each party shall appoint an arbitrator and the two (2) arbitrators so appointed shall select and appoint a third arbitrator ("neutral arbitrator"). The neutral arbitrator shall preside over the arbitration proceedings, which shall be

conducted in accordance with the Florida Arbitration Code. The final decision of the arbitrators as to the fair market value of the equipment shall be conclusive and binding upon the parties hereto. The cost of such arbitration proceedings shall be shared equally by both the CITY and the SHERIFF. Upon termination or expiration of this Agreement and in the event of arbitration, all equipment and vehicles shall remain in service within the CITY until such time as a final decision is rendered and the CITY and SHERIFF shall execute such documents as are necessary to transfer liability for such vehicles and/or equipment from the SHERIFF to the CITY at the time the CITY takes possession of such vehicles and/or equipment.

14.10 Upon the parties reaching a mutual agreeable purchase price for the equipment, per Section 14.8 or arbitration determined purchase price of equipment, per Section 14.9 and payment by the CITY, the SHERIFF shall convey all of its rights, title and interest, thereto, including police vehicles, to the CITY by Bill of Sale Absolute or Certificate of Title, as applicable.

ARTICLE 15 - DEFAULT

Notwithstanding a party's right to terminate this Agreement as set forth in Article 14 above, if the SHERIFF or the CITY fails to perform or observe any of the material terms and conditions of this Agreement for a period of ten (10) days after receipt of written notice of such default from the other party, the party giving notice of default may be entitled, but is not required, to seek specific performance of this Agreement on an expedited basis, as the performance of the material terms and conditions contained herein relate to the health, safety, and welfare of the residents subject to this Agreement. The parties acknowledge that money damages or other legally available remedies may be inadequate for the failure to perform, and that the party giving notice is entitled to obtain an order requiring specific performance by the other party. Failure of any party to

exercise its rights in the event of any breach by the other party shall not constitute a waiver of such rights. No party shall be deemed to have waived any failure to perform by the other party unless such waiver is in writing and signed by the waiving party. Such waiver shall be limited to the terms specifically contained therein. This Article shall be without prejudice to the rights of any party to seek a legal remedy for any breach of the other party as may be available to it in law or equity.

ARTICLE 16 – AUTHORITY TO EXECUTE; NO CONFLICT CREATED

- 16.1 The SHERIFF, by his execution hereof, does hereby represent to the CITY that he has full power and authority to make and execute this Agreement pursuant to the power so vested in him under the Constitution and Laws of the State of Florida to the effect that:
- A. His making and executing this Agreement shall create a legal obligation upon him in his official capacity as Sheriff of Flagler County.
 - B. This Agreement shall be enforceable by the CITY according and to the extent of the provisions hereof.
- 16.2 Nothing herein contained, and no obligation on the part of the SHERIFF to be performed hereunder, shall in any way be contrary to or in contravention of any policy of insurance or surety bond required of the SHERIFF pursuant to the laws of the State of Florida.
- 16.3 The Mayor, by his execution hereof, does represent to the SHERIFF that he/she has full power and authority to make and execute this Agreement on behalf of the City of Palm Coast.
- 16.4 Nothing herein contained is in any way contrary to or in contravention of the Charter of the City of Palm Coast or the laws of the State of Florida.

ARTICLE 17 – NOTICE

The persons to receive notice under this Agreement are:

CITY MANAGER:
City of Palm Coast
160 Cypress Point Parkway
Suite B106
Palm Coast, Florida 32164

CITY ATTORNEY:
City of Palm Coast
160 Cypress Point Parkway
Suite B106
Palm Coast, Florida 32164

SHERIFF:
James Manfre
Flagler County Sheriff’s Office
1001 Justice Lane
Bunnell, Florida, 32110

SHERIFF’S LEGAL ADVISOR:
Sid Nowell, Esq.

ARTICLE 18 – NON-ASSIGNMENT

The SHERIFF shall not assign any of the obligations or benefits imposed hereby or contained herein, unless upon the written consent of the CITY Council, which consent must be evidenced by a duly passed resolution of the CITY Council.

ARTICLE 19 – THIRD PARTIES

In no event shall any of the terms of this Agreement confer upon any third person, corporation, or entity other than the parties hereto any right or cause of action for damages against any of the parties to this Agreement arising from the performance of the obligation and responsibilities of the parties herein or for any other reason.

ARTICLE 20 – JOINT PREPARATION

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

ARTICLE 21 - SEVERABILITY

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provision shall continue to be effective.

ARTICLE 22 - GOVERNING LAW AND VENUE

This Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventh Judicial Circuit in and for Flagler County, Florida. The parties expressly waive all rights to trial by jury for any disputes arising from or in any way connected with this Agreement. The parties understand and agree that this waiver is a material contract term. This Agreement is not subject to arbitration, except as described in Article 14 herein. If either party is required to enforce this Agreement by court proceedings or otherwise, whether or not formal action is required, each party shall pay its own attorney's fees and costs.

ARTICLE 23 - COMPLIANCE WITH LAWS

The parties shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

ARTICLE 24 - RECORDS

The CITY and the SHERIFF shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.

ARTICLE 25 - RECORDATION/FILING

The SHERIFF, after approval of this Agreement by the governing body of the CITY, and after the execution thereof by the duly qualified and authorized officers of each of the parties hereto, shall file this Agreement with the Clerk of Flagler County, Florida, as required by Section 163.01(11), Florida Statutes.

ARTICLE 26 - PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 29 of this Agreement shall prevail and be given effect.

ARTICLE 27 - THIRD PARTY BENEFICIARIES

Neither the CITY nor the SHERIFF intends that any person shall have a cause of action against either of them as a third party beneficiary under this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that is not their intent to create any rights or obligations in any third person or entity under this Agreement.

ARTICLE 28 – MERGER/AMENDMENT

This Agreement incorporates and includes all prior negotiations, correspondence, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any

prior representations or agreements whether oral or written. It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by all parties to this Agreement.

ARTICLE 29 – ENTIRE AGREEMENT

The parties acknowledge, one to the other, that the terms hereof constitute the entire understanding and agreement of the parties with respect hereof. No modification hereof shall be effective unless in writing, executed with the same formalities as this Agreement is executed.

IN WITNESS WHEREOF, the parties hereto execute this instrument, at the time set forth below.

ATTEST:

CITY OF PALM COAST, FLORIDA

By: _____
Virginia A. Smith, City Clerk

By: _____
Jon Netts, Mayor

Dated: _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY _____
William E. Reischmann, Jr., City Attorney

ATTEST:

SHERIFF OF FLAGLER COUNTY

By: _____

By: _____
James Manfre

Dated: _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
Sid Nowell, Esquire

EXHIBIT "A"

EFFECTIVE UNTIL OCTOBER 1, 2014

[INSERT CURRENT]

For Fiscal Year 2009-2010

SUPPORTED ADDITIONAL STAFFING ASSIGNED TO PALM COAST

1 Captain	\$156,251
3 Sergeants	\$433,104
2 Corporals	\$262,260
16 Deputies	\$1,645,248 (\$102,828/Deputy)

EXHIBIT "B"

EFFECTIVE AS OF OCTOBER 1, 2014

City of Palm Coast Recommended FY14 Contract

No. of Positions	Position Title	Price per Position	Total Per Position
1	Commander	\$156,351.00	\$156,351.00
3	Sergeants	\$144,689.00	\$434,067.00
2	Corporals	\$131,751.00	\$263,502.00
16	Deputies	\$104,089.00	\$1,665,424.00
1	School Resource Deputy	\$104,089.00	<u>\$104,089.00</u>

This total represents a \$23,742 increase over FY13 which was \$2,599,691 **\$2,623,433.00**