

RESOLUTION NO. 566-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, AUTHORIZING AND DIRECTING THE EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF ORANGE CITY AND THE CITY OF DEBARY FOR THE PROVISION OF MUNICIPAL FIRE PROTECTION SERVICES; REPEALING ALL RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of DeBary has contracted with the County of Volusia to provide municipal fire protection services for its residents; and

WHEREAS, Volusia County notified the City of DeBary that it will no longer provide this service; and

WHEREAS, the City of Orange City and the City of Deltona submitted proposals to the City of DeBary for the provision of municipal fire protection services; and

WHEREAS, after consideration of both proposals, the DeBary City Council voted to negotiate and has negotiated an Interlocal Agreement with the City of Orange City to provide municipal fire protection services; and

WHEREAS, it is the desire of the Orange City Council to execute said Interlocal Agreement to become the provider of municipal fire protection services to the City of DeBary; and

WHEREAS, the City of Orange City is authorized by Section 163.01, Fla. Stat., to enter into an Interlocal Agreement or contract, for the performance of service functions; and

WHEREAS, the Interlocal Agreement attached hereto as Exhibit "A" and as authorized by this Resolution is not and should not be deemed to authorize the delegation of any constitutional or statutory duties of Orange City or the City of DeBary, or its representative City officers; and

WHEREAS, the Interlocal Agreement attached hereto is not intended to be a transfer, consolidation, or merger within the meaning of those terms for constitutional, statutory or pension purposes or for any other purpose whatsoever.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA:

SECTION 1. That the Mayor is hereby authorized and directed to executethe “Interlocal Agreement for the Provision of Municipal Fire Services to the City of DeBary”, as attached hereto as Exhibit “A”.

SECTION 2. That said Interlocal Agreement labeled “Exhibit A” is attached hereto and incorporated by reference herein with full force and effect.

SECTION 3. That all Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed.

SECTION 4. That this Resolution shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida.

ROLL CALL VOTE AS FOLLOWS:

O. William Crippen	<u>yes</u>	Anthony Pupello	<u>yes</u>
Gary A. Blair	<u>yes</u>	Tom Abraham	<u>Absent</u>
Tom Laputka	<u>yes</u>	Jeff H. Allebach, Vice Mayor	<u>yes</u>
Harley Strickland, Mayor	<u>yes</u>		

ADOPTED THIS 2nd **DAY OF** November, 2009.

ATTEST:

Deborah J. Renner
Deborah J. Renner, City Clerk

AUTHENTICATED:

Harley Strickland
Harley Strickland, Mayor

This Resolution approved
as to form and legal sufficiency:

William Reischmann
William Reischmann, City Attorney

**INTERLOCAL AGREEMENT FOR PROVISION OF MUNICIPAL FIRE SERVICES
TO THE CITY OF DEBARY, FLORIDA**

THIS AGREEMENT is entered into by and between Orange City, a municipal corporation duly incorporated pursuant to the laws of the State of Florida, which has administrative offices at 205 East Graves Avenue, Orange City, Florida 32763, hereinafter referred to as ORANGE CITY, and the City of DeBary, a municipal corporation duly incorporated pursuant to the laws of the State of Florida, with administrative offices at 16 Colomba Road, DeBary, FL 32713, hereinafter referred to as DEBARY.

RECITALS

1. Public agencies, (including ORANGE CITY and DEBARY) are authorized by § 163.01(14), Florida Statutes, to enter into contracts for the performance of service functions of [such] public agencies, but such contracts shall *not be deemed to authorize the delegation of the constitutional or statutory duties* of county or city officers. The parties *expressly deny* any intent, expressed or implied, in this Agreement to provide for a delegation by DEBARY of such constitutional or statutory duties to ORANGE CITY. Further, this Agreement is not intended to be a transfer, consolidation, or merger within the meaning of those terms for constitutional, statutory, or pension purposes or for any other purpose whatsoever.
2. The foregoing authorization for such agreements is granted to local governments for the purpose of permitting such governments to make the *most efficient use* of their powers by enabling them to cooperate with the other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities. § 163.01(2), Florida Statutes.
3. Pursuant to § 768.23, Florida Statutes, neither ORANGE CITY nor DEBARY waives any defense of sovereign immunity, or increases the limits of its liability, upon entering into this Agreement. This Agreement does not contain any provision that requires one party to indemnify or insure the other party for the other party's negligence, or to assume any liability for the other party's negligence.
4. The City Council of DEBARY, after evaluation of options for the provision to its residents of the municipal services enumerated herein, has made a legislative determination that the interests of its residents will be best served by contracting with ORANGE CITY for provision of such services, which services will be performed by ORANGE CITY personnel.
5. ORANGE CITY certifies that it either currently has, or will employ, a sufficient number of personnel, appropriately qualified to perform the services enumerated herein, and ORANGE CITY is willing to provide such services to DEBARY.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

PART I. GENERAL PROVISIONS

6. The foregoing Recitals are hereby adopted as material provisions of this Agreement.

7. **PURPOSE.** The purpose of this Agreement is for ORANGE CITY to provide specified municipal fire services to DEBARY (hereinafter, the "Contract Services"), at an agreed upon level of service ("LOS") herein specified, in lieu of DEBARY using its own personnel therefore or obtaining such from other providers. The area within which the Contract Services shall be provided by ORANGE CITY includes all corporate limits of DEBARY and other future areas annexed into DEBARY.

8. **LIAISONS.** The ORANGE CITY City Manager or his/her designee and the DEBARY City Manager or his/her designee shall serve as the respective liaisons between both cities for the purposes of performance, interpretation, and implementation of this Agreement.

9. **MUNICIPAL SERVICES.** The Contract Services purchased by DEBARY (Paragraph No. 25) herein are *municipal* level of services. Such municipal level Contract Services shall be provided by ORANGE CITY resources distinct from and in addition to the level of services that are funded from and provided by county-wide ad valorem and other county-wide revenues (hereinafter, "County Services"), which services Volusia County is expected to continue to provide notwithstanding this Agreement. DEBARY shall pay ORANGE CITY for the Contract Services as provided for herein (Paragraph Nos. 25, 26, and 27), and the County Services shall continue to be funded directly from Volusia County general fund revenues as required by applicable law.

10. **NO PLEDGE OF AD VALOREM TAXES.** The parties agree that this Agreement does not constitute a general indebtedness of DEBARY within the meaning of any constitutional, statutory, or charter provision of limitation, and it is expressly agreed by the parties that ORANGE CITY shall not have the right to require or compel the exercise of ad valorem taxing power of DEBARY, or taxation of any real or personal property therein for payment of any monetary obligations due under the terms of this Agreement. It is further agreed that this Agreement and any funds called for to be paid hereunder shall not constitute a lien upon any real or personal property of DEBARY, or any part thereof.

11. **DIVISION OF MANAGEMENT RESPONSIBILITIES.** For all Contract Services provided by ORANGE CITY where specific professional standards are applicable to the performance of Contract Services, ORANGE CITY'S designated officer in charge ("OIC"), or his/her designee, shall have the authority for decision making as to such professional standards. The relevant ORANGE CITY Department Director, or the OIC, shall be available on a regular basis to the DEBARY City Manager or his/her designee to provide consultation and recommendations to the City Manager or his/her designee in his/her general management decisions as contemplated herein.

12. **SOVEREIGN IMMUNITY.** Each party to this Agreement expressly retains all rights, benefits and immunities of sovereign immunity that they presently enjoy under the

Constitution and Statutes of the State of Florida, and particularly with respect to Chapter 768, Florida Statutes. Notwithstanding anything set forth in any provision of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of sovereign immunity or limits of liability of either party beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature and any liability of either party for damages shall not exceed the statutory limits of liability, regardless of the number or nature of any claim that may arise including, but not limited to, a claim sounding in tort, equity, or contract. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against any party, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law, or for any other purpose.

13. **PERSONNEL MATTERS.** ORANGE CITY shall allocate all necessary and appropriate manpower and equipment for the performance of the Contract Services as may reasonably be required to maintain the levels of service described herein and to manage, operate, and provide all Contract Services to DEBARY. ORANGE CITY shall be the employer of all personnel necessary to provide Contract Services. All ORANGE CITY personnel assigned to perform Contract Services shall remain subject to ORANGE CITY merit rules and regulations for all purposes contemplated thereunder, including, but not limited to, initial appointment and probation, training and assignment, promotions, merit and cost-of-living raises, annual leave and sick leave, and disciplinary actions. Any claim of a disciplinary nature by DEBARY regarding an ORANGE CITY employee shall be referred to the ORANGE CITY City Manager or his/her designee, who shall remain the appointment authority for such employee, for all purposes designated by ORANGE CITY. Such ORANGE CITY employees shall have no right to elect or choose any procedures available to DEBARY employees. ORANGE CITY 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. ORANGE CITY's employees shall not be deemed agents or servants of DEBARY, and DEBARY's employees shall not be deemed agents or servants of ORANGE CITY.

14. **EQUIPMENT.** All equipment now owned or purchased by DEBARY, which is used by ORANGE CITY to provide the Contract Services in performance of this Agreement is and shall remain the property of DEBARY and be used exclusively for providing the Contract Services to DEBARY, and any mutual aid obligations unless otherwise specified herein or pursuant to a separate agreement executed in conjunction with the purchase of such property.

15. **CONTRACT SERVICES – POLICIES AND PROCEDURES.** ORANGE CITY shall provide Contract Services (Paragraph No. 25 herein) consistent with its present Standard Operating Procedures, as it may be amended, a true and correct copy of which is attached hereto and incorporated herein as Exhibit "1," and consistent with the ORANGE CITY Fire Department Mission Statement as follows:

"The mission of the Orange City Fire Department is to protect lives and property of the citizens and visitors of Orange City [and DEBARY pursuant to this Agreement] by providing the highest level of service through fire prevention,

public education, fire suppression, emergency medical care and mitigation of the effects of natural and man made disasters consistent with resources provided."

ORANGE CITY shall provide and maintain necessary and appropriate instruction and training in fire services to all personnel providing Contract Services. ORANGE CITY shall not change, alter, or delete any policy or procedures relating to the provision of Contract Services without communicating the changes and the reasons therefore to DEBARY and allowing DEBARY an opportunity to object thereto.

16. **INSPECTION AND MONITORING OF FIRE SERVICES.** DEBARY shall have the right with reasonable notice to inspect, examine, and monitor the operations of the Contract Services.

17. **COMMUNICATION - COMPLAINTS.** DEBARY and ORANGE CITY shall mutually agree upon the format and content of any reports required by either party pertaining to this Agreement. ORANGE CITY and DEBARY shall further provide to the other a copy of each complaint received by each entity concerning the Contract Services. It shall be the duty of the City to which a complaint is directed or the City responsible therefore under this Agreement to assure that appropriate action has been taken to promptly remedy the cause of each complaint and the outcome reported to the party affected.

18. **TERM.** This Agreement shall take effect on the 6th day of November, 2009, at 7:00 a.m., and shall continue in effect until September 30, 2012, the date of signature by the parties notwithstanding, unless earlier terminated in accordance with Article 19. The parties may, by mutual agreement, renew this Agreement upon the same or modified terms.

19. **TERMINATION.** DEBARY does hereby acknowledge that ORANGE CITY is entering into this Agreement in full reliance upon DEBARY's fulfillment of the obligations herein imposed for the full term contemplated herein. DEBARY acknowledges that ORANGE CITY expressly assumes the obligation of Contract Services herein described (Paragraph No. 25) to be provided in the manner set forth herein, and DEBARY acknowledges and agrees that there will be certain costs and expenses and that ORANGE CITY will be required to make numerous operational changes to and with its existing system of fire prevention services. ORANGE CITY is entering into this Agreement in reliance that DEBARY will continue in this Agreement pursuant to the terms stated herein and DEBARY likewise is entering into this Agreement in reliance that ORANGE CITY will continue to provide the Contract Services pursuant to the terms stated herein. Therefore, ORANGE CITY and DEBARY agree that DEBARY will not seek to terminate this Agreement prior to September 30, 2012, except for ORANGE CITY's breach of this Agreement. Similarly, ORANGE CITY agrees that prior to September 30, 2012, it will not seek to terminate this Agreement except for DEBARY's breach of this Agreement. Should either party elect not to renew the term of this Agreement, then said parties shall provide written notice to the other party no less than one hundred eighty (180) days prior to the termination date. Such notice shall be delivered by certified mail, return receipt requested, and the date of the notice shall be the date the receipt therefore is signed by an employee, official, or representative of the other party. Should either party fail to provide timely notice of its intent not to renew this Agreement, the Agreement shall automatically be renewed for a period of one (1)

year unless otherwise mutually agreed by both parties. In the event either party breaches this Agreement (excluding DEBARY's obligation for compensation, which is governed by the terms of Paragraph 26 herein), the non-breaching party shall provide ninety (90) days written notice to the other party of the details of the breach, the non-breaching party's intent to terminate, and an opportunity to cure. In the event that the breaching party fails to timely cure the breach within such 90-day period, this Agreement shall terminate on the 90th day after delivery of such termination notice.

20. **NOTICE.** Notice as required to be given in this Agreement shall be provided to the following persons:

- a. **ORANGE CITY:** City Manager, 205 East Graves Avenue, Orange City, Florida 32763.
- b. **DEBARY:** City Manager, 16 Colomba Road, DeBary, FL 32713.

21. **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 claimed against any of the parties to this Agreement arising from the performance of the obligations and responsibilities of the parties herein or for any other reason.

22. **NON-ASSIGNABILITY.** ORANGE CITY shall not assign the performance of the Contract Services to any other governmental or private entity, or other entity, or in any manner contract for the provision of the Contract Services by a third party without the express written consent of DEBARY.

23. **DISPUTE RESOLUTION.** Issues concerning non-performance, or other aspects of this Agreement that cannot be resolved through ordinary channels shall, if possible, be resolved jointly by and between the ORANGE CITY and DEBARY City Managers or their duly authorized designees, pursuant to Paragraph 17 herein. Any disputes concerning non-performance, or other breaches of or complaints concerning this Agreement, which disputes cannot be resolved through such channels and for which either party initiates litigation to enforce its rights hereunder, shall be subject to the provisions of Chapter 164, Florida Statutes, the "Florida Governmental Cooperation Act."

24. **SEVERABILITY.** If any provision of this Agreement is found to be unconstitutional, illegal, or otherwise unenforceable by judgment of a court of competent jurisdiction, such judgment shall not invalidate the remainder of this Agreement, unless such judgment renders the purpose or performance of this Agreement no longer practical for either party.

PART II. SPECIFIC SERVICES

25. **CONTRACT SERVICES - LEVEL OF SERVICE (“LOS”).** ORANGE CITY agrees to provide municipal fire services personnel, herein referred to as the “Contract Services” in the following manner:

a. Stations and Staffing:

ORANGE CITY shall provide the Contract Services via two (2) fire stations initially identified as DEBARY’S downtown station, located at 93 South Highway 17-92 or as may be designated by DEBARY hereafter (“DEBARY STATION”), and ORANGE CITY’S commercial station, located at 743 Harley Strickland Boulevard or as may be designated by ORANGE CITY hereafter (“ORANGE CITY STATION”). ORANGE CITY STATION shall cover the neighborhoods and areas of DEBARY commonly identified and referred to as Saxon Woods, Terra Alta, Highland Park, Summer Haven, DeBary Woods, and part of Glen Abbey. The remainder of DEBARY shall be covered by DEBARY STATION.

DEBARY STATION shall be staffed by three (3) firefighter personnel, consisting of one (1) Fire Officer I-Certified Shift Commander and two (2) Firefighter-EMTs, one of whom shall also be a Paramedic. ORANGE CITY STATION shall, be staffed by two (2) firefighter personnel, consisting of one (1) Firefighter-EMT and one (1) Firefighter-Paramedic. Such staffing shall be provided twenty-four (24) hours each day for seven (7) days each week. Such staffing levels shall aid in maintaining the current Insurance Service Organization (“ISO”) rating for DEBARY at 5/9.

When available, ORANGE CITY shall obtain and utilize ORANGE CITY and DEBARY volunteer firefighters to enhance and maintain staffing levels, thereby increasing productivity and availability of services to DEBARY.

Both DEBARY STATION and ORANGE CITY STATION shall provide Advanced Life Support (“ALS”) services to DEBARY to the extent ORANGE CITY retains ALS capabilities. Should ORANGE CITY be denied renewal of its Certificate of Need (“COPCN”) for ALS services or otherwise cease to provide ALS services to DEBARY, DEBARY shall receive a discount equal to ORANGE CITY’S cost of providing ALS services to DEBARY. ORANGE CITY shall further provide annual Fire Prevention Programs, Engine Company Fire Inspections, Fire Reviews and quarterly incident reports. DEBARY agrees to adopt ORANGE CITY’S Fire Plan Review and Inspection Fee Schedule. In no event shall the fee amounts charged by ORANGE CITY to DEBARY for services within DEBARY pursuant to such Schedule, as such may be amended from time to time, differ from those fees charged by ORANGE CITY within ORANGE CITY for the same or like services. All such fees charged for services within DEBARY shall be collected and paid by DEBARY to ORANGE CITY prior to ORANGE CITY’S performance of any inspections or plan reviews of properties and premises located within DEBARY. DEBARY further reserves the right to offset its administrative expenses related to its collection and payment of such fees by charging

persons or entities requesting such services a reasonable administrative fee in addition to those fees charged by ORANGE CITY.

ORANGE CITY hereby confirms and agrees that all current Mutual Aid, Auto Aid, Closest Unit Response ("CUR"), and dispatch contracts (as may be amended) to which ORANGE CITY is a party or beneficiary will provide coverage and service to DEBARY as part of the benefits to DEBARY under the Agreement. DEBARY assumes all responsibility for acquiring and maintaining liability insurance for DEBARY STATION and vehicles and structures owned by DEBARY.

b. Capital Outlay and Capital Improvements Plan ("CIP")

DEBARY shall maintain the DEBARY STATION, including, but not limited to, the necessary roof replacement and shall make any necessary exterior repairs, for DEBARY STATION, and shall provide and maintain a water tanker (*i.e.*, tender) suitable to meet the requisite level of service. ORANGE CITY shall furnish renovations to the interior of DEBARY STATION, subject to DEBARY's approval. DEBARY shall make DEBARY Station and the water tanker (*i.e.*, tender) available to ORANGE CITY for ORANGE CITY's exclusive use in rendering the Contract Services and any mutual aid obligations pursuant to this Agreement, but such station and vehicle shall otherwise be owned and retained by DEBARY.

c. Modification to Services

Should DEBARY desire ORANGE CITY to provide services either different in kind, or at a service level different than that contemplated herein, the DEBARY City Manager shall make written request to the ORANGE CITY City Manager and, such notice shall be sent in accordance with Article 20. Any mutually agreed-upon modification to increase the kind of service and/or LOS to be provided by ORANGE CITY and commensurate modification in compensation shall be reduced to writing and must be approved by the appropriate officials of both parties. Any reduction in LOS desired by DEBARY also shall be reduced to writing and must be agreed to by both DEBARY and ORANGE CITY. Any such changes in LOS shall become effective at the beginning of a new contract year (each such year beginning on October 1, and ending on September 30) unless both parties agree otherwise and as may be permitted by budget. The foregoing shall not be construed as requiring ORANGE CITY to agree to make a change increasing or decreasing the kind of service and/or increasing or decreasing the LOS to be provided by ORANGE CITY. Upon a change in kind of service in the LOS to be provided by ORANGE CITY, compensation to ORANGE CITY shall be adjusted, upon implementation of such change in service, to conform to the new service.

26. **COMPENSATION.** For the first year of this Agreement, (November 6 (at 7:00 AM) through September 30) DEBARY shall pay ORANGE CITY for all services provided hereunder by ORANGE CITY, the sum of Eight hundred eighty-three thousand nine hundred fifteen dollars and zero cents" (\$883,915.00), such price being inclusive of a 15% administrative fee applied to Total Personnel Service costs and Total Operating Costs in the first year, subject to any increases, decreases, or prorations of the total cost of services as set forth herein. For each year thereafter, the City shall pay ORANGE CITY for the cost of Contract Services provided by ORANGE CITY and received by DEBARY as such costs are determined pursuant to paragraph 27 of this Agreement. During the term of this Agreement, DEBARY shall pay ORANGE CITY costs associated with Capital Purchases, subject to DEBARY's prior approval of the Capital Purchases. Furthermore, ORANGE CITY shall submit billings to DEBARY and activity reports on a quarterly basis, and payments of the Compensation shall be divided such that DEBARY pays a quarter of the annual compensation each quarterly billing cycle. DEBARY shall pay the sum invoiced within thirty (30) days of receipt of the bill from ORANGE CITY. Checks shall be made payable to the "City of Orange City" annotated "DeBary Fire Service Agreement" and sent to the following address:

City of Orange City
Finance Department
205 East Graves Street
Orange City, FL 32752

Should this Agreement for Contract Services be terminated during the first year of this Agreement, the annual sum due shall be prorated to reflect that portion of the Contract Year for which DEBARY received Contract Services. If termination of this Agreement occurs after the first year of this Agreement, compensation paid by DEBARY to ORANGE CITY shall be only for the Contract Services provided through the date of termination.

27. **MODIFICATION OF COMPENSATION.** ORANGE CITY shall submit to DEBARY, ORANGE CITY's Budget for the Contract Services ("Budget"), communicating any change in the total cost of services as set forth herein. An estimated Budget shall be submitted to DEBARY for review on April 1st of each year, with monthly updates to such reports due on the 1st of each month thereafter until a proposed Budget is submitted. The proposed Budget shall be submitted to DEBARY for review each year by July 2 (i.e., 90 days prior to September 30). The amount of annual compensation provided for in Paragraph No. 26 shall be modified accordingly to reflect any increases or decreases in annual costs that ORANGE CITY incurs in providing the Contract Services. Payment by DEBARY to ORANGE CITY for Contract Services provided during the term of this Agreement, hereafter, shall be modified accordingly pursuant to ORANGE CITY's submission of this annual Budget. Costs under such Budget shall be divided into three (3) categories titled Total Personnel Services, Total Operating Costs, and Total Capital Outlay, for DEBARY's review as follows:

- a. Total Personnel Services shall include those actual expenses and taxes related to the payment of salaries, Fire Reserve Payroll, overtime, special pay/incentives, holiday, FICA, MCCR insurances, retirement, disability, vacation, sick and other

benefits paid to those employees and personnel providing Contract Services to the City pursuant to this Agreement. In addition to such costs, an administrative fee of 15% of Total Personnel Services shall be charged for the first year of Contract Services. Such administrative fee shall be reduced to 14% and 13% for the second and third years respectively. Items qualifying as Total Personnel Services shall reflect ORANGE CITY's costs for such items.

- b. Total Operating Costs shall include those expenses related to the continued operation, supply, maintenance and provision of Contract Services to the City such as dispatch services, travel and training, telecommunications, postage, equipment maintenance, printing, fire prevention programs, volunteers, office supplies, medical supplies, operating supplies, uniforms/gear, fuel, and books and publications. In addition to such costs, an administrative fee of 15% of Total Operating Cost shall be charged for the first year of Contract Services. Such administrative fee shall be reduced to 14% and 13% for the second and third years respectively. In its annual review of the budget, DEBARY may reject or modify items qualifying as Total Operating Costs, excluding maintenance and repairs of fire apparatus. DEBARY acknowledges that its rejection or reduction of Total Operating Costs may result in a proportionate decrease in the level of service and hereby approves of same.
- c. Total Capital Outlay shall include costs for items purchased exceeding seven hundred fifty dollars (\$750.00) or with an expected life exceeding one (1) year (Capital Purchases), arising from real estate improvements, vehicles, equipment purchased for DEBARY and titled in DEBARY's name by ORANGE CITY. Though exclusively utilized by ORANGE CITY in the performance of Contract Services, property purchased pursuant hereto shall remain titled in the name of DEBARY at all times. DEBARY may refuse or reduce items qualifying as Capital Purchases unless such refusal would threaten the LOS.

28. **RIGHT OF FIRST REFUSAL / NEW AGREEMENT.** If, in lieu of renewing this Agreement or executing another Agreement with ORANGE CITY for an additional three-year term after September 30, 2012, DEBARY opts to develop, maintain, and oversee its own DEBARY fire services department under the direct supervision of DEBARY, such new DEBARY fire services department ("New Department") shall first, before hiring other fire services personnel, extend bona fide offers of comparable employment (*i.e.* employment that is roughly equivalent to one's prior job duties and responsibilities) to those ORANGE CITY fire services personnel, if any, displaced as a direct result of DEBARY's decision not to renew this Agreement and whom will no longer be employed by ORANGE CITY in any capacity ("displaced personnel"). Such obligation shall be referred to herein as a "right of first refusal." Because DEBARY has no authority to require another fire services provider to accept fire personnel, such obligation shall be limited to the foregoing scenario and shall not be applicable in the event that DEBARY seeks or obtains fire services from another entity. Under no circumstances shall this provision be construed to require DEBARY to develop, maintain, and oversee a new department. To be eligible for the right of first refusal, an ORANGE CITY fire services employee must provide proof of all requisite qualifications for the position offered, have

an acceptable disciplinary record, be in good standing with ORANGE CITY, pass a criminal background check, and shall not have had any complaints filed against him/her during his/her time of employment with ORANGE CITY. The right of first refusal shall be subject to staffing levels approved by DEBARY and the availability of comparable fire services positions at DEBARY. Should DEBARY not approve enough comparable positions to accommodate all displaced personnel, comparable positions shall be offered to displaced personnel in order of priority on the basis of seniority and individual qualifications to the extent that such positions are available. In the event that there are not enough comparable positions available to accommodate a qualified displaced person, such person shall be considered by DEBARY for other available fire service positions for which such person is qualified; however, in no event shall a displaced person receive priority consideration for a non-comparable fire services position that qualifies as an comparable position for another qualified displaced person. In accordance with the principles set forth in ¶ 21 *supra*, the right of first refusal described herein shall belong to ORANGE CITY only, and shall not be enforceable by or otherwise inure to displaced personnel or any other third party.

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

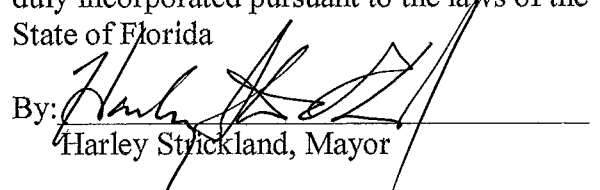
30. **ENTIRE AGREEMENT.** This Agreement reflects the full and complete understanding of the parties and may be modified or amended only by a document in writing executed by all the parties, with the same formalities as this Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have caused the same to be signed by their duly authorized representatives this 3rd day of November, 2009.

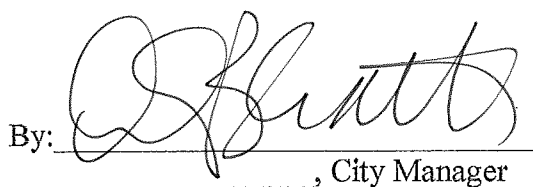
ATTEST:

By: 
Chester Murray, City Manager

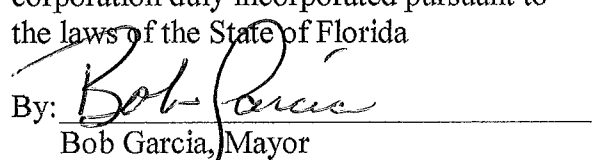
ORANGE CITY, a municipal corporation
duly incorporated pursuant to the laws of the
State of Florida

By: 
Harley Strickland, Mayor

ATTEST:

By: 
_____, City Manager

CITY OF DEBARY, a municipal
corporation duly incorporated pursuant to
the laws of the State of Florida

By: 
Bob Garcia, Mayor