

Rec. \$ _____

This Instrument Prepared by:

The School Board of Marion County, Florida
Facilities Department
Attn: Robert Knight Supervisor of Facilities Department
1105 SW 7th Road
Ocala, Florida 34471

Record and Return to:

City of Ocala
Growth Management Department
Attn: Karen Cupp
201 SE 3rd Street, 2nd Floor
Ocala, FL 34471

DEVELOPER'S AGREEMENT

(The School Board of Marion County Water Main Extension Agreement)

THIS DEVELOPER'S AGREEMENT ("Agreement"), is made and entered into effective as of 28th day of March, 2023, by and between:

- **City of Ocala**, a Florida municipal corporation ("City");
- **The School Board of Marion County, Florida**, a political subdivision of the State of Florida ("Owner").

WHEREAS:

- A. Owner is the owner of the real property described on attached Exhibit "A" (the "Property"), which is located across from the jurisdictional and water utility service boundaries of the City; and
- B. Owner has notified the City of its intent to construct a new central warehouse facility on the Owner's property which is located at 2091 NE 35th Street, Ocala, Florida 34479; and
- C. The Property described on Exhibit "A" constitutes all of the real property; and
- D. Owner has requested and the City has agreed to design and construct a water main extension from the current water main location of NE 25th Avenue and NE 35th Street, westward along the existing NE 35th Street right of way to a point approximately .38 miles or 2,2001.17 feet, to front of Owner's property including an extension across NE 35th Street into Owner's property five feet to a proposed City water meter box; and

- E. The water main extension will consist of a 12-inch pipeline and will include at least one fire hydrant approximately .37 miles or 1,955.09 feet from water main connection at NE 25th Avenue, or approximately 400 feet from the centerline of parcel 24277-002-01 (owned by Dollar General).

NOW THEREFORE, in consideration of the foregoing matters (which are incorporated herein by reference) and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by all parties, the parties hereto agree as follows, which terms shall be binding upon the parties and their respective successors and assigns, as may be applicable:

1. **Incorporation of Recitals.** The parties agree and confirm that the above recitals are true and correct and incorporate their terms and provisions herein for all purposes.

2. **Definitions.**

- 2.1. Generally. In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings.
 - 2.1.1. *Agreement* – This Agreement, including any Exhibits attached hereto, as the same may be subsequently amended, modified or supplemented pursuant to its’ terms and provisions.
 - 2.1.2. *City* – shall refer to the City of Ocala, a municipal corporation existing under the laws of the State of Florida.
 - 2.1.3. *Code* – The Code of Ordinances of City of Ocala.
 - 2.1.4. *Development Regulations* - shall refer to the Land Development Regulations of the City. This definition will include any promulgated construction or design specifications of the City.
 - 2.1.5. *District* – shall refer to the St. Johns River Water Management District, a public entity created under the laws of the State of Florida.
 - 2.1.6. *Improvements* – shall refer to those roadways, stormwater conveyance system improvements, stormwater retention areas, sanitary sewer mains, sanitary sewer lines, water mains, water lines, water meters, fire hydrants, traffic control devices, sidewalks and grading and appurtenances which are depicted upon the Plans for the proposed work as designed by the City
 - 2.1.7. *Owner* – shall refer to The School Board of Marion County, Florida, a Body Corporation existing under the laws of the State of Florida
 - 2.1.8. *Plans* – shall refer to the conceptual plan and construction plans for the proposed work, which depict the construction of the Improvements. Copies of the Plans shall be kept on record at the offices of the City Engineer, and by reference are made a part of this Agreement.
 - 2.1.9. *Property* – shall refer to the real property located in Marion County, Florida described on attached **Exhibit A.**

- 2.1.10. *Public Improvements* – shall refer to the roadways, stormwater conveyance system improvements, stormwater retention areas, sanitary sewer mains, sanitary sewer lines, water mains, water lines, water meters, fire hydrants, traffic control devices, sidewalks, and grading and appurtenances related thereto lying within the right of way as shown on the Plans. Water system improvements will be Public Improvements only to the point of metering.
- 2.1.11. *Utility Improvements* — shall refer to those sanitary sewer services, water services, water meters, and grading and appurtenances relating which are generally set forth on the Plans.
- 2.1.12. *Utility Improvement Costs* – The actual out of pocket costs incurred by Developer to design, permit and construct the Utility Improvements.
- 2.2. Additional Definitions and Rules of Construction. The definitions in paragraph 2.1 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The words “herein,” “hereof,” “hereunder,” and similar terms shall refer to this Agreement, unless the context otherwise requires.
- 3. **Covenants of Owner.** In addition to the other covenants and agreements of Developer set forth specifically elsewhere in this Agreement, Owner covenants and agrees:
 - 3.1. To pay for fifty percent (50%) of the cost of the proposed water main extension based on an 8-inch water main cost estimate, the total cost of which is proposed to be \$255,099.50 resulting in a cost payable by the Owner of \$127,549.75 which shall be due from Owner upon receipt of a bill from the City for the same.
 - 3.2. To allow the City access to Owner’s property for the purpose of extending the water main for Owner’s use for both potable water and fire suppression.
 - 3.3. To become a water utility customer of the City and to pay the City a monthly water consumption fee.
 - 3.4. To be responsible for any and all construction, connections, and maintenance of potable water and fire suppression lines on Owner’s property up to the point of connection to the City’s water meter.
- 4. **Covenants of City.** The City covenants and agrees:
 - 4.1. To design and construct a 12-inch water main extension from aforesaid connection point to the proposed water meter connection on the Owner’s property and to put said water line into use by July 31, 2023 provided Owner satisfies and complies with all covenants indicated in this agreement.
 - 4.2. To accept the Owner as a water utility customer and grant all privileges and rights afforded to water utility customers.
 - 4.3. To accept and perpetually maintain the water line up to the point of connection on the Owner’s property including the water meter.

5. **General Provisions.**

5.1. **Notice.**

5.1.1. Any notices required or permitted hereunder, and all demands and requests given or required to be given by any party hereto to another party, shall be in writing unless otherwise provided herein and shall be deemed given when received, if personally delivered or sent by electronic mail, or if sent by any nationally recognized, reputable firm or overnight couriers) or if mailed, if such notice has been delivered to the United States Postal Service with postage prepaid and properly marked for certified or registered mail with a request for return receipt.

5.1.1.1. For City:

City of Ocala
Attn: City Manager
110 S.E. Watula Avenue
Ocala, FL 34471

With Copy to:

City of Ocala
Growth Management Department
Attn: Karen Cupp
201 SE 3rd Street, 2nd Floor
Ocala, FL 34471

5.1.1.2. For Owner:

The School Board of Marion County, Florida
Attn: Robert Knight, Supervisor of Facilities Department
1105 SW 7th Road
Ocala, Florida 34471
(P) 352-671-6902
(F) 352-671-6906

With Copy to:

Current School Board Chair
The School Board of Marion County, Florida
1614 E. Fort King Street
Ocala, Florida 34471

5.1.2. Each such Communication shall be deemed delivered:

5.1.2.1. On the date of delivered if by personal delivery;

5.1.2.2. On the date of facsimile transmission if by facsimile; and

- 5.1.2.3. If the Communication is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; or (b) the date upon which delivery is refused.
- 5.1.2.4. Notwithstanding the foregoing, service by personal delivery delivered, or by facsimile sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.
- 5.1.3. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.
- 5.1.4. If the above provisions require Communication to be delivered to more than one person (including a copy), the Communication shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.
- 5.2. **Headings.** The headings contained within this Agreement are for identification purposes only, and shall not be construed to amend, modify, or alter the terms of the Agreement.
- 5.3. **Litigation.** With respect to any litigation arising out of this Agreement, or to resolve any claims or controversies arising out of or in connection with this Agreement, then the non-prevailing party pay all reasonable costs incurred by the prevailing party, including reasonable attorneys' fees, suit costs and expenses, which attorneys' fees, suit costs and expenses shall include all such fees, costs and expenses incurred with respect to any trial level activities, bankruptcy proceedings, appellate proceedings, or post-judgment proceeding related thereto.
- 5.4. **Binding Effect.** The parties to this Agreement represent to each other that each party fully understands the facts surrounding this Agreement and each is signing this Agreement fully and voluntarily, intending to be bound by it. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their assigns. There are no representations or warranties other than those set forth herein.
- 5.5. **Severability.** In the event any provision or Paragraph of this Agreement is determined to be invalid or unenforceable, such determination shall not affect the enforceability of the validity of the remaining provisions of this Agreement.
- 5.6. **Survival of Representations and Warranties.** All representations and warranties contained herein are made in writing by the parties in connection herewith shall survive the execution and delivery of this Agreement.
- 5.7. **Successors and Assigns.** All covenants and agreements in this Agreement made by or on behalf of any parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, whether so expressed or not.
- 5.8. **Applicable Law.** This Agreement is being delivered in the State of Florida, and shall be construed and enforced in accordance with the laws of the State of Florida. The exclusive venue for any legal proceeding arising out of this Agreement shall be Marion County, Florida.

- 5.9. **Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.
- 5.10. **Gender.** As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.
- 5.11. **City Code.** Per Fla. Statutes 1013.371 (1) (a), ...all public educational and ancillary plants constructed by a board must conform to the Florida Building Code and the Florida Fire Prevention Code, and the plants are exempt from all other state building codes; county, municipal, or other local amendments to the Florida Building Code and local amendments to the Florida Fire Prevention Code; building permits, and assessments of fees for building permits, except as provided in s. 553.80; ordinances; road closures; and impact fees or service availability fees....
- 5.12. **Exercise of Rights.** All rights, power and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any law, and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal, or unenforceable under any applicable law.
- 5.13. **Entire Agreement.** This Agreement shall constitute the entire agreement of the parties hereto; all prior agreements between the parties, whether written or oral, are merged herein and shall be of no force or effect. This Agreement cannot be changed, modified or released orally, but only by an agreement in writing signed by the parties against whom enforcement of said change, modification or discharge is sought.
- 5.14. **Indemnification.** Each party shall be liable for its own acts and negligence arising out of the activities contemplated by this Agreement. The Owner shall indemnify, defend and hold harmless the City against any actions or damages arising out of Owner's negligence or of the Owner's officers, agents, or employees in connection with this Agreement (including reasonable attorneys' fees and costs of suit) and the City shall indemnify, defend and hold harmless the Owner against any actions, claims or damages arising out of the City's negligence or of the City's officers, agents, or employees in connection with this Agreement (including reasonable attorneys' fees and costs of suit). The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in §768.28, Florida Statutes, as amended, nor shall the same be construed to constitute an agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions. Further, the limits set forth in §768.28, Florida Statutes, as amended, shall apply whether the underlying action sounds in contract or tort.
- 5.15. **Public Records.**
- A. IF CITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CITY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: PUBLIC RELATIONS AND COMMUNICATION OFFICER: KEVIN CHRISTIAN, APR, CPRC, AT (352) 671-7555, PUBLIC.RELATIONS@MARION.K12.FL.US OR IN PERSON AT 1614 E. FORT KING STREET, OCALA, FLORIDA 34471.**

B. IF OWNER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO OWNER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK, AT (352) 629-8266, CLERK@OCALAFL.ORG OR IN PERSON AT 110 SE WATULA AVENUE, OCALA, FLORIDA 34471.

- 5.16. **No Waiver of Sovereign Immunity.** This Agreement does not waive sovereign immunity by any agency or political subdivision to which sovereign immunity may apply, or of any rights or limits of liability existing under § 768.28, Fla. Statutes, as amended. This term survives the termination of all performance or obligations under this Agreement and is fully binding until any applicable statute of limitations bars any proceeding brought under this Agreement.
- 5.17. **Inspector General Audits.** Both parties and its subcontractors (if any), shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General or by any other Florida official with proper authority.
- 5.18. **E-Verify.** Under Executive Order 11-116, and Section 448.095, Florida Statutes, as amended, effective July 1, 2022, the parties must use the U.S. Agency of Homeland Security's E-Verify system, <https://www.e-verify.gov/employees>, to verify the employment eligibility of all employees hired during the term of this Agreement. The parties shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement.
6. **Default.** In the event that Owner or City defaults under this Agreement by, without limitation, failing to construct improvements or pay amounts as and when required hereunder, then each party may pursue all remedies available at law and equity;

THEREFORE, the parties have executed this Agreement on the day and year first written above.

ATTEST:

City of Ocala, a Florida municipal corporation

Angel B. Jacobs
City Clerk

JAMES HILTY, SR.
President, Ocala City Council

Approved as to form and legality

William Sexton,
City Attorney

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of _____, 2023, by Ire Bethea, Sr., as City Council President of the City of Ocala, Florida, a Florida municipal corporation, on behalf of the City.

Notary Public, State of Florida

Name: _____
(Please print or type)
Commission Number:
Commission Expires:

Notary: Check one of the following:

_____ Personally known OR
_____ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____

AS TO OWNER

The School Board of Marion County, a Body Corporation existing under the laws of the State of Florida

Witness Signature

Witness Printed Name

Witness Signature

Witness Printed Name

By: _____
Allison B. Campbell, School Board Chair

Date _____

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____, 2023, by Allison B. Campbell, as School Board Chair for the School Board of Marion County, a Florida, a Body Corporate, on behalf of the Owner.

Notary Public, State of Florida

Name: _____
(Please print or type)
Commission Number:
Commission Expires:

Notary: Check one of the following:

- ____ Personally known OR
- ____ Produced Identification (if this box is checked, fill in blank below).
Type of Identification Produced: _____

EXHIBIT A
Property

This instrument was prepared by:
J. B. Walkup, Jr.
BLOWERS, WALKUP, BERK & TUCCI
18 Northwest Third Avenue
Ocala, Florida 32670

BOOK 981 PAGE 730

executive line 79-14340

This Indenture,

Made this 7th day of July, A. D. 19 79

Between MARION PRIVATE SCHOOL CORPORATION
a corporation existing under the laws of the State of FLORIDA
having its principal place of business in the County of MARION and
State of FLORIDA party of the first part, and
SCHOOL BOARD OF MARION COUNTY, FLORIDA, a body corporate
Post Office Box 670, Ocala
of the County of Marion and State of Florida
party of the second part,

Witnesseth, that the said party of the first part, for and in consideration of
the sum of -----TEN DOLLARS AND NO/100-----Dollars,
to it in hand paid by the said party of the second part, the receipt whereof is hereby
acknowledged, has granted, bargained and sold to the said party of the second part
forever, the following described land, situate, lying and being in the County of
Marion, State of Florida, to wit:

The West 724.01 feet of the SW 1/4 of the SE 1/4 of Section 33, Township 14
South, Range 22 East, EXCEPT commencing at the quarter corner on the South
boundary of said Section 33, thence N.0°07'41" E. 330.53 feet, thence S. 89°
59'53" E. 664.01 feet, thence S.0°07'51" W. 330.75 feet, thence West along the
centerline of Joy Avenue to the Point of Beginning, containing 16 acres, more
or less.



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CLERK CIRCUIT COURT
MARION COUNTY, FLA.

And the said party of the first part does hereby fully warrant the title to said land,
and will defend the same against the lawful claims of all persons whomsoever.

In Witness Whereof, the said party of the first part has
caused these presents to be signed in its name by its President,
and its corporate seal to be affixed, attested by its
the day and year above written.

(Corporate Seal)

MARION PRIVATE SCHOOL CORPORATION

By Mark D. Camp
MARK D. CAMP President.

Attest: _____

Signed, Sealed and Delivered in Our Presence:

J. B. Walkup, Jr.
Larry R. Somone

State of Florida

County of MARION

I Hereby Certify, That on this 7th day of July, A. D. 1979,
before me personally appeared MARK D. CAMP, President and

respectively of MARION PRIVATE SCHOOL CORPORATION, a corporation
under the laws of the State of FLORIDA, to me known to be the
persons described in and who executed the foregoing conveyance to
SCHOOL BOARD OF MARION COUNTY, FLORIDA, a body corporate

and severally acknowledged the execution thereof to be their free act and deed as
such officers, for the uses and purposes therein mentioned; and that they affixed
thereto the official seal of said corporation, and the said instrument is the act and
deed of said corporation.

Witness my signature and official seal at Ocala
in the County of Marion and State of Florida, the day and
year last aforesaid.

Filed and recorded 7/6/79 in O.R. Book 981 Page 730
Record Verified. Frances E. Thigpin, Clerk of Circuit Court, Marion Co. Fla.

J. B. Walkup, Jr.
Notary Public, State of Florida at Large
My Commission Expires May 10, 1980
Mu Commission Expires