

TAB 4



City of Palmetto Agenda Item

Meeting Date

July 2, 2012

Presenter: Allen Tusing/Scott E. Rudacille

Department: Public Works/Assistant City Attorney

Title: Consideration of the Sewer Connection Agreement with the VOA

Background:

Earlier, the City Commission considered an amendment to Section 29-7 of the Palmetto City Code to allow the possibility of allowing connection of property outside of the city limits and owned by a Florida not-for-profit corporation to the City Sewer System even if it is not annexed into the City. If Ordinance 2012-13 was adopted, the attached agreement with VOA may be considered.

Discussion:

The agreement with The Volunteers of America of Florida, Inc. allows connection to the City water and sewer system. The City Commission may only approve it if they find connection by the VOA to be in the best interests of the City based on the Agreement. It requires payment of all city impact and connection fees related to those utilities, as well as a requirement to pursue annexation into the City if the property is ever transferred to an entity that is not a Florida not-for-profit corporation.

Budgeted Amount: \$0.00 **Budget Page No(s):** **Available Amount:** \$0.00 **Expenditure Amount:** \$0.00

Additional Budgetary Information:

Funding Source(s): **Sufficient Funds Available:** Yes No **Budget Amendment Required:** Yes No **Source:**

City Attorney Reviewed: Yes No N/A **Advisory Board Recommendation:** For Against N/A **Consistent With:** Yes No N/A

Potential Motion/Direction Requested:
If Ordinance 2012-13 is approved by the Commission -
I move to approve the. **AGREEMENT FOR WATER AND SEWER SYSTEM CONNECTION OF PROPERTIES WITHIN UNINCORPORATED MANATEE COUNTY BETWEEN VOLUNTEERS OF AMERICA, OF FLORIDA, INC. AND THE CITY OF PALMETTO**

Staff Contact:

Attachments: Agreement for the Sewer

**AGREEMENT FOR SEWER AND WATER SYSTEM
CONNECTION OF PROPERTIES WITHIN UNINCORPORATED
MANATEE COUNTY BETWEEN VOLUNTEERS OF AMERICA,
OF FLORIDA, INC. AND THE CITY OF PALMETTO**

THIS AGREEMENT, made and entered into this ____ day of _____, 2012, Between The Volunteers of America of Florida, Inc., a Florida non-for-profit corporation, 1205 East 8th Avenue, Tampa, Florida 33605, owners (hereinafter referred to as “Owner”) and the City of Palmetto, a political subdivision of the State of Florida, 516 8th Avenue West, Palmetto, Florida 34221 (hereinafter referred to as “City”).

WHEREAS, the Owner holds title to a parcel of real estate property located in the Unincorporated portion of Manatee County located at 409 20th Street West, Palmetto, Florida.

WHEREAS, Manatee County does not have sewer facilities available to serve the property, thus necessitating the use of septic systems absent approval to connect to the City’s central sewer system; and

WHEREAS, the City has decided that it is in the best interest of its residents and the environment to allow the Owner to connect the properties to the City’s water and central sewer system; and

WHEREAS, pursuant to Section 29-10 and Subsection 6(d) of Section 29-7 of the Code of Ordinances of the City of Palmetto, the City Commission may allow connection to the City utility system subject to Owner entering into an Agreement with the City relating to Sewer System Connection and Annexation.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other valuable consideration contained herein, the parties agree to as follows:

1. The property which is subject to this agreement, located at 409 20th Street West, Palmetto, Florida, which is more particularly described in Exhibit “A,” attached hereto and incorporated herein.
2. At such time that the Property is no longer owned, in whole or in part, by a Florida not-for-profit corporation, the Owner or Owner’s successor or assigns, shall petition the City for voluntary annexation of the Property in accordance with the procedures established in Section 171.044, Florida Statutes. The City Commission shall consider such petition and either accept or reject the annexation petition in a timely manner.
3. Prior to connection to City utilities, the Owner, at Owner’s expense, shall pay for the appropriate connection and impact fees, and install all infrastructure, including, but not limited to, house laterals, force mains and lift stations necessary to support the development of the Property.

4. In the event of default, the Owner, its successors or assigns, defaults under the terms of this Agreement, the City shall have all remedies available at law.

5. Prior to construction, the Owner through his engineer of record shall submit construction plans for the water and sewer system to the City for review and approval. The City's approval shall not be unreasonably withheld.

6. Upon certification by the engineer of record that the sewer system has been constructed to the City of Palmetto standards, the City of Palmetto will accept dedication of said system.

7. The Owner will obtain right of way use permits from Manatee County for installation of the water and sewer lines within County owned right of way, if necessary.

8. If either party defaults under this Agreement, such defaulting party agrees to pay reasonable attorney's fees and court costs incurred by the other party because of such default.

9. The Clerk of the City (the "Clerk") shall record this Agreement in the Public Records of Manatee County, Florida, no later than fourteen (14) days after the execution of this Agreement by all parties. Owner shall bear the expense of recording this Agreement.

10. This Agreement shall be construed, and the rights and obligations of the parties hereunder shall be determined, in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be in the Courts in and for Manatee County, Florida.

11. In the event any term or provision of this Agreement shall be held invalid by a Court of competent jurisdiction, such invalid term or provision should not affect the validity of any term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Agreement; provided, however, if any term or provision of this Agreement is held to be invalid due to the scope or extent thereof, then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

12. This Agreement constitutes the entire agreement between the parties hereto as to the subject matter contained herein and supersedes any and all prior understandings, if any. There are no other oral or written promises, conditions, representations, understandings, or terms of any kind as conditions or inducements to the execution hereof, and none have been relied upon by either party. Any subsequent conditions, representations, warranties, or agreements shall not be valid and binding upon the parties unless they are in writing signed by both parties and executed in the same manner as this Agreement.

13. The City and Owner agree that both parties have played an equal and a reciprocal part in drafting this Agreement. Therefore no provision of this Agreement shall be construed by

a Court or judicial authority against any party hereto because such party is deemed to have drafted or structured such provisions.

14. Owner and City represent that, by the execution of this Agreement, it is not the intent of the parties that this Agreement be construed or deemed to represent a joint venture or common undertaking between City and Owner, or either, with any third party. While engaged in carrying out and complying with the terms of this Agreement, Owner is an independent principal and not a contractor for or an officer or employee of City. Owner shall not at any time or in any manner represent that it or any of its agents or employees are employees of City.

IN WITNESS WHEREOF, the parties have duly signed, sealed and delivered this Agreement by duly authorized officers, all as of the date first above written.

**CITY OF PALMETTO, FLORIDA, BY
AND THROUGH THE CITY
COMMISSION OF THE CITY OF
PALMETTO**

By: _____
Shirley Groover Bryant, Mayor

ATTEST: James R. Freeman
City Clerk

By: _____
City Clerk/Deputy Clerk

WITNESSES

**VOLUNTEERS OF AMERICA OF
FLORIDA, INC., a Florida not-for-profit
corporation**

By: _____
(Corporate Seal)