

SECOND AMENDMENT TO INTERLOCAL AGREEMENT REGARDING ST JOHNS HERITAGE PARKWAY INTERSECTION AND BABCOCK STREET

THIS SECOND AMENDMENT TO INTERLOCAL AGREEMENT REGARDING ST JOHNS HERITAGE PARKWAY INTERSECTION AND BABCOCK STREET ("Second Amendment") is made and entered into the date of last signature below by and between Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY", and the City of Palm Bay, Brevard County, Florida, hereinafter referred to as the "CITY".

WITNESSETH:

WHEREAS, the COUNTY and the CITY entered into an Interlocal Agreement pursuant to Chapter 163, Part 1, Florida Statutes, regarding St. Johns Heritage Parkway Intersection and Babcock Street, on the 30th day of April, 2020, as recorded in Public Records of Brevard County Florida at Official Record Book 8730, Page 998, hereinafter referred to as "Original ILA", which is incorporated herein by this reference; and

WHEREAS, the Original ILA was entered into by the parties in order to facilitate the completion of intersection improvements at Babcock Street and the newly constructed St. Johns Heritage Parkway, defined below as the Intersection Project, and complete the future widening of Babcock Street south of Malabar Road; and

WHEREAS, the Original ILA set out certain deadlines and dates by which the CITY would acquire right-of-way for Phase 3 of the Intersection Project which was the subject of the Original ILA; and

WHEREAS, the CITY and the COUNTY agreed to modify the Original ILA for the purpose of extending said dates for the CITY to complete acquisition of the right-of-way for Phase 3 of the Intersection Project; and

WHEREAS, the First Amendment to the Original ILA, hereinafter referred to as the "First Amendment", was effective August 9, 2021, as recorded in the Public Records of Brevard County, Florida, at Official Record Book 9217, page 749, hereinafter referred to as the "Amendment," which is incorporated herein by this reference; and

WHEREAS, the First Amendment provided that if the CITY did not complete acquisition of the right-of-way for Phase 3 by December 31, 2021, the CITY shall submit a written request seeking an extension of the acquisition deadline to the County Manager's Office at least thirty calendar days prior to said deadline. The Amendment authorized the County Manager to grant two time extensions: (1) the first is up to an additional 120 days; and (2) the second is up to an additional 90 days. Any subsequent extensions must be granted by the Brevard County Board of County Commissioners; and

WHEREAS, the COUNTY granted the CITY the first extension on December 16, 2021, which is incorporated herein by this reference, establishing a new deadline for acquisition of all right-of-way for Phase 3 to be completed by April 30, 2022; and

WHEREAS, the COUNTY granted the CITY the second extension on March 21, 2022, which is incorporated herein by this reference, establishing a new deadline for acquisition of all right-of-way for Phase 3 to be completed by July 29, 2022; and

WHEREAS, CITY has made substantial progress in acquiring the needed right-of-way for Phase 3; and

WHEREAS, on June 16, 2022, the CITY requested from the COUNTY a third extension for an additional ninety (90) days to complete acquisition of all right-of-way for Phase 3, which request is attached hereto as Exhibit A; and

WHEREAS, the COUNTY finds this request for an extension is reasonable and serves a public purpose and benefit; and

WHEREAS, the CITY and COUNTY desire to amend the Original ILA, including any amendments or modifications made thereto, to provide for the requested third extension to complete acquisition of the right-of-way for Phase 3 to October 27, 2022, and to allow for any future extensions requested by the CITY at least thirty (30) calendar days prior to said deadline to be granted by the County Manager, in his/her sole discretion. If a request for an extension is deemed not to be reasonable by the County Manager, the CITY must seek approval from the Brevard County Board of County Commissioners.

NOW, THEREFORE, for and in consideration of the terms, conditions and mutual covenants contained herein and for other good and valuable consideration received by each party, the sufficiency of which is hereby acknowledged, the COUNTY and the CITY acknowledge and agree as follows:

1. **Recitals.** The above recitals are true and correct and by this reference are hereby incorporated into and made an integral part of this Second Amendment.
2. **Amendment.** Item 12(c) of the Original ILA is hereby stricken in its entirety and amended as follows:

October 27, 2022: The CITY shall complete acquisition of all right-of-way for Phase 3. If not completed by this date, the CITY shall submit a written request seeking an extension of the acquisition deadline to the County Manager's Office at least thirty (30) calendar days prior to said deadline. The County Manager is authorized to grant reasonable time extensions. The granting of such extensions shall not be unreasonably withheld by the COUNTY. In the sole discretion of the County Manager, if the CITY's request for an extension is not determined to be reasonable, the CITY will be required to seek approval from the Brevard County Board of County Commissioners. The

County Manager has the authority to grant any necessary extensions to ensure the Original ILA, and any amendments or modifications thereto, does not expire prior to consideration by the Board of County Commissioners.

3. **Counterparts.** This Amendment may be executed in two (2) or more counterparts, each of which shall be taken to be an original, and all collectively deemed to be one (1) instrument.
4. **Ratification.** Except as modified herein, the COUNTY and the CITY hereby represent and warrant that the Original ILA, and any amendments or modifications thereto, remains in full force and effect and is hereby reaffirmed and ratified by both the COUNTY and the CITY.
5. **Effective Date and Recording.** Pursuant to Chapter 163, Florida Statutes, the effective date of this Amendment shall be the date on which it is recorded with the Clerk of the Circuit Court in and for Brevard County. The COUNTY shall be responsible for recording a fully executed original of this Second Amendment in the public records of Brevard County, and shall return a recorded copy of the Amendment to the CITY.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have subscribed their names and have caused this Second Amendment to be executed by their duly authorized representatives.

Attest:

City of Palm Bay, Florida

City Clerk

By: _____
Robert Medina, Mayor
Date: _____

Attest:


Brevard County, Florida

Rachel Sadoff, Clerk of the Court

By: _____
Kristine Zonka, Chair

Date: _____
As approved by the Board on July 19,
2022

Reviewed for Legal Form and Content
for Brevard County, Florida:



Deputy County Attorney



June 16, 2022

Frank Abbate
Brevard County Manager
2725 Judge Fran Jamieson Way, Bldg. C
Viera, FL 32940

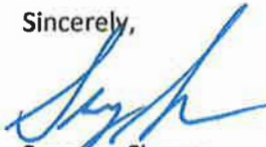
Dear Mr. Abbate:

Section 2 of the of the Amendment to the Interlocal Agreement (ILA) between the City of Palm Bay and Brevard County regarding St. Johns Heritage Parkway intersection and Babcock Street, the City is required to complete the acquisition of all necessary rights-of-way (ROW) along Babcock Street by December 31, 2021. As you are aware, the City requested and received two extensions as authorized in the Amendment, with the last extension expiring on June 30, 2022. The City has acquired all but approximately 0.11 acres of ROW from property owner, GA Property, LLC. While the City was able to negotiate the acquisition agreement and Palm Bay City Council approved the agreement on May 19, 2022, the property owner has since requested additional compensation. At this time, the City has not come to an agreement with the property owner and would like the County's consideration for a 90-day extension beyond what is authorized under the Amendment to the ILA.

If you have any technical questions, please contact the City Engineer Frank Watanabe at (321) 409-6341.

Thank you for your consideration.

Sincerely,



Suzanne Sherman

City Manager

