

**NATURAL RESOURCES MANAGEMENT DEPARTMENT, STORMWATER PROGRAM
INTERLOCAL AGREEMENT
WEST MELBOURNE**

THIS INTERLOCAL AGREEMENT (hereinafter the “Agreement”) is made and entered by and between the BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS a political subdivision of the State of Florida (hereinafter referred as “County”) and the CITY of WEST MELBOURNE, a municipality incorporated under the laws of Florida, (hereinafter referred as the “City”).

WITNESSETH:

WHEREAS, the County currently operates and manages a Stormwater Program under the authority of Chapters 403 and 197, Florida Statutes; and

WHEREAS, the City currently operates and manages a Stormwater Program under the authority of Chapters 403 and 197, Florida Statutes; and

WHEREAS, the County and the City recognize there are mutual benefits associated with a more efficient regional approach to the management of stormwater issues; and

WHEREAS, the Board of County Commissioners has authorized the expansion of the County’s Stormwater Program for administration and operation of municipality adopted benefit zones; and

WHEREAS, the City Council of West Melbourne, Florida has determined that the County’s administration of the city’s Stormwater Program will best serve the interest of its citizens; and

WHEREAS, this agreement is authorized pursuant to Section 163.01, Florida Statutes, as an Interlocal agreement; and

NOW THEREFORE, in consideration of the premises and covenants herein contained, it is mutually agreed between the parties as follows:

SECTION 1. STATUTORY AUTHORITY

This agreement is entered into under the authority vested in the parties by Section 163.01, Florida Statutes, whereby an interlocal agreement is an agreement entered into by political subdivisions to allow local government units to provide services or facilities to another local government unit or public

agency on a basis of mutual advantage and cooperation for the betterment of the local community needs in the public interest.

SECTION 2. PROGRAM ADMINISTRATION

The County shall administer and manage the City's Stormwater Program consistent with the policies, procedures, and practices of the County's Natural Resources Management Department Stormwater Program in effect on the effective date of this agreement. For the purposes of this agreement the authority to make minor adjustments in procedures and practices not affecting policy is hereby delegated to the County Manager and the City Manager, provided that said amendments do not vary the specific terms and conditions of this agreement or any applicable City or County ordinances. Procedural amendments shall be in writing executed by the County Manager and City Manager. Administration of the City's Stormwater Program includes but is not necessarily limited to:

- Management of the parcel database including coordination with the County Property Appraiser, Tax Collector, and Information Technology offices.
- Administration of the Credit Policy Program.
- Drafting of required Ordinances, Rate Resolutions, and annual assessment rolls as necessary. All such actions must be reviewed by the City Manager and approved by the City Attorney. All such actions shall be adopted by the City Council, as required by law.
- Review and adjustment of Stormwater Assessment bills, when appropriate, through the Error and Insolvency process.
- Coordination with the City Council and staff to identify and select capital improvement projects which are consistent with County policies and procedures and have benefit to the West Melbourne Stormwater Management Benefit Area (WMSMSBA).
- Providing information and coordination related to billing inquiries to the citizens within the WMSMSBA.
- Management of technical staff employed by the County's Stormwater Program.
- Educational activities for the public and/or City staff to meet the minimum NPDES requirements.
- Activities related to the coordination of the City of West Melbourne Stormwater Management Program (SWMP) required under the Generic Permit for Discharge of Stormwater Phase II, Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permit.
- Participation in the Stormwater Education and Outreach Interlocal Agreement, as long as the Lagoon Loyal program remains in effect.

- Investigation of environmental or water management concerns (illicit discharges) other than yearly compliance inspections.
- Yearly compliance inspections of stormwater management systems receiving stormwater credit.
- Preparation of activities directly related to the NPDES generic permit, including:
 - Collection of documentation related to annual reporting,
 - Preparation of the annual report.
 - Preparation of the permit renewal Notice of Intent (NOI),
 - Responses to requests for additional documentation by the FDEP Stormwater Section,
 - Any other documentation request as deemed necessary to meet the NPDES permit requirements.
- The Brevard County Property Appraiser incurs administrative costs maintaining the expanded use code system. The rate of compensation for administrative costs has been set at \$0.60 per parcel for fiscal year 2022-23.
- Compensation for Information Technology Department services at the rate of \$1.00 per parcel.

SECTION 3. ASSESSMENT REVENUE

Special assessment revenues as budgeted by City Council and collected within the City for the Stormwater Program will be used for administering, planning, constructing, operating, and maintaining stormwater management systems benefiting the City. The City may utilize up to fifty percent (50%) of the total funds available for maintenance of and/or capital improvements to the City's existing stormwater system as further specified in Section 11.

SECTION 4. CUSTODIAN OF FUNDS

During the period covered by this Interlocal Agreement, the City shall be the custodian of funds generated within the WMSMSBA.

SECTION 5. ADJUSTMENTS OF ASSESSMENTS AND EXPENDITURE OF COST

In the event that an adjustment or individual calculation of an annual Stormwater Assessment is required, The County's Natural Resources Management Department Director (Director) or his/her designee shall have the authority to make such adjustment in accordance with County policies and procedures. Any appeals related to credit issuance, exemptions from, or adjustments to, any stormwater assessment will be resolved utilizing the County Stormwater Program Appeals Committee and Appeals Committee procedure as outlined in Chapter 110, Article V, Section 110-373(c) of

Brevard County Code. The City shall be given notice of any request for adjustment and/or appeal and has the right, but not the obligation, to participate in any hearing requesting and adjustment or an appeal.

All expenditures of funds pursuant to this agreement which are collected within the WMSMSBA shall require the approval of the Director and the City Manager. In the event of a disagreement as to the approval of expenditure, the decision of the City Manager shall prevail. It is recognized that during the period covered by this Interlocal Agreement, services of City Departments/Divisions, such as purchasing, financial, or legal services, may require reasonable compensation, and if required, will be set forth in the annual program operating budget.

SECTION 6. PURCHASING AND FINANCIAL PRACTICES

During the period covered by this Interlocal Agreement, purchasing and financial processes shall be in accordance with the City's policies and procedures, as amended from time to time.

SECTION 7. ADMINISTRATIVE COSTS

The City shall pay an annual fee for its share of the County Stormwater Program's administrative costs. The City and County agree that the City's share of the administrative costs for the 2022-23 fiscal year is \$50,000. The annual fee reflects administrative costs incurred by the City for County provided services and staff billable rates. The City's share of the administrative costs shall be recalculated annually hereafter, by adding the consumer price index (CPI), for all average prices as calculated by the Bureau of Labor Statistics for the prior year, to the administrative cost. The City shall be billed yearly on the anniversary date of this agreement. County provided Administrative services are listed in Section 2 Program Administration.

The proposed annual budget, including the yearly adjustment to account for the CPI increase, will be coordinated with the City for review and approval. In the event of a disagreement the City manager and Director shall meet and resolve the disagreement.

SECTION 8 - DIRECT COSTS FOR SPECIAL SERVICES

The City will pay direct labor and related costs incurred for special services pre-approved in scope and budget by the City. These services shall include but are not limited to the City's Stormwater Fee increases and coordination and documentation required to complete the DEP NPDES Audit. Costs for these services will be charged on an hourly rate, to be submitted to and approved by the City, and

shall also include associated costs of supplies and expenses, and capital equipment. The County will maintain appropriate records in a format acceptable to the City to support these charges.

SECTION 9. REMMITANCE OF ADMINISTRATIVE COSTS

The City will remit to the County the annual fee for administrative costs upon receipt of invoice from the County. Invoicing shall be done on the first quarter at the beginning of the fiscal year.

SECTION 10. LEGAL SERVICES

During the period covered by this agreement, the City agrees that any claims or suits involving operation of the stormwater program within the City limits will be defended by and at the expense of the City. However, the County, pursuant to a separate agreement if entered into, and at the request of the City, may defend the City against all claims arising out of decisions relating to adjustments or credit to an individual fee; or appeals to or from the Stormwater Program Appeals Committee as set forth in Section 5, including actual reasonable attorney fees incurred by the County Attorney's Office. For internal control and audit purposes, time records will be kept by the County Attorney's Office for all time charged against City stormwater assessments. Time records will include who performed the individual task [e.g.-draft letters, research], date tasks performed, time expended for each task expressed in tenth of an hour, and total amount billed. Costs of such defense shall be paid from the stormwater assessment imposed by the City.

SECTION 11. SELECTION OF PROJECTS

The County Stormwater Program staff will work with the City's staff and the City Council to select projects which benefit the WMSMSBA. Projects shown in the City's Stormwater Needs Assessment Plan shall be considered during the project selection process. It is recognized that, in general, program operation costs, capital improvements, and the maintenance of capital improvements constructed by the program are the primary uses allowable for revenue collected. However, where the City determines that projects relating to the maintenance of and/or capital improvement to the City's existing stormwater system are necessary to protect the public health, safety and welfare, the City may utilize up to fifty percent (50%) of the total available funds for such projects related to the existing stormwater system. In addition, it is recognized the parties will endeavor to apply the funds identified for capital improvement projects that would equally benefit and improve both water and flood control.

SECTION 12. CONTINUING CONSULTANTS

The City shall have available for its use the services of continuing consultants as selected by the County under the Competitive Consultant Negotiation Act (CCNA).

SECTION 13. REPRESENTATIONS OF THE CITY

The City makes the following representations to the County:

- a) The City is duly organized and in good standing under the laws of the State of Florida, and is duly qualified and authorized to carry on the governmental functions and operations set forth in this Agreement.
- b) The City has the power, authority, and legal right to enter into and perform the obligations set forth in this Interlocal Agreement, and the execution, delivery, and performance thereof by the City (i) has been duly authorized by the City of West Melbourne; (ii) does not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon the assets of the City, except as otherwise provided herein.

SECTION 14. REPRESENTATIONS OF THE COUNTY

The County makes the following representations to the City of West Melbourne:

- a) The County is duly organized and in good standing under the laws of the State of Florida, and is duly qualified and authorized to carry on the governmental functions and operations under the laws of the State of Florida, and is duly qualified and authorized to carry on the governmental functions and operations set forth in this Interlocal Agreement.
- b) The County has the power, authority, and legal right to enter into and perform the obligations set forth in this Interlocal Agreement, and the execution, delivery, and performance thereof by the County (i) has been duly authorized by the Board of County Commissioners of Brevard County; (ii) does not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon the assets of the County, except as otherwise provided herein.

SECTION 15. RECORDS REVIEW

It is hereby specifically agreed that any record, document, computerized information and program, audio or video tape, photograph, or other writing of the County's Stormwater Program relating to this Agreement shall be deemed to be a "Public Record," whether in the possession or control of the County's Stormwater Program or one of its consultants, as defined in Section 119.011, Florida Statutes. Said record, document, computerized information and program, audio or video tape,

photograph, or other writing shall be subject of the provisions of Chapter 119, Florida Statutes. Upon request by the City and without posing an exemption to the City's rights set forth in Section 119.07(1), Florida Statutes, the County shall permit inspection of the foregoing public records by the City, and the City may obtain copies of said public records. All books, cards, registers, receipts, documents, and other papers in connection with this Agreement shall at any and all reasonable times during the normal working hours of the County be open and freely exhibited by the County for the purpose of examination and/or audit by the City.

SECTION 16. NOTICE

All notices, demands, annual renewals, or other writings in this Agreement are to be given, made or sent, or which may be given, made or sent, by either party through this Agreement to the other, shall be deemed to have been given, made or sent when made in writing and deposited in the first-class United States mail, certified, return receipt requested and postage prepaid, and addressed as follows:

TO COUNTY: **Director
Natural Resources Management Department
Brevard County Government Center
Building "A", Suite 219
2725 Judge Fran Jamieson Way
Viera, FL 32940**

with a copy to: **County Manager
Brevard County Government Center
Building "C"
2725 Judge Fran Jamieson Way
Viera, FL 32940**

TO CITY: **City Manager
City of West Melbourne
2240 Minton Rd.
West Melbourne, FL 32904**

With a copy to: **City Clerk
City of West Melbourne
2240 Minton Rd.
West Melbourne, FL 32904**

The person or address to which any notice or other writing may be given, made or sent, as above provided, may be unilaterally changed by written notice given as above provided.

SECTION 17. THIRD-PARTY BENEFICIARIES; PARTNERSHIPS

- (a) No Third-Party Beneficiaries. It is expressly agreed to by the parties, and it is the expressed intent of the parties that there are no intended or unintended, expressed or incidental, third-party beneficiaries of this Agreement. Consequently, this Agreement may NOT be relied upon by any person or entity other than the County or the City.
- (b) Partnership. The County and the City shall not be deemed to be partners or co-joint ventures of one another by virtue of this Agreement.

SECTION 18. DEFAULT

(a) It is expressly agreed between the parties hereto that in the event the City determines the County, or the County determines the City, to be in default of any of the conditions, covenants, or agreements of this Agreement, the Manager of the party hereto alleging a default will provide written notice thereof to the Manager of the party hereto alleged to be in default. Default with regard to any provision hereof shall be construed as a material breach of this Agreement, the intent of the parties being that all terms of this Agreement are material. The party alleged to be in default shall, within fifteen (15) days of the receipt of such notice, initiate action to correct such default and promptly and diligently prosecute such corrective action to completion; provided, however, that during said fifteen (15) day period if the Manager of the entity alleged to be in default disagrees with the determination of the entity alleging a default, then in such event both Managers shall meet and discuss the alleged default and possible correction thereof. In the event the two Managers cannot agree on whether or not a default exists or how to resolve the default, they shall present an agreed upon statement of the issue(s) outstanding to their respective governing bodies, together with alternatives proposed by both Managers for any corrective action to be undertaken. At this point, both parties shall immediately coordinate with one another to simultaneously satisfy the requirements of subsection (b) and Section 164.103, Florida Statutes, in a prompt manner.

(b) If the governing body of the entity alleging a default determines no default to have occurred, no further action by the entity claimed to be in default shall be necessary.

(c) If the governing body of the entity alleging a default determines a default to have occurred, but the governing body of the entity alleged to be in default determines no default to have occurred, then the entity alleging a default shall retain all legal and equitable rights and remedies available, but unless otherwise terminated by either party, this Agreement shall continue in full force and effect

during any judicial proceeding initiated by the entity alleging a default. If the governing body of the entity alleging a default is dissatisfied with the remedy elected by the party alleged to be in default or the progress in remedying the default, the entity alleging a default shall retain all legal and equitable rights and remedies available.

(d) If a majority vote of each of the governing bodies determines a default to have occurred and agrees upon a method for the prosecution of corrective action and appropriate corrective action, the entity in default shall initiate corrective action within fifteen (15) days of the date of final determination of such default by both governing bodies and promptly and diligently prosecute such corrective action to completion. Thereafter, the parties to this Agreement shall retain all legal rights and remedies available to them, but unless otherwise terminated by either party hereto, this Agreement shall continue in full force and effect during any judicial proceeding initiated by either party.

(e) Remedies and Waiver. All remedies conferred on either party shall be deemed cumulative, and no one remedy is exclusive of the other or of any other remedy conferred by law. Waiver by the City or the County, or failure of the City or the County to take action with respect to, any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term, covenant, or condition herein contained. In no event shall the County be deemed liable for the costs, damages, or attorney's fee incurred as a result of services provided herein.

SECTION 19. SEVERABILITY

If any part of this Interlocal Agreement is found invalid, unconstitutional, or unenforceable by any court, such invalidity or unenforceability shall not affect other parts of this Interlocal Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be accomplished. This agreement shall be enforced and interpreted as if such invalid, unenforceable, or unconstitutional provision did not exist.

SECTION 20. ENTIRETY

This Interlocal Agreement, including exhibits, if any, represents the understanding and agreement of the parties in its entirety. There shall be no amendments to this Interlocal Agreement unless such amendments are in writing, signed by all the parties, and filed with the Brevard County Clerk of the Circuit Court.

SECTION 21. TERMINATION

This agreement shall remain in effect until date specified in Section 22 of this Agreement or upon termination by either party. Either the City or the County may serve written notice to the other party to terminate the contract upon no less than one hundred twenty (120) days notice. The City shall be responsible for all outstanding costs as permitted by this agreement.

SECTION 22. DURATION OF THE AGREEMENT

This agreement shall remain in full force for a period of three (3) years after its date of execution by both parties, unless this agreement is terminated as otherwise provided herein. In addition, this agreement may be extended by both parties in one (1) year increments for up to two (2) years beyond the initial three (3) year period of agreement. Annual extensions shall be made by mutual written consent by both parties and as authorized by the Director and the City Manager, and proper notification per Section 16.

SECTION 23. EFFECTIVE DATE

The effective date of this Interlocal Agreement shall be the date on which this fully executed agreement has been filed with the Brevard County Clerk of the Circuit Court.

SECTION 24. GOVERNING LAW

The laws of the State of Florida shall govern the validity and interpretation of this Interlocal Agreement.

SECTION 25. VENUE

Venue for legal action brought by any party to this Agreement to interpret, construe or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and ANY TRIAL SHALL BE NON-JURY.

SECTION 26. E-VERIFY

The Parties:

- (a) Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the Agreement; and
- (b) Shall expressly require any contractors or subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the U.S. Department of Homeland

Security's E-Verify system to verify the employment eligibility of all new employees hired by a contractor or subcontractor during the term of this Agreement; and

- (c) Agree to maintain records of participation in and compliance with the E-Verify program, including participation by its contractors or subcontractors as provided above, and to make such records available upon request.

Compliance with the terms of this Section is made an express condition of this Agreement and either party may treat a failure to comply as a material breach of this Agreement.

A Party who registers with and participates in the E-Verify program may not be barred or penalized under this Section if, as a result of receiving inaccurate verification information from the E-Verify program, the Party hires or employs a person who is not eligible for employment.

Nothing in this Section may be construed to allow intentional discrimination of any class protected by law.

Section 27. COUNTERPARTS

This First Amendment and Renewal may be executed in counterparts and, in such case, together shall constitute one complete agreement.

REMAINDER OF PAGE LEFT BLANK. SIGNATURES TO FOLLOW.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates of their duly authorized signatures affixed hereto.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA

Rachel M. Sadoff, Clerk

By: _____
Kristine Zonka, Chair

Date: _____

(As approved by Board on: _____,
2022)

Reviewed for legal form and content
for Brevard County, Florida:

Heather A. Balser
Heather A. Balser, Assistant County Attorney

ATTEST:

CITY OF WEST MELBOURNE

Cynthia Hanscom
Cynthia Hanscom, City Clerk

Hal J. Rose
Hal J. Rose, Mayor
(As approved by the City Council on
July 19, 2022)