

INTERLOCAL AGREEMENT

ROAD WIDENING – S. COURTENAY PARKWAY (CONE ROAD TO FORTENBERRY ROAD)

THIS INTERLOCAL AGREEMENT is made and entered into by and between the Merritt Island Redevelopment Agency, a community redevelopment agency created and operating pursuant to Chapter 163, Part III, Florida Statutes, hereinafter referred to as "MIRA," and Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY."

WITNESSETH:

WHEREAS, the COUNTY and MIRA desire to coordinate on a project known as the S. Courtenay Parkway Widening Project, which generally consists of road widening to S. Courtenay Parkway from approximately just south, of the Cone Road intersection to the end of the existing four lanes just south of the Fortenberry Road intersection, located on Merritt Island, hereinafter referred to as the "PROJECT;" and

WHEREAS, both parties agree that the project was proposed by MIRA and its contributions are the only reason the COUNTY pursued it at this time; and

WHEREAS, the PROJECT consists of widening the two-lane segment of S. Courtenay Parkway to three lanes, with a center dual turn lane, to improve traffic capacity, traffic safety, and functionality of the roadway; and

WHEREAS, in addition to addressing traffic improvements, the PROJECT will also include drainage improvements to resolve or minimize historic recurring ponding issues, and improve sidewalks and pedestrian access; and

WHEREAS, enhanced landscaping improvements will be installed to encourage sustainable development within the MIRA district boundaries; and

WHEREAS, the PROJECT will promote efficiency, prevent unnecessary duplication of effort, and benefit the public health, safety, and welfare; and

WHEREAS, the PROJECT is in accordance with the mission of MIRA and the MIRA Redevelopment Plan; and

WHEREAS, both MIRA and the COUNTY have agreed to contribute funding towards the construction of the PROJECT.

NOW, THEREFORE, the COUNTY and MIRA covenant and agree that they have full power and authority to enter into this Agreement and bind their respective

governmental entities 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 Agreement.

(2) STATUTORY AUTHORITY:

This Agreement shall be considered an Interlocal Agreement pursuant to the authority outlined in Chapter 163, Florida Statutes.

(3) SCOPE OF PROJECT:

The PROJECT will consist of road widening along S. Courtenay Parkway from approximately just south of the Cone Road intersection to the end of the existing four-lane just south of the Fortenberry Road intersection, which totals roughly 0.42 miles.

The PROJECT will be constructed in accordance with the plans and specifications to be signed and sealed by the Engineers of Record, (further referred to as "consultant") pursuant to the approved engineering scope and fees for the PROJECT.

The COUNTY shall be responsible for managing the planning, design, and construction of the PROJECT. Upon completion, COUNTY shall be responsible for maintaining the roadway, drainage, and traffic signals within the PROJECT.

The landscape consultant's design shall not conflict with the roadway or traffic safety, which may include plantings, irrigation, and landscaping lighting.

(4) APPROVAL OF PLANS:

In situations excluding emergencies, MIRA will have the opportunity to review and approve all plans and specifications. The COUNTY will be responsible for ensuring that any plans submitted to MIRA will be submitted in a timely fashion. Upon submittal of plans to MIRA for review, MIRA shall provide any review comments and/or marked up plans within fourteen (14) calendar days. If MIRA does not provide review comments and/or marked up plans within fourteen (14) calendar days from the date of receipt of the plans to MIRA, MIRA's right to approve is forfeited, and the COUNTY will continue with the PROJECT using its best judgment. Further, as the maintenance authority of the public right of way of this PROJECT, the design intent shall ultimately conform to COUNTY standards.

(5) CONSTRUCTION REVIEW MEETINGS:

MIRA shall have the right to have a representative present at any construction site meetings or construction progress meetings which shall be set at such time and place as the COUNTY deems appropriate. The COUNTY shall provide five (5) days advance notice of date, time, and location of meeting, unless an emergency meeting is required, in which case all best efforts shall be made to contact MIRA's designated PROJECT representative.

(6) FINANCIAL OBLIGATIONS OF COUNTY AND MIRA:

The Parties acknowledge, that the expected total cost of the PROJECT is \$3,500,000, but is subject to change based on the final design and market conditions. MIRA shall provide a not to exceed contribution of \$2,000,000 towards the total Project costs, hereinafter referred to as MIRA's contribution. COUNTY shall provide \$1,500,000 towards the total project costs, hereinafter referred to as COUNTY's contribution. COUNTY contribution includes providing an overall not to exceed amount of \$125,000 towards completion of the landscaping plans and landscaping plan implementation, as defined herein. The County shall ensure it holds the contractor responsible for the replacement of plantings during the Establishment Period of one year. Also as part of the \$1,500,000, the COUNTY shall provide an estimated contribution of \$100,000 of COUNTY Design and Construction oversight expenses to the project, which will be considered "in-kind".

MIRA shall stage deposits of \$100,000, at final design, \$900,000, at construction contract execution, and \$1 Million in the subsequent Fiscal Year, with the COUNTY.

The funds contributed by MIRA will be held by the COUNTY in a separate fund established for the PROJECT. The funds that are not expended by the COUNTY as part of the PROJECT will be used for future maintenance of the landscaping area.

Should the initial landscaping plans implementation and Establishment Period, as defined herein, exceed the \$125,000.00 landscaping contribution of the COUNTY, the excess costs shall be paid by MIRA.

Upon completion of the Project and the conclusion of the Establishment Period as defined herein, MIRA will be financially responsible for the maintenance and repair of the landscaped area including but not limited to, the replacement of dead or dying plantings, irrigations systems, pavcs, or other landscape related infrastructure indefinitely or unless removed.

MIRA shall pay for its share of maintenance annually on October 1st,

based on actual contractor proposals and include all additional costs borne by the COUNTY over its basic mowing if mutually agreed to by both parties.

Any necessary repairs to equipment, plants, signs, or trees, included in the final landscape plan, would be managed and paid for by the MIRA, after any guarantee period.

Any changes to the final landscape plan or future improvements, such as subdivision signs, landscaping, hardscaping, lighting, etc., hereinafter referred to as "improvements" installed on behalf of and/or by MIRA shall be subject to the County Right-of-Way permit application process and approved by the COUNTY. The improvements shall be maintained and funded by MIRA. Improvements shall be maintained in such a manner so as to not cause damage to or interfere with any COUNTY infrastructure and facilities. Any such damage to COUNTY infrastructure or facilities shall be remedied immediately by the MIRA at no cost to the COUNTY. If, at any time, it is determined by the COUNTY that such improvements create a safety hazard, then such hazard(s) shall be addressed by the MIRA within twenty-four (24) hours of notification from the COUNTY. If such hazard(s) have not been addressed within this 24-hour window, or such necessary additional time is not granted by the COUNTY, then the COUNTY shall have the right, but not the obligation, to address such hazard(s). In addition to any other remedy or cause of action available to the COUNTY, the MIRA expressly agrees to cover any and all costs incurred by the COUNTY to address such hazard(s).

(7) CHANGE DIRECTIVES:

Directives that change the Scope of the PROJECT, as outlined in Section (3) of this Agreement, shall be paid for based on a determination of which Party is responsible for the change. Both Parties shall endeavor to work in good faith to ensure the costs are fairly apportioned.

(8) COST CHANGES

The COUNTY has agreed that should costs increase, it can fund up to \$2,000,000, inclusive of its in-kind contribution without further approvals. Should the costs exceed this amount, the COUNTY has the unilateral right to cancel the project given MIRA's \$2,000,000 cap above. However, the Parties agree that any excess amount over \$3,500,000 shall be subject to review by both parties. Both parties may contribute additional funding subject to their own discretion, however, MIRA shall fund all landscaping costs over the COUNTY's \$125,000 contribution. The Parties may also mutually agree to cut the scope to keep the Project viable. However, if the project does not proceed, MIRA shall reimburse the COUNTY for actual expenses borne by the enhanced landscape design and a pro-rated

share of the design and project management costs based on MIRA providing a 57% prorated share and the County, a 43% prorated share. This is because the COUNTY proceeded with design to 30% in good faith so that the MIRA Board could better understand the project and has since proceeded to 60% design based on subsequent assurances. The prorated share amount is based on the proportional contribution of the parties towards the total estimated project costs of \$3,500,000, that being \$1,500,000 from COUNTY and \$2,000,000 from MIRA. Should the total project costs be lower than \$3,500,000, the same proportional ratios apply.

(10) NOTICES:

All notices required under the Agreement shall be in writing and delivered to the Parties by United States mail, as follows:

- (a) MIRA Representative
Larry Lallo
MIRA Executive Director
2575 N. Courtenay Pkwy., Suite 207
Merritt Island, Florida 32953
- (b) COUNTY Representative
Tammy Thomas-Wood
Public Works Operations Manager
2725 Judge Fran Jamieson Way, A-201
Viera, Florida 32940

(11) DEFAULT:

(a) It is expressly agreed between the Parties hereto that in the event MIRA determines the COUNTY, or the COUNTY determines MIRA, to be in default of any of the conditions, covenants, or provisions of this Agreement, the Party alleging a default will provide written notice thereof to the other Party alleged to be in default. Default with regard to any provision 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 of the entity alleged to be in default disagrees with the determination of the entity alleging a default, then in such event both representatives of each entity shall meet and discuss the alleged default and possible correction thereof. In the event the representatives cannot agree on whether or not a default exists or how to resolve the default, they shall each present an agreed upon statement of the issue(s) outstanding to their respective governing bodies, together with alternatives proposed by both representatives for any corrective

action to be undertaken. The Brevard County Manager shall have the final authority and decision on whether a Default has occurred and the appropriate remedy to reach a resolution between the Parties.

(b) Remedies Cumulative; 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 MIRA or the COUNTY of, or failure of MIRA 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 or MIRA be deemed liable for costs, damages, or attorney's fees incurred as a result of the services provided herein.

(12) LEAD AGENCY:

The COUNTY agrees to plan, design, and construct the PROJECT, and MIRA agrees that the COUNTY shall be the lead agency to perform all work on the PROJECT. It is anticipated that the COUNTY will engage a contractor to complete the PROJECT and the COUNTY shall have the authority to enter into appropriate contracts to perform work on the PROJECT. All contracts must be in compliance with Florida law.

(13) INDEMNIFICATION:

To the extent allowed by law and subject to the provisions set forth in Section 768.28, Florida Statutes, each Party is responsible for the negligent or wrongful acts or omissions of its own employees, agents or other representatives while acting within the scope of their employment or otherwise within their authorized capacity, arising from the activities encompassed by this Agreement. Nothing contained within this Agreement requires either Party to indemnify the other Party for any losses, damages or injuries of its employees, agents or representatives. Neither Party, by execution of this Agreement, will be deemed to have waived its statutory right/defense of sovereign immunity, or to have increased its limits of liability under Section 768.28, Florida Statutes, as may be amended from time to time. Each Party shall retain all rights, defenses, and remedies under Florida law in the event of any claims, suits or other disputes arising from its performance of the obligations under this Agreement. Nothing in this Agreement shall be interpreted to create any causes of action for any third parties not a Party to this Agreement.

(14) SEVERABILITY:

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties contained herein

are not materially prejudiced and if the intentions of the Parties can still be accomplished.

(15) EFFECTIVE DATE:

The effective date of this Agreement shall be the date of recording as set forth in Section (16) below.

(16) RECORDING:

Upon execution of this Agreement, COUNTY shall record a fully executed original of this Agreement in the Public Records of Brevard County, Florida, and shall return a recorded copy of the Agreement to the MIRA.

(17) TERMINATION CLAUSE:

Prior to the issuance of the Notice to Proceed to the Contractor, the COUNTY or MIRA shall have the right to terminate this Agreement, with or without cause, by furnishing thirty (30) days prior written notice herein.

(18) ATTORNEY'S FEES:

In the event of any legal action to enforce the terms of this Agreement, each Party shall bear its own attorney's fees and costs.

(19) VENUE AND NON-JURY TRIAL:

Any legal action to enforce, interpret, or construe the terms of this Agreement, shall be in a court of competent jurisdiction in and for Brevard County, Florida and **ANY TRIAL SHALL BE A NON-JURY TRIAL.**

(20) COMPLIANCE WITH STATUTES:

It shall be each Party's responsibility to be aware of and comply with all federal, state, and local laws.

(21) ENTIRETY:

This Agreement represents the understanding and agreement of the parties in its entirety. There shall be no amendments to the Agreement unless such amendments are in writing and signed by both parties.

(22) REPRESENTATIONS:

- (a) MIRA makes the following representations to the COUNTY:
- (1) MIRA is duly organized and in good standing under the laws of the State of Florida.
 - (2) MIRA 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 hereof by MIRA (i) has been duly authorized; and (ii) does not constitute a default under, or result in the creation of any lien, charge, encumbrance or security

interest upon the assets of MIRA, except as otherwise provided herein.

- (b) The COUNTY makes the following representations to MIRA:
 - (1) 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.
 - (2) 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 hereof 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.

(23) LEGAL SERVICES – CONFLICT WAIVER:

The Office of the Brevard County Attorney represents the COUNTY and MIRA. Although the interest of the COUNTY and MIRA are generally consistent, it is recognized and understood that differences may exist or become evident during the course of this representation. Notwithstanding these possibilities, the COUNTY and MIRA have determined that it is in their individual and mutual interests to have the Office of the Brevard County Attorney represent them jointly in connection with agreements relating to the services described in this Agreement. Accordingly, the COUNTY and MIRA agree that the Office of the Brevard County Attorney may represent them jointly in connection with the provisions contained in this Agreement. It is further understood and agreed that the Office of the Brevard County Attorney may freely convey necessary information provided by one client to the other, and that the County Attorney's Office will have no obligation to maintain confidentiality between the COUNTY and MIRA as to matters that are the subject of this Agreement unless MIRA decides to retain a separate, independent counsel.

(24) THIRD-PARTY BENEFICIARIES; PARTNERSHIP:

- (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 MIRA.
- (b) Partnership. The COUNTY and MIRA shall not be deemed to be partners or co-joint venturers of one another by virtue of this Agreement.

(25) TERM; DURATION OF AGREEMENT:

The term of this Agreement shall run from the date of last signature below through the date of completion of the PROJECT. The COUNTY agrees to accept all maintenance responsibilities for any roadway, drainage, and signalization improvements created as a result of this Agreement in perpetuity as the COUNTY will have title to the subject property. MIRA agrees to accept all maintenance responsibilities for any landscaping and associated improvements. Upon completion of the PROJECT, the Agreement shall expire, notwithstanding Section (6) above. Should MIRA sunset or is dissolved, the entirety of the Agreement shall terminate.

(26) GOVERNING LAW:

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURES TO FOLLOW.]



IN WITNESS WHEREOF, the Parties hereto have set their hands and seals as of the date of last signature below.

ATTEST:

BREVARD COUNTY, FLORIDA

Rachel M. Sadoff, Clerk of the Court

By: _____
Rita Pritchett, Chair
Approved by the Board on: _____

Approved for legal form and content:

Jan [Signature] 7/26/2023
Assistant County Attorney

ATTEST:

**MERRITT ISLAND REDEVELOPMENT
AGENCY (MIRA)**

By: Jan [Signature]
Larry Lallo, Executive Director
Approved by the MIRA Board on: 6/27/2023

[Handwritten initials]