

THIS INSTRUMENT RETURN TO:
City Clerk
City of Melbourne
900 East Strawbridge Ave.
Melbourne, Florida 32901

PREPARED BY:
Adam Conley, Assistant City Attorney
City of Melbourne
900 East Strawbridge Ave.
Melbourne, Florida 32901

**MOBILITY IMPROVEMENT INTERLOCAL AGREEMENT
FOR WICKHAM ROAD AND POST ROAD INTERSECTION IMPROVEMENTS**

THIS INTERLOCAL AGREEMENT, entered into this _____, 2024, by and between **BREVARD COUNTY**, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "County"); and the **CITY OF MELBOURNE**, a Florida municipal corporation, whose address is 900 East Strawbridge Avenue, Melbourne, Florida 32901, (hereinafter referred to as "City") is based on the following premises.

RECITALS:

WHEREAS, the County has determined that construction of a turn lane and associated improvements at the intersection at North Wickham Road and Post Road is necessary to improve traffic conditions at this intersection (the "Improvement Project"); and

WHEREAS the County has requested that the City contribute impact fee funds toward the Improvement Project, and the City desires to contribute transportation impact trust funds to the Improvement Project; and

WHEREAS, the County will also seek grant funding from the Florida Department of Transportation to contribute toward the Improvement Project; and

WHEREAS, the City has adopted the Transportation Impact Fee Code and Mobility Fee Code, wherein the City collects transportation impact fees and expends such impact fees on capital improvements pursuant to City Code; and

WHEREAS, the Improvement Project is located within Transportation Impact Fee Benefit Zone 1 and Mobility District E of the City of Melbourne; and

WHEREAS, the Improvement Project is identified on Table X-3 (Mobility Project Implementation Plan) in the Capital Improvement Element of the Comprehensive Plan; and

WHEREAS, pursuant to Appendix D, § 10.07(b) of the Transportation Impact Fee Code and Appendix D, §3.104(c)-(d) of the Mobility Fee Code, the City agrees to contribute to the construction of the Improvement Project on a reimbursement basis by expending and disbursing transportation impact fee trust funds and mobility district trust funds for the Improvement Project under the terms and conditions of this Agreement.

NOW, THEREFORE, be it agreed by and between the parties as follows:

1. Recitals.

Each and all of the foregoing recitals be and the same are hereby incorporated herein and acknowledged to be true and correct.

2. Definitions.

Within this Agreement, unless the context otherwise requires, the following words, terms, and phrases shall have the meanings defined as follows:

- (a) "Agreement" means and refers to this Mobility Improvement Interlocal Agreement for Wickham Road and Post Road Intersection Improvements, as recorded in the Public Records of Brevard County, Florida, and as the same may be amended from time to time.
- (b) "City" means and refers to the City of Melbourne, a Florida municipal corporation.
- (c) "County" means and refers to Brevard County, a political subdivision of the State of Florida.
- (d) "Improvement Project" means and refers to the Wickham Road and Post Road intersection improvement project as described in the Recitals above, including the design, survey, and construction of the intersection improvements.
- (e) "Mobility Fee Code" means and refers to Appendix D, Chapter 3, Article X of the City Code of Melbourne, Florida.
- (f) "Transportation Impact Fee Code" mean and refers to Appendix D, Chapter 10, Article I of the City Code of Melbourne, Florida.

3. Construction of Improvement Project.

The City and County agree that, in no event more than five (5) years from the Effective Date of this Agreement, the County will construct (or procure construction pursuant to its procurement policies and procedures) and complete the Improvement Project. The County understands and agrees that all costs and expenses of the Improvement Project are the sole responsibility of the County.

4. City Reimbursement for Completed Improvement Project.

- A. The City and County agree that the City's contribution to the construction and completion of the Improvement Project shall be on a reimbursement basis. The City agrees to reimburse County as set forth in subsection (B) below for the reasonable actual costs of completing the Improvement Project, upon compliance with the following conditions:
 - i. Acquisition of, and compliance with, all necessary permits related to the construction and installation of the Improvement Project;
 - ii. The County (or its contractor) providing as-built drawings for the completed Improvement Project;

- iii. The County (or its contractor) providing an affidavit that there are no outstanding liens, mechanic or materialmen's liens, or any other encumbrances resulting from the Improvement Project;
 - iv. Compliance with conditions (i) through (iii) above within the timeframe set forth in Section 4 of this Agreement; and
 - v. The County submitting a request for reimbursement from the City, along with evidence of compliance of the conditions listed in this Section 4(A), as well as evidence of the reasonable actual construction costs as described in subsection (B) below, within sixty (60) days of completion of the Improvement Project.
- B. The amount of the City's reimbursement to the County for the Improvement Project shall be the lesser of the following:
- i. Up to fifty percent (50%) of the County's reasonable actual costs and expenses for the Improvement Project that are not grant funded; or
 - ii. a maximum reimbursement of \$1,300,000.
- The County shall demonstrate its reasonable actual costs and expenses through documentary proof reasonably acceptable to the City Engineer, including copies of documents evidencing funds spent, copies of contracts, paid invoices, checks, accounting ledgers, orders, receipts, receipt of grant funds, and other documents evidencing costs which are consistent with reasonable costs to construct the Improvement Project. Such documentary proof must indicate that the item expensed is directly related to the construction of the Improvement Project.
- C. Through this Agreement, the City intends to use funds from the Mobility District E trust fund and the Transportation Impact Fee Zone 1 trust fund to reimburse the County for the Improvement Project.
- D. In the event the County fails to comply with the terms and conditions set forth in this Agreement, the County will be deemed in breach of the Agreement, and shall not be entitled to reimbursement from the City.

5. Not a Joint Venture.

The City and County agree that nothing herein shall be construed or interpreted as creating a joint venture or principal/agent relationship between the City and County regarding the construction of the Improvement Project.

6. Notices

Whenever either party desires to give notice to the other, notice shall be sent by hand delivery, overnight delivery, such as UPS or Federal Express, or certified mail, return receipt requested, and shall be sent to:

For the County:

County Manager
Brevard County
2725 Judge Fran Jamieson Way

Viera, Florida 32940

With a copy to:

County Attorney
Brevard County
2725 Judge Fran Jamieson Way
Viera, Florida 32940

For the City:

City Manager
City of Melbourne
900 East Strawbridge Avenue
Melbourne, Florida 32901

With a copy to:

City Attorney
City of Melbourne
900 East Strawbridge Avenue
Melbourne, Florida 32901

7. Entire Agreement.

This Agreement represents the understanding between the parties in its entirety as to the subject matter of this Agreement. No other agreements, either oral or written, exist between the City and County as to the subject matter of this Agreement. This Agreement shall supersede and terminate any prior interlocal agreement, addendum, or amendment thereto, between the City and County regarding the subject matter of this Agreement.

8. Amendments.

This Agreement and any exhibits may only be amended, supplemented, or altered by a written instrument duly executed by both parties.

9. Interpretation.

The parties agree that they have both participated in the drafting of this Agreement, have consulted with legal counsel regarding the Agreement, and that this Agreement is not to be construed against either party as if it were the drafter of this Agreement.

10. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Florida.

11. Severability.

The parties to this Agreement agree that the provisions of this Agreement are severable. If a court of competent jurisdictions finds any provision of this Agreement to be invalid, void, or otherwise unenforceable, the remainder of this Agreement shall be

effective and shall remain in full force and effect unless amended or modified by mutual consent of the parties.

12. Enforcement; Attorney's Fees; Venue.

Enforcement of this Agreement may be by County or the City, and may be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any provision hereof, either to restrain a violation or to recover damages to the extent permitted by this Agreement. In the event of any legal action to enforce, interpret, or construe the terms of this Agreement, each party shall bear its own attorney's fees and costs. Venue for any legal action brought by any party to this Agreement regarding this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and ANY TRIAL SHALL BE NON-JURY.

13. Recordation; Effective Date.

This Agreement shall be recorded in the Public Records of Brevard County, Florida, as required by §163.01, Florida Statutes. The recorded original of this Agreement, or any amendment hereto, shall be returned to the City for filing in its records. This Agreement shall take effect (the "Effective Date") when a fully executed original Agreement is recorded in the Public Records of Brevard County, Florida.

IN WITNESS WHEREOF, this Interlocal Agreement has been fully executed on behalf of the City and the County by their duly authorized representatives on the respective dates below.

BREVARD COUNTY,
a political subdivision of the State of Florida

CITY OF MELBOURNE, FLORIDA
A Florida municipal corporation

By: _____
Jason Steele
Chair
2725 Judge Fran Jamieson Way
Viera, Florida 32904

By: _____
Jenni Lamb
City Manager
900 E. Strawbridge Avenue
Melbourne, Florida 32901

(CITY SEAL)

ATTEST:

ATTEST:

Rachel Sadoff, Clerk

Kevin McKeown, City Clerk