

INTERLOCAL AGREEMENT
(Indialantic Stormwater Improvements)

THIS INTERLOCAL AGREEMENT (“Agreement”) is made by and between **Brevard County, Florida**, 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.”

RECITALS:

WHEREAS, the County plans to construct drainage improvements as part of the Indialantic Stormwater Improvements, generally along N. Riverside Drive; and

WHEREAS, the City desires to have their existing abandoned utilities removed that, in certain locations, conflict with the County’s construction of the Indialantic Stormwater Improvements, hereinafter referred to as the “Removal Project”; and

WHEREAS, the Removal Project will be performed in conjunction with the Indialantic Stormwater Improvements in order to promote efficiency, to prevent unnecessary duplication of effort, and to achieve the best public interest of the citizens of Brevard County.

NOW, THEREFORE, in consideration of the mutual promises outlined herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the County and City 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, and is executed in accordance with the authority delegated by Florida law, including, but not limited to, Chapters 125 and 166, Florida Statutes.

3. PROJECT

The City and County agree that the Removal Project shall be completed in conjunction with the County’s Indialantic Stormwater Improvements being performed by the County’s Construction Manager At Risk contractor, RUSH Construction, Inc. More specifically, the Removal Project consists of the removal of a portion of two (2) existing

12" abandoned water main(s) in the excavated areas of the Indialantic Stormwater Improvements.

4. APPROVAL OF PLANS

The Removal Project will be constructed in accordance with the plans and specifications prepared by Jones Edmunds & Associates, Inc., the Engineer of Record for the Indialantic Stormwater Improvements. The City shall have the opportunity to review and approve all plans and specifications prior to any construction being undertaken by the County. The County shall be responsible for ensuring that any plans which are submitted to the City shall be submitted in a timely fashion. Whenever plans are submitted to the City for review, the City shall return said plans in "marked up" form with comments to the County within fourteen (14) calendar days. If the City does not return the "marked up" plans and comments within fourteen (14) calendar days, the City's right to approve is forfeited and the County shall continue with the Removal Project using its best judgment.

5. LEAD AGENCY DESIGNATION

The City shall fully cooperate with and shall support the County's work efforts associated with the Removal Project. The City hereby grants to the County, its contractors, representatives, employees, and agents (all of which shall be referred to in this Agreement as the "County"), the right to enter onto the City's property to accomplish the tasks required by the Removal Project. This right of entry shall continue in full force and effect throughout the time that the Removal Project-related tasks are ongoing. The County shall have final decision-making authority with respect to the acquisition, design, and construction phases associated with the Removal Project, subject to the limitations outlined herein.

6. FINANCIAL OBLIGATIONS

The current construction cost estimate for the Removal Project is \$15,000. The City shall deposit funds in the amount of \$15,000 to the County within thirty (30) calendar days of the Effective Date of this Agreement. These funds shall be held in an account dedicated for this Removal Project by the County. If the Removal Project's cost is greater than \$15,000, the City shall deposit the difference with the County within thirty (30) calendar days of notification by the County to the City. Any unused City funds shall be returned to the City by the County within thirty (30) days of Removal Project completion. Nothing herein shall release the City from financial responsibility for payment of costs incurred by the County as a result of the Removal Project described herein.

The City shall be financially responsible for any and all costs in excess of the Removal Project cost estimate for the Removal Project; and any additional engineering costs, permit costs/fees, contractor supervision, technical services incurred as a result of the construction of the Removal Project.

The City will be given an opportunity to review and approve change orders prior to County execution. The County will provide change orders to the City, and the City shall provide any review comments or approval within five (5) calendar days. If the City does not provide review comments within five (5) calendar days from the date of receipt of the change order, the County may proceed in the best interest of the Removal Project and approve the change order. Nothing herein shall release the City from financial responsibility for payment of costs incurred by the County as a result of construction of the Removal Project described herein. The City's failure to provide comments within the allotted time shall be considered acceptance and approval of the terms and conditions of the respective change order.

A change order may be required for any of the following (non-exhaustive) list:

- A change in the Scope of Work;
- The amount of any adjustment in the construction costs - added to or deleted from the construction cost estimate; or
- The extension or the adjustment in the construction duration.

The City shall fund 100% of construction change order costs for the Removal Project within fourteen (14) calendar days of notification by the County to the City.

7. NOTICES

Notices shall be sent by hand delivery, overnight delivery, such as UPS or Federal Express, or certified mail, return receipt requested, and Email. Notices shall be sent to:

CITY Representative

Jenni Lamb
City Manager
City of Melbourne
900 East Strawbridge Avenue
Melbourne, FL 32901
City.manager@mlbfl.org

With a copy to:

City Representative

Thomas Baker
Public Works Department
City of Melbourne
900 East Strawbridge Avenue
Melbourne, FL 32901
Thomas.Baker@mlbfl.org

COUNTY Representative

Suzanne Reider

Public Works Grants and JPA Writer/Coordinator

2725 Judge Fran Jamieson Way, A-201

Viera, FL 32940

suzanne.reider@brevardfl.gov

8. 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 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.

9. 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.

10. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the successors in interest, transferees, and assigns of the Parties.

11. GOVERNING LAW

This Agreement shall be deemed to have been executed and entered into within the State of Florida and shall be governed, interpreted, and construed in accordance with the laws of the State of Florida.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and neither this Agreement nor any portion of it may be altered, modified, waived, deleted, or amended except by a written instrument executed by the

Parties hereto. This Agreement supersedes all oral agreements and negotiations between the Parties relating to the subject matter of this Agreement.

13. PUBLIC RECORDS; RIGHT TO AUDIT

In the performance of this Agreement, both Parties shall keep books, records, and accounts of all activities related to this Agreement. Such books, records and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of either Party and shall be retained by the respective Party for a period of at least three years after termination of this Agreement, unless otherwise dictated by Florida law. All books, records, and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Law, Chapter 119, Florida Statutes.

14. 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.**

15. RECORDATION; EFFECTIVE DATE

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

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURES TO FOLLOW

This Agreement has been fully executed on behalf of the Parties by their duly authorized representatives on the respective dates below in counterparts that, when taken together, shall be construed as one document.

BREVARD COUNTY, FLORIDA

By: _____

Frank Abbate, County Manager

Date: _____

Approved by the Board on 1/28/2025

Approved for legal form and content
solely for Brevard County:



Deputy County Attorney

ATTEST:

CITY OF MELBOURNE

By: _____

Jenni Lamb, City Manager

Date: _____

Approved for legal form and content
solely for the City of Melbourne:

