

**REVISED AND RESTATED INTERLOCAL AGREEMENT
BETWEEN CITY OF MELBOURNE, OLDE EAU GALLIE RIVERFRONT COMMUNITY
REDEVELOPMENT AGENCY AND BREVARD COUNTY**

THIS REVISED AND RESTATED INTERLOCAL AGREEMENT is entered into by and between the following Parties: the CITY OF MELBOURNE, a Florida municipal corporation, 900 E. Strawbridge Ave., Melbourne, Florida 32901 (hereinafter "the CITY"), the OLDE EAU GALLIE RIVERFRONT COMMUNITY REDEVELOPMENT AGENCY, a Florida dependent special district created pursuant to Part III, Chapter 163, Florida Statutes, 900 E. Strawbridge Ave., Melbourne, Florida 32901 (hereinafter "the AGENCY"), and BREVARD COUNTY, a political subdivision of the State of Florida (in its own name and on behalf of each County Taxing Authority, as defined in section 2e., below), 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter collectively called "the COUNTY").

WITNESSETH:

WHEREAS, the CITY created the AGENCY pursuant to CITY Resolution No. 1657 and Ordinance No. 2001-23 after the COUNTY delegated its authority under Part III, Ch. 163, Florida Statutes, as set forth in COUNTY Resolution 2000-249; and

WHEREAS, the CITY created a tax increment redevelopment trust fund (AGENCY tax increment fund) pursuant to section 163.387, Florida Statutes, and CITY Ordinance No. 2001-23 as a part of the noted CITY and COUNTY enabling authority; and

WHEREAS, the CITY and COUNTY have continuously paid their respective full AGENCY tax increment payments required by section 163.387(1), Florida Statutes, and CITY Ordinance No. 2001-23 to the AGENCY since the first fiscal year of the AGENCY's operation; and

WHEREAS, the AGENCY desires to carry out community redevelopment objectives in the District by constructing a structured parking garage pursuant to section 163.370(2)(c)3, Florida Statutes, in the blighted and cramped downtown Eau Gallie area to revitalize it; and

WHEREAS, in order for AGENCY to finance and construct said parking garage, the AGENCY requires an extension to its termination date; and

WHEREAS, the COUNTY also has budgetary needs to improve transportation and roadways; and

WHEREAS, on May 24, 2021, the CITY, AGENCY, and COUNTY entered into an Interlocal Agreement, as recorded in Official Records Book 9131, Page 321 of the Public Records of Brevard County, Florida (the "Original Interlocal Agreement"); and

WHEREAS, the CITY and COUNTY have enjoyed an excellent relationship over the years, and desire to cooperate in achieving the AGENCY's community redevelopment goals; and

WHEREAS, the Parties desire to replace the Original Interlocal Agreement with this Revised and Restated Interlocal Agreement to accomplish the finance and construction of said structured parking garage.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **RECITALS.** The foregoing recitals are true and correct and are incorporated into this Agreement by this reference.
2. **DEFINITIONS.** The following terms shall have the meanings indicated below, unless the context requires a different meaning:
 - a. "AGENCY" means the Olde Eau Gallie Riverfront Community Redevelopment Agency, a Florida dependent special district created pursuant to Part III, Chapter 163, Florida Statutes.
 - b. "AGENCY Termination Date" means September 30, 2038, unless as otherwise set forth by Section 4 of this Agreement.
 - c. "CITY" means the City of Melbourne, a Florida municipal corporation.
 - d. "COUNTY" means Brevard County, a subdivision of the State of Florida.
 - e. "County Taxing Authority" means the COUNTY, through its Board of County Commissioners, and any COUNTY established municipal services taxing unit or dependent special district on behalf of which the County levies taxes or approves a budget, to the extent such municipal services taxing unit or dependent special district is required to contribute a tax increment to the AGENCY tax increment fund established in accordance with the requirements of Section 163.387, Florida Statutes.
 - f. "Increment" or "Tax Increment" shall have the same meaning as "Increment" as set forth in in Section 163.387(1)(a), Florida Statutes.
 - g. "Parking Garage Project" means a CITY and AGENCY redevelopment project for a structured parking garage with public parking in downtown Eau Gallie.
 - h. "Parking Garage Property" means the CITY property upon which the Parking Garage Project is constructed and operated.
3. **AUTHORITY.** This Agreement is being entered into under the authority vested in the Parties by Section 163.387(3)(b), Florida Statutes and, pursuant to that authority, supersedes any provision or requirement set forth in Section 163.387, Florida Statutes to the extent of any conflict with this agreement and that statutory provision.
4. **AGENCY TERMINATION DATE.** Pursuant to Section 4 of the Original Interlocal Agreement, on July 6, 2021, the COUNTY adopted Resolution No. 2021-083, and on September 15, 2021, the CITY adopted Ordinance No. 2021-37 to extend the termination date of the AGENCY to September 30, 2038. Pursuant to this Agreement, the AGENCY Termination Date shall remain no later than September 30, 2038.

As with the Original Interlocal Agreement, in the event the CITY and AGENCY are able to complete construction of the Parking Garage Project and satisfy all indebtedness related to the construction of the Parking Garage Project prior to September 30, 2038, the CITY and AGENCY agree to take such actions with the COUNTY as may be required to terminate the AGENCY prior to September 30, 2038.

5. ELIGIBLE CITY & AGENCY PROJECT – PARKING GARAGE PROJECT.

- a. **Parking Garage Project.** The Parties agree that the sole AGENCY redevelopment project shall be the development, construction, and operation of the Parking Garage Project. The Parking Garage Project shall create at least two-hundred fifty (250) dedicated public parking spaces. The Parties agree that the development, procurement, and operation of the Parking Garage Project shall be consistent with, and subject to, the terms and conditions of this Agreement.

Pursuant to Section 11 of the Original Interlocal Agreement, the AGENCY Redevelopment Plan was revised on September 15, 2021, through Ordinance No. 2021-37 to specifically identify the Parking Garage Project. Any further revision of the AGENCY redevelopment plan shall require the approval of the Brevard County Board of County Commissioners.

- b. **Ownership of Parking Garage Project.** The CITY and AGENCY agree that the Parking Garage Project, and the land upon which it is located, shall be owned by the CITY. The COUNTY acknowledges and agrees that, should the Parking Garage Project be developed through a public-private partnership agreement, such agreement may grant a lease or license interest in parking spaces not used as public parking for the use of private development.
- c. **Public Parking Spaces.** The CITY and AGENCY agree that a minimum of two-hundred fifty (250) parking spaces within the Parking Garage Project are to be used as public parking for a period of fifty (50) years and consistent with the terms and conditions of this Agreement.

The CITY and AGENCY further agree that, if the Parking Garage Project is developed as a public-private partnership, no private development partner may use any of the dedicated public parking spaces to meet applicable parking requirements in the Melbourne City Code for associated private development in the public-private partnership.

6. ELIGIBLE PROCUREMENT METHODS FOR PARKING GARAGE PROJECT.

- a. **CITY & AGENCY Capital Improvement Project:** The CITY and AGENCY may choose to undertake the Parking Garage Project pursuant to relevant state law and City Code procurement processes for capital improvement projects.
- b. **Public-Private Partnership Project:** The CITY and AGENCY may choose to undertake the Parking Garage Project pursuant to relevant state law and City Code procurement processes for a public-private partnership.

7. ELIGIBLE APPROPRIATIONS AND EXPENDITURES OF AGENCY FUNDS. The Parties agree that the AGENCY may appropriate and expend AGENCY tax increment funds as follows:

- a. **Capital Expenditures and Project-Related Costs.** The Parties acknowledge and agree that the CITY and AGENCY have provided the COUNTY with a cost estimate for a 300-space structured parking garage facility at the Project site in downtown Eau Gallie from engineering consultants with experience developing structured parking garage facilities. The Parties further acknowledge and agree that this cost estimate substantiates the CITY's and AGENCY's intended capital investment of up to \$10.5 million for the Parking Garage Project, whether through a CITY and AGENCY capital improvement project expenditure or through a capital contribution to a public-private partnership project.

In addition to capital expenditures or contributions of up to ten-million five-hundred thousand dollars (\$10, 500,000.00) toward the Project, the CITY and AGENCY will also incur associated costs with the procurement, development, and construction of this Project including, but not limited to, legal costs related to drafting of construction contracts and a public-private partnership agreement, costs of issuing indebtedness to finance the construction costs or capital contribution, professional engineering design or consulting costs, construction engineering inspection management costs, preconstruction and postconstruction bonds, and other similar related costs of the Project. The Parties agree that the CITY and AGENCY are authorized to expend available AGENCY tax increment funds on such costs of the Project to the extent such expenditures are eligible under Ch. 163, Part III, Florida Statutes.

Accordingly, the Parties agree that the CITY and AGENCY may appropriate and expend AGENCY tax increment funds (and associated indebtedness contemplated by this Agreement) in an amount not to exceed \$12,075,000 dollars towards the capital expenditures and associated costs of the Parking Garage Project. The COUNTY further agrees that such a capital contribution to a public-private partnership, pursuant to the terms and conditions of this Agreement, does not constitute the use of AGENCY tax increment funds (and related indebtedness contemplated by this Agreement) to subsidize any private portions of the Parking Garage Project or other related private development within a public-private partnership.

- b. **Debt Service on Indebtedness for Parking Garage Project.** The Parties agree that the CITY and AGENCY are authorized to expend available AGENCY tax increment funds to pay outstanding debt service on issued indebtedness for the Parking Garage Project, as described further in Section 8 herein, to the extent such expenditures are eligible under Ch. 163, Part III, Florida Statutes.
- c. **Other Administrative Costs of the AGENCY.** Pursuant to Section 6(c) of the Original Interlocal Agreement, the CITY and AGENCY have wound down all other AGENCY projects, obligations, and actions such that the Parking

Garage Project is the only remaining project, and all AGENCY expenditures are those associated with the Parking Garage Project and administrative expenses for actions required by Statute, the Original Interlocal Agreement, or the Special Districts Office of the Florida Department of Commerce. Pursuant to this Agreement, the CITY and AGENCY are authorized to expend available AGENCY funds on AGENCY administrative expenses for actions required by Statute, this Agreement, or the Special Districts Office of the Florida Department of Commerce.

- d. **Unspent AGENCY Tax Increment Funds.** The Parties agree that, after the Effective Date of this Agreement, any AGENCY tax increment funds not appropriated or expended pursuant to subsections (a) through (d) above, may either be deposited into an escrow account for the purpose of later reducing the amount of indebtedness pursuant to Section 163.387(7)(c), Florida Statutes, or returned to the Taxing Authorities at the end of each fiscal year pursuant to Section 163.387(7)(a), Florida Statutes.

8. AGENCY INDEBTEDNESS FOR PARKING GARAGE PROJECT.

- a. **Limitations; Purpose.** The Parties agree that the AGENCY may only borrow money, issue any kind of bond, pledge tax increment funds to a bond, incur indebtedness, and apply for and accept advances, loans, or any other repayable financial assistance, or to give such security as may be required for any of the above in furtherance of the Parking Garage Project pursuant to the terms and conditions of this Agreement. The CITY and AGENCY agree the AGENCY shall not undertake the above-described activities of incurring debt for any other purpose and shall only incur indebtedness consistent with this Agreement.
- b. **Amount; Maturity Date.** The Parties agree that the AGENCY's projections for tax increment funding to the AGENCY through the Termination Date can support indebtedness for the expenditures set forth in Section 7 in furtherance of the Parking Garage Project. The COUNTY agrees and authorizes the CITY and AGENCY to issue indebtedness for the Parking Garage Project and related eligible expenditures, so long as the maturity date of the indebtedness does not exceed the AGENCY Termination Date.
- c. **Tax-Basis.** The indebtedness for the Parking Garage Project shall be issued on a tax-exempt basis, unless the CITY and AGENCY's bond counsel advises that all or a portion of it should be issued on a taxable basis.

9. PUBLIC PARKING SPACES; PARKING REVENUE AND ELIGIBLE USES OF SUCH REVENUE.

- a. **Term of Free Public Parking; Time Limits; Enforcement.** The Parties agree that the public parking spaces of the Project will be available with no term parking fees (i.e. hourly, daily, etc.) until such time as a parking management plan is adopted by City Council for Downtown Eau Gallie after the Project is completed. Notwithstanding this provision for public parking with no term fees, the CITY and AGENCY are authorized to adopt and enforce

time limitations on public parking, and to enforce penalties of those time limitations through fines and charges as adopted by City Council.

- b. **Paid Public Parking.** Subsequent to the adoption of a parking management plan as described in subsection (a) above, which the CITY agrees shall not occur earlier than five (5) years after the Project is completed the CITY and AGENCY (if still active) are authorized to adopt and enforce term fees (i.e. hourly, daily, etc.), time limitations, and penalties for the public parking spaces of the Project as adopted by City Council.
- c. **Eligible Uses of Public Parking Fees and Enforcement Revenues.** The CITY and AGENCY agree that all revenues collected based on public parking management programs of the Project described in subsections (a) and (b) above shall be utilized in the following order of priority:
 - i. **Capital Maintenance Reserves for the Project:** The CITY will first utilize parking revenues to fund its capital maintenance reserves for the Project, based on each relevant adopted fiscal year budget and the City's capital reserve and investment policies.
 - ii. **Annual Operational and Maintenance Obligations for the Project:** The CITY will next utilize parking revenues for any annual operational and maintenance obligations it may have for the Parking Garage Project.
- d. **Rate Structure of Parking Management Plan.** The CITY and AGENCY agree that the rate structure of the adopted parking management plan will [COUNTY language for uniform rates, etc.] and will make reasonable attempts to set rates to collect annual revenues for the estimated needs for the eligible uses set forth in subsection (c) above.

10. CITY AND COUNTY TAX INCREMENT CONTRIBUTION.

- a. **COUNTY Tax Increment Contribution.** Pursuant to Section 163.387, Florida Statutes, the COUNTY agrees to continue its annual contribution to the AGENCY TAX increment trust fund in every fiscal year through the AGENCY Termination Date.
- b. **CITY Tax Increment Contribution.** Pursuant to Section 163.387, Florida Statutes, the CITY agrees to continue its annual contribution to the AGENCY tax increment trust fund in every fiscal year through the AGENCY Termination Date.

11. RESTRICTIVE COVENANT. In furtherance of the terms and condition set forth in this Section 5, the CITY and AGENCY agree to execute and record a restrictive covenant on the Parking Garage Property in the Public Records of Brevard County, Florida for the following:

- i. That the Parking Garage Property shall be owned by the CITY for a period of fifty (50) years from the date the restrictive covenant is recorded, except as authorized to be transferred by the COUNTY;
- ii. That a minimum of two-hundred fifty (250) parking spaces are dedicated as public parking for a period of fifty (50) years from the date the restrictive covenant is recorded;

- iii. That no private development partner may use any of the dedicated public parking spaces to meet applicable parking requirements in the Melbourne City Code for associated private development in the public-private partnership; and
- iv. Notwithstanding the dedication of two-hundred fifty (250) parking spaces for public parking, such public parking shall be subject to the fee and enforcement provisions of Section 9 of this Agreement.

12. BOUNDARIES. The Parties agree that the CITY and AGENCY shall not modify the AGENCY redevelopment plan to expand the boundaries of the Olde Eau Gallie Riverfront Community Redevelopment Area without the consent of the COUNTY.

13. ACCOUNTING; ANNUAL AUDIT; REPORT; MEETING.

- a. **Transfers of AGENCY Funds.** The CITY and AGENCY agree that all transactions with AGENCY funds will occur within the AGENCY trust fund.
- b. **Parking Garage Project Asset Reporting Per GASB Standards.** The CITY and AGENCY will follow Chapter 163, Part III, Florida Statutes and GASB standards for accounting pertaining to the Parking Garage Project.
- c. **Annual Audit Reports.** Each fiscal year, the AGENCY shall prepare and submit to the COUNTY a report in the form set forth in Exhibit A, attached and incorporated herein by reference. The AGENCY shall also prepare and submit to the COUNTY an annual report of the AGENCY to included audited financial statements to the COUNTY, as required by Section 163.387(8), Florida Statutes. The CITY and AGENCY agree to have the independent auditor preparing the audit report examine AGENCY expenditures and certify that all AGENCY tax increment fund revenues have been lawfully expended solely in compliance with and for community redevelopment purposes authorized by law, under the provisions of Chapter 163, Part III, Florida Statutes, and the terms of this Agreement.
- d. **Meeting.** The City Manager of the CITY or Chairperson of the AGENCY governing body agrees to meet annually with the County Commissioner of District 4 to discuss the annual audit reports. The CITY, AGENCY, and COUNTY agree that, in accordance with its authority under Section 125.01(1)(x), Florida Statutes, at any time during the remaining term of the AGENCY, the COUNTY shall have the right to require the AGENCY to retain an independent auditor to conduct a performance audit paid for by the COUNTY.

14. EFFECT OF AGREEMENT. This Agreement, including the exhibits, and any written amendments executed by the Parties to this Agreement constitute the entire agreement between the Parties. This Agreement may be amended only by written agreement approved and executed with the same formalities as this Agreement by all Parties. This Agreement supersedes all prior agreements to the extent that they are in conflict with this Agreement, including the Original Interlocal Agreement. Nothing in this Agreement shall be interpreted as modifying the authority of the Board of County Commissioners as outlined in Section 3(b) of COUNTY Resolution 2000-249.

15. ATTORNEY'S FEES. In the event any litigation arises out of this Agreement or under this Agreement, each party shall bear its own attorney's fees and costs.

16. NOTICES. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and, in the case of notice to the City or County Manager, by email. Notice shall be deemed to have been duly given if emailed and by personal delivery or deposit of the same in certified mail:

CITY and CRA:

COUNTY:

17. GOVERNING LAW. The validity, construction, and enforcement of, and the remedies under this Agreement, shall be governed in accordance with the laws of the State of Florida, and venue of any proceeding shall be Brevard County, Florida.

18. SAVINGS CLAUSE. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

19. EFFECTIVE DATE; RECORDING; EFFECT ON PRIOR INTERLOCAL AGREEMENT. This Agreement shall take effect on the date that it is executed by all Parties and recorded in the Official Records of Brevard County, Florida by either the CITY or COUNTY. Upon recording, this Agreement shall supersede and terminate the Original Interlocal Agreement.

[SIGNATURE BLOCKS]