

Meeting Date
November 21, 2017



AGENDA	
Section	Consent
Item No.	II A 7

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval RE: Interlocal Agreement with City of West Melbourne for Mowing Maintenance of the Right of Way of Minton Road from US 192 to Palm Bay Road – District 5 (Fiscal Impact: \$6,807 Annually)
DEPT/OFFICE:	Public Works Department – Finance and Contracts Administration

Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chairman to execute the Interlocal Agreement with the City of West Melbourne for mowing maintenance of the County right of way of Minton Road from US 192 to Palm Bay Road.

Summary Explanation & Background:

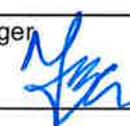
The City of West Melbourne desires to perform the mowing maintenance of the County right of way of Minton Road from US 192 to Palm Bay Road. The City will assume mowing maintenance responsibility for the grassed and/or vegetative roadway shoulders and median on Minton Road from US 192 to Palm Bay Road in exchange for an annual payment from the County in the amount of \$6,807. This reimbursement amount is based on the minimum of four cycles per year if the County were to continue maintenance of the right of way. The City intends to increase the mowing frequency of the right of way under their assumption of this maintenance responsibility.

The initial term of the Interlocal Agreement will be a three-year period effective upon execution of the Agreement by both parties. The County agrees to compensate the City annually in the amount of \$6,807 with the payment to be made on or before January 31 each year, commencing in 2018 to cover the period of maintenance from January 1 to December 31. The City will consider this item at their November 21, 2017 Council meeting for approval.

Fiscal Impact: FY 2017/2018/2019/2020 – \$6,807 annually from Fund 1180/262000.

Clerk to the Board Instructions: Please return Interlocal Agreement to the Public Works Department for recording by the City with the Clerk of Court.

Exhibits Attached: Interlocal Agreement (2 originals)

Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager Frank Abbate 	Assistant County Manager John P. Denninghoff 	Department Director / Extension					
	Interim Assistant County Manager Jim Liesenfelt	Andrew J. Holmes, P.E. / 57202					



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

November 22, 2017

M E M O R A N D U M

TO: Andrew Holmes, Public Works Director

RE: Item II.A.7., Interlocal Agreement with City of West Melbourne for Mowing Maintenance of Minton Road from US 192 to Palm Bay Road

The Board of County Commissioners, in regular session on November 21, 2017, approved and authorized the Chairman to execute the Interlocal Agreement with the City of West Melbourne for mowing maintenance of the County right-of-way of Minton Road from US 192 to Palm Bay Road. Enclosed is an executed Interlocal Agreement.

Upon execution by City of West Melbourne, please return a fully-executed Interlocal Agreement to this office for inclusion in the official record.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/kp

Encl. (1)

cc: Contracts Administration
Finance
Budget

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT, made and entered into 21 day of November, 2017, by and between the City of West Melbourne, Brevard County, Florida, a municipal corporation existing under the laws of the State of Florida, hereinafter referred to as "CITY," and the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY".

WITNESSETH:

WHEREAS, a portion of Minton Road is located in the incorporated area of West Melbourne, Brevard County, Florida (hereinafter referred to as the "PUBLIC RIGHT-OF-WAY"); and

WHEREAS, the COUNTY owns the PUBLIC RIGHT-OF-WAY; and

WHEREAS, the COUNTY pursuant to the authority set forth in Section 125.01, Florida statutes, may allow the use of public right-of-way for purposes which do not conflict with the interests of the public or are in the interests of the public; and

WHEREAS, the CITY desires to assume the maintenance responsibility of the PUBLIC RIGHT-OF-WAY in exchange for an annual payment by the COUNTY to the CITY; and

NOW THEREFORE, 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) 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 of Florida Statutes, Chapter 163 Part 1, 2013.
- (3) Maintenance Of Right-Of-Way: The COUNTY hereby agrees to permit the CITY to maintain the following described PUBLIC RIGHT-OF-WAY:

Grassed and/or vegetative roadway shoulders and medians on Minton Road from US 192 to Palm Bay Road, as depicted on the attached Exhibit "A" and incorporated herein.
- (4) Financial Contribution: The COUNTY agrees to compensate the CITY annually in the amount of \$6,807.00, with the payment to be made on or before January 31 each year, commencing in 2018, to cover the period of

maintenance from January 1 to December 31. This reimbursement is based on a minimum of four (4) cycles per year.

(5) Term: The initial term of this Agreement shall be three (3) years, commencing on January 1, 2018 and ending at midnight on December 31, 2020. This Agreement shall automatically renew for additional three (3) year periods, under the same terms and conditions contained herein, provided that the Board of County Commissioners of Brevard County fiscally fund this Agreement every year beyond the original term set forth.

(6) Indemnification: The CITY agrees that it will indemnify and hold harmless the COUNTY, to the extent permitted by law, from any and all liability, claims, damages, expenses, proceedings, and causes of action of any kind and/or nature arising out of or connected with the CITY's maintenance of the PUBLIC RIGHT-OF-WAY, excluding any claims arising out of the negligent or intentional misconduct of the COUNTY or its officers, employees, or agents.

The CITY agrees that it will, at its own expense, defend any and all actions, writs, or proceedings which are brought against the COUNTY and which arise out of circumstances set out previously in this paragraph; and that it will satisfy, pay and discharge any and all judgments that may be entered against the COUNTY in any such actions or proceedings, excluding only claims arising out of the negligent or intentional misconduct of the COUNTY or its officers, employees, or agents.

Nothing in the Agreement, express or implied, is intended to be nor shall be construed as a waiver or limitation of the CITY's or COUNTY'S right to sovereign immunity under Section 768.28, Florida Statutes or other applicable provision of law.

(7) Default: Either party to this Agreement, in the event of any act of default by the other, shall have all remedies available to it under the laws of the State of Florida.

(8) 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.

(9) Effective Date: The effective date of this Agreement shall be the date on which the last signature required to execute this Agreement is attached.

- (10) Filing: It will be a condition precedent to effectiveness of this Interlocal Agreement that the CITY shall file a certified copy with the Clerk of Court in and for Brevard County, Florida, and shall return an original of the Agreement to the COUNTY REPRESENTATIVE listed in Paragraph (11).
- (11) Notices: All notices required under the Agreement shall be in writing and delivered to the parties by mail or electronic delivery, as follows:
- (a) CITY Representative
Mark Piccirillo
Public Works Director
1415 Henry Avenue
West Melbourne, Florida 32904
mpiccirillo@westmelbourne.org

 - (b) COUNTY Representative
Tammy Thomas-Wood
Public Works Support Services Manager
2725 Judge Fran Jamieson Way, Building A
Viera, Florida 32940
Tammy.Thomas-Wood@brevardfl.gov
- (12) Termination Clause: This Agreement shall be enforceable until terminated in writing by either party. The COUNTY or the CITY shall have the right to terminate this Agreement with or without cause by furnishing 45 days written notice as provided in Paragraph (4).
- If either party terminates this Agreement, the CITY shall restore the PUBLIC RIGHT-OF-WAY to its previous condition or the CITY shall reimburse the COUNTY for the cost of such removal and restoration. If the CITY has performed maintenance for which it has not been compensated pursuant to Paragraph (4) herein at the time of termination, the COUNTY shall compensate the CITY on a pro rata basis for such maintenance.
- (13) Breach: In the event the COUNTY determines that the CITY has breached any term or provision of this Agreement, the COUNTY shall provide written notice of such breach to the CITY and the CITY shall have forty-five (45) days after receipt of such notice to cure such breach or, if such breach is of a nature that it cannot be reasonably cured within such forty-five (45) day period, then the CITY shall have a longer period to cure the breach as is reasonably necessary provided, however, that the CITY commences reasonable action to cure within the forty-five (45) day period and diligently and continuously pursues such cure to completion.

- (14) Attorney's Fees: In the event of any legal action to enforce the terms of this contract, each party shall bear its own attorney's fees and costs.
- (15) Venue and Non-Jury Trial: Any legal action to enforce, interpret, or construe the terms of this contract, shall be in a court of competent jurisdiction in and for Brevard County, Florida and **any trial shall be a non-jury trial**.
- (16) Compliance with Statutes: It shall be the CITY's responsibility to be aware of and comply with all federal, state, and local laws.
- (17) 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.
- (18) RIGHT TO AUDIT RECORDS: In performance of this Contract, the CITY shall keep books, records, and accounts of all activities related to this Contract in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the CITY in conjunction with this Contract and the performance of this Contract shall be open to inspection during regular business hours by an authorized representative of the COUNTY. The CITY shall retain all documents, books and records for a period of five (5) years after termination of this Contract or as otherwise required by applicable law, unless such records are exempt from section 24(a) of Article I of the State Constitution and Ch. 119, Florida Statutes. All records or documents created by or provided to the CITY by the COUNTY in connection with this Contract are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to the COUNTY in a format compatible with the information technology systems of the COUNTY.

The CITY shall ensure that public records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Contract and following termination of the Contract if the CITY does not transfer the records to the public agency. In lieu of retaining all public records upon termination of this Contract, the CITY may transfer, at no cost to the COUNTY, all public records in possession of the CITY. If the CITY transfers all public records to the COUNTY upon termination of the Contract, the CITY shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals.

ATTEST:

CITY OF WEST MELBOURNE

Cynthia Hanscom, City Clerk

Hal J. Rose, Mayor

As approved by the City Council on: _____

Reviewed as to form and legal sufficiency:

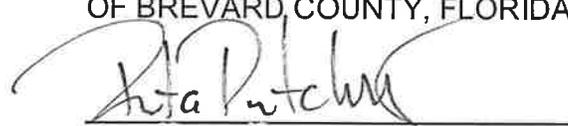
Morris Richardson, City Attorney

ATTEST:



Scott Ellis, Clerk

BOARD of COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Rita Pritchett, Chair

As approved by the Board on: 11/21/17

APPROVED AS TO LEGAL FORM:

Assistant County Attorney