



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

F.10.

9/17/2024

### Subject:

Utility Service and Pre-Annexation Agreement with City of Melbourne for Wickham Road Public Works and Fleet Services Facility

### Fiscal Impact:

None if approved.

### Dept/Office:

Public Works Department / County Attorney's Office

### Requested Action:

It is requested that the Board of County Commissioners approve a Utility Service and Pre-Annexation Agreement with the City of Melbourne in substantially the form attached to this report, subject to County Attorney approval, and authorize the Chair to sign the Agreement.

### Summary Explanation and Background:

The County is in the process of significantly redeveloping and upgrading its Wickham Road Public Works and Fleet Services Facility (the "Facility"). Engineering and design for a replacement building for the Facility is complete. Construction is projected to start this fall and will include consolidating Heavy and Light Central Fleet Services.

Although located in the unincorporated area, the Facility receives water utility service from the City of Melbourne. As part of the project, and to comply with applicable building codes, the County must replace the existing water service line with two larger lines (one domestic line and one fire line). The County must also replace the existing water meter with a larger meter.

The City of Melbourne typically requires a property owner requesting new or expanded water service to annex into the City to receive such service. Annexing into the City would require revisions to the existing construction plans to comply with City codes, and the additional time required would risk the loss of ARPA funds.

The respective staffs of the City and the County worked together on a proposed Utility Service and Pre-Annexation Agreement that allows for the Facility to receive the necessary City water utility service without having to annex into the City as long as the County continues to own the Facility. The Agreement provides that the Facility shall be annexed into the City only if the Facility is conveyed to a private party.

The Melbourne City Council unanimously approved the Agreement at its meeting on September 11, 2024.

### Clerk to the Board Instructions:

Upon execution by the Chair, please provide a copy of the Clerk's Memorandum and original executed Utility Service and Pre-Annexation Agreement to the County Attorney's Office, with a copy to the Public Works Department.



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

September 18, 2024

**M E M O R A N D U M**

**TO:** Marc Bernath, Public Works Director

**RE:** Item F.10., Utility Service and Pre-Annexation Agreement with City of Melbourne for Wickham Road Public Works and Fleet Services Facility

The Board of County Commissioners, in regular session on September 17, 2024, approved and executed a Utility Service and Pre-Annexation Agreement with the City of Melbourne in substantially the form attached to this report, subject to County Attorney approval. Enclosed is an executed Agreement.

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

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

Kimberly Powell, Clerk to the Board

/tr

Encl. (1)

cc: County Attorney

THIS AGREEMENT RETURN TO:  
Kevin McKeown, City Clerk  
City of Melbourne  
900 East Strawbridge Avenue  
Melbourne, Florida 32901

THIS AGREEMENT PREPARED BY:  
City Attorney  
City of Melbourne  
900 East Strawbridge Avenue  
Melbourne, Florida 32901

Property Appraiser's Parcel  
Identification #:26-36-36-00-1

### **UTILITY SERVICE TO COUNTY AND PRE-ANNEXATION AGREEMENT**

THIS AGREEMENT is made this 17 day of September, 2024, by and between the City of Melbourne, Florida, a Florida Municipal Corporation (hereinafter referred to as the "City"), whose address is 900 East Strawbridge Avenue, Melbourne, Florida 32901; and 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 the "County").

### **RECITALS:**

WHEREAS, the Property currently receives City water service; and

WHEREAS, the County designed and developed construction plans for certain improvements on the Property, which project requires increased capacity of water service from the City to the Property;

WHEREAS, the County intends to fund the project for the Property with federal monies that must be expended within a limited period of time;

WHEREAS, annexing into the City would require revisions to the existing construction plans in order to comply with City Code, which additional time would risk the loss of utilizing federal monies for the project;

WHEREAS, the County intends to redevelop, own, and maintain the Property for the benefit of the public and has no intention to sell the Property or otherwise convey the Property in the foreseeable future;

NOW, THEREFORE, in consideration of Ten and 00/100 Dollars (\$10.00), and certain other good, valuable, and diverse considerations, the sufficiency and receipt of which is hereby acknowledged and the parties desiring to be legally bound, do agree as follows:

## ARTICLE I. RECITALS; DEFINITIONS

Section 1. Incorporation of Recitals. Each and all of the foregoing recitals are hereby incorporated herein, and each and all of the recitals are hereby deemed to be true and correct.

Section 2. Definitions. As used herein, the following terms shall be defined to mean:

- a) "Agreement" shall mean and refer to this instrument as amended from time to time.
- b) "City" shall mean and refer to the City of Melbourne, Florida, a Florida Municipal Corporation.
- c) "County" shall mean Brevard County, a political subdivision of the State of Florida, and shall include each and all of the successors and assigns of the County, as owner in fee simple of the Property or as the legal holder of any development rights thereon.
- d) "Facilities" means and includes the land to be conveyed by deed or by easement to the City, together with all bends, tees, pumps, lift stations, force mains, pipes, lines, laterals, valves, gauges, and wires, all as described in this Agreement.
- e) "Petition to Annex" shall mean and refer to a written request from an owner of Property and/or registered voter residing upon the Property to seek annexation of the Property, as provided in Chapter 171, Florida Statutes, as amended or superseded from time to time.

- f) "Property" shall mean and refer to the land described as follows:

N ½ OF NE ¼ OF NE ¼ EX N RD R/W EXC ORB 4232 PG 116 PAR 3

Consisting of approximately 17.88 acres

Commonly referred to as

4690 and 4694 N. Wickham Road, Melbourne, FL

PIN: 26-36-36-00-1

- g) "Utility" or "Utility Service" shall mean and refer to City potable water service and, upon the City determining wastewater service to be available to be connected to the Property, wastewater service.

## ARTICLE II. UTILITY SERVICE

Section 1. Capacity Allocation. The City shall make available for the Property an allocation of potable water capacity for the County project as described in that certain submittal to the City identified as UTIL2024-0011 as of the date of this Agreement, subject to the review and approval of the City Engineer in his sole discretion. City wastewater

service is not available for the Property.

City potable water service is presently connected to the Property as of the date of this Agreement. Simultaneous with the execution hereof and from time to time, the County agrees to pay appropriate reservation and/or impact fees as may be required by City ordinance, as amended from time to time. If utility systems on the Property are not connected to the City Utility Service systems within three hundred sixty-five (365) days of the date of this Agreement and all impact/connection, meter, tap-on, and other service fees or charges, as determined by the City to be applicable, timely and promptly paid by the County as required by City ordinance, as amended from time to time, the availability of Utility Service shall be on a first come/first serve basis, meaning that the capacity will no longer be reserved for the Property, notwithstanding the payment of deposits or other fees. The County may reserve capacity as set forth in applicable City ordinances and resolutions, Chapter 58 and Section 3.06(f), Appendix D, Melbourne City Code, as amended or superseded from time to time.

Section 2. Connection to System. The County agrees to pay all costs of constructing and extending the City Utility Service systems to and on the Property, including but not limited to engineering, surveying, and construction costs and the cost of obtaining land or easements for the Facilities, all as the City shall reasonably determine. The County shall be assisted by the City in proper sizing of all Facilities and shall be provided by the City with specifications for design and construction which will enable the County to meet the City's criteria for the City to assume ownership and maintenance of the Facilities. Upon completion of construction of all Facilities, said Facilities shall be inspected by the City, and if said Facilities meet City standards and are constructed of a quality at least equal to or better than the quality of similar types of construction in the City at the time of construction of the Facilities and installed in a manner acceptable to the City, the City will accept same from the point of connection to the City Utility system to a point on the City's side of any meter serving the Property in the case of water Facilities. The County shall convey to the City any land or easements for Facilities to be conveyed to and accepted by the City. Deed and easement conveyances shall be in form and substance acceptable to the City Attorney, free and clear of all claims of ownership, lien, security interest, or other encumbrances. The County agrees that no certificate of occupancy for structures upon the Property shall be issued, and County hereby waives any right or claim to the issuance of a certificate of occupancy, until the appropriate Facilities have been constructed and accepted by the City.

Section 3. Exclusive Service Area; Covenant Not to Engage in Utility Business. The County acknowledges, agrees, and states its preference that, so long as the City fulfills its duty to provide Utility Service to the Property, the City shall be the exclusive provider of water service to the Property. The County's utilization of the City Utility Facilities shall be subject to the rules and regulations established by State and Federal regulatory agencies, and applicable City ordinances, policies, and procedures. The County, as a further consideration for this Agreement, agrees that it shall not (the words "shall not" being used in a mandatory definition) engage in the business of providing water to the Property during the period of time the City, its successors and assigns, provide Utility Service to the Property, it being the intention of the parties hereto that the foregoing provision shall be a covenant running with the land and under said provision and also under other provisions of this Agreement the City shall have the sole and exclusive right and privilege to provide water

service to the Property and to the occupants of each residence, building or unit constructed thereon.

Section 4. Code Compliance. In any future development of the Property, the County shall prepare plans and specifications for the project including necessary potable water system construction. All improvements related to the City's potable water service to the Property shall be constructed in compliance with City Codes applicable to the construction by the County and other local and/or State regulations. The utility design shall be of a size and location mutually agreed upon by the City and the County.

### ARTICLE III. ANNEXATION

Section 1. Petition to Annex. At such time that the County conveys the Property to a party that is not a governmental agency, this Agreement shall constitute an irrevocable Petition to Annex the Property, which Petition to Annex shall run with the land.

At the option and request of the City, the County's successors and assigns as owners of the Property shall voluntarily submit to the City a formal and revised Petition for Annexation of the Property. The Petition shall be executed by all of the then existing fee simple title owners of the portion of the Property to be annexed and shall be filed with the City in compliance with any and all requirements of law, including, but not limited to, Chapter 171, Florida Statutes, and the City Code of Melbourne, Florida, all as the same may be amended or superseded from time to time.

Thereafter, the City agrees to consider said Petition to Annex. Notwithstanding the existence of this Agreement, the County and the parties hereto realize that this Agreement shall in no way bind the City to annex the Property. In the event that the County's successors and assigns as owners of the Property withdraw the Petition for Annexation of the Property or fail to submit said Petition as requested, this Agreement shall and does continue to constitute a Petition for Annexation of the Property binding on the County's successors and assigns, as a contractual agreement with the City, a covenant running with the land or an equitable servitude upon the land, all as the case may be, fully enforceable by the City.

Section 2. Consideration of Petition. The City shall have the full and complete right to deny annexation, defer annexation, or approve annexation of the Property or any portion thereof. By execution hereof, the County understands and agrees that the City makes no representation as to the suitability or legal appropriateness of the Property for annexation or that the City will annex the Property at any time or based upon any specific conditions. Notwithstanding the foregoing, in the event the City does approve annexation of the Property, for zoning or comprehensive planning purposes, the City agrees to accept the buildings and structures constructed thereon as non-conforming; provided that said buildings and structures have not been abandoned or discontinued for the intended use for a continuous period of ninety (90) or more days at any time prior to approval of annexation.

Section 3. Cooperation. The County agrees, for its successors and assigns as owners of the Property, that such successors and assigns shall cooperate in the process of annexing the Property, based on any time schedule, all as may be required by the City in its

sole and absolute discretion, subject always to the provisions of this Agreement. Annexation of any part or portion of the Property shall not relieve the County's successors and assigns of the obligation to cooperate with the City and to keep alive the Petition for Annexation of all the Property. At the request of the City, the County shall diligently and in good faith, using best efforts, support and approve the annexation envisioned by this Agreement. Should any "party affected," as defined in Chapter 171, Florida Statutes (or any successor statute), file a legal action with a court of competent jurisdiction contesting the annexation of the Property or this Agreement, the County's successors and assigns, at the request of the City, shall participate in defense of the annexation and this Agreement. Further, the County's successors and assigns shall indemnify and save harmless the City for the payment of any claims or damages, as well as any court costs and reasonable attorney's fees, incurred in defending said action or as a direct or indirect result of said action.

Section 4. Petition to Annex is Exclusive. By execution hereof, the County, for itself and its successors and assigns, hereby agrees with and warrants unto the City, that this Agreement as a Petition to Annex shall constitute an exclusive Petition to Annex, and that the County, for itself and its successors and assigns, shall not file, join in or execute a request or Petition to Annex into any other municipality without the consent and joinder of the City. In consideration of the provisions of this Agreement and the City's agreement to consider from time to time annexation of the Property into the City, the County, for itself and its successors and assigns, agrees that the City may for any reason refuse to consent to or join in the annexation of the Property into a municipality other than the City, and that the City shall not be liable to the County, its successors and assigns, for any reason as a result thereof. The County, for itself and its successors and assigns, covenants not to sue or file a claim against the City therefor.

If for any reason the County, its successors or assigns, (or an agent thereof) attempts to seek or join in annexation of the Property or any portion thereof into a municipality other than the City or executes a Petition to Annex into a municipality other than the City, the County, its successors or assigns, (or an agent thereof) shall be deemed to have defaulted on a material obligation of this Agreement. The County, on behalf of itself and its successors and assigns, and the City agree that the annexation of the Property or a portion of it into another municipality will cause severe and irreparable harm and damages to the City unless the *status quo* circumstances (no annexation into another municipality is permitted and permitting annexation into the City) is maintained, and that maintenance of the *status quo* by enjoining the attempted annexation will serve the public interest. The parties agree that there is no adequate remedy at law, and that the City is legally entitled to have the covenant against annexation into another municipality other than the City enforced. The County, for itself and its successors and assigns, agrees to the issuance of an injunction enjoining the County or its successors and assigns as fee simple owner of the Property or any portion of it from annexing into a municipality other than the City. The County, for itself and its successors and assigns, agrees not to dispute, defend against, or object to the issuance of such an injunction. The City shall be entitled to obtain its reasonable attorney's fees and court costs for prosecuting such an action to be payable by the County or its successors and assigns.

If for any reason, the Property or any portion of it is annexed into a municipality other



than the City, as consideration for this Agreement, the City shall be entitled to charge for Utility Service for water using the maximum rates permitted by law amounting to at least the base rate for Utility Service for water within the City plus a surcharge of not more than 25% over the base rate. The County, for itself and its successors and assigns, hereby waives any objections, claim or defense against such surcharges, stipulates that said charges are based upon a legally supportable rate study, and covenants not to file suit to object to said rates and surcharges.

#### ARTICLE IV. GENERAL PROVISIONS

Section 1. Term of Agreement. The effect, terms, and provisions of this Agreement shall continue for a period of forty (40) years, or until annexation into the City of all of the Property has been approved, whichever shall first occur. This Agreement shall constitute a covenant running with the land or as equitable servitude upon the land, as the case may be.

Section 2. Amendment/Interpretation. This Agreement may be amended at any time by approval of the City and County. No amendment shall be effective until recorded in the Public Records of Brevard County, Florida. Notwithstanding other provisions of this Agreement, this Agreement was mutually negotiated and drafted by all parties to this Agreement. Consequently, it is the intent of the parties hereto that no provision hereof shall be more harshly construed against any party hereto as the drafter of this Agreement.

Section 3. Miscellaneous. No delay by either party in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver hereof or preclude the exercise thereof during the continuance of any default under or breach of the terms of this Agreement. No waiver by either party of any such agreement requirement, election of remedy, or default shall constitute a waiver of or consent to any subsequent default or breach. Any action to enforce this Agreement shall result in the payment of the prevailing party's reasonable attorney's fee and court costs by the unsuccessful party.

Section 4. Covenants Running With the Land. Anything to the contrary herein notwithstanding and without limiting the generality (and subject to the limitations) hereof, it is the intention of the County, for itself and its successors and assigns as owners of all or portions of the Property, affected hereby that this Agreement shall constitute covenants running with the land and with title to the Property, or as equitable servitude upon the land, as the case may be. The provisions and requirements hereof shall be a burden and a benefit upon the Property.

Section 5. Successors and Assigns. The rights and obligations contained in this Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the parties hereto, including any successor entitled to County with respect to all or any part of the Property. The benefits, duties and obligations of the parties arising under this Agreement are not assignable except by written consent of the parties.

Section 6. Compliance. Both the County and City agree that the failure of this utility Agreement to address a particular permit, condition, term, or restriction shall not relieve the County of the necessity of complying with the law governing said permitting requirements,

conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety or welfare of its citizens.

Section 7. Legal Authority. Each party hereto represents to the other it has taken all necessary actions to execute this Agreement and that it has the legal authority to enter into this Agreement and undertake all the obligations imposed on it.

Section 8. Remedies. The parties hereto shall have all equitable and legal remedies available under Florida law to enforce the terms and conditions of this Agreement.

Section 9. Notices. All notices which are required or permitted under this Agreement shall be given to the parties by certified mail, return receipt requested, hand delivery or express courier, and shall be effective upon receipt. Notices shall be sent to the parties at the addresses set forth below or such other addresses as provided to the parties by written notice delivered in accordance with this Section.

Notice to: COUNTY

County Manager  
Brevard County Board of County Commissioners  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

Copy to: County Attorney  
Brevard County Board of County Commissioners  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

Notice to: CITY

City Manager  
City of Melbourne  
900 E. Strawbridge Ave.  
Melbourne, FL 32901

Copy to: City Attorney  
City of Melbourne  
900 E. Strawbridge Ave.  
Melbourne, FL 32901

Section 10. Applicable Law. This Agreement shall be construed, interpreted, and controlled by the laws of the State of Florida.

Section 11. Entire Agreement; Amendments. This Agreement supersedes all previous agreements, either verbal or written, made between the City and County, related to utilities service. No additions, alternations or changes in the terms hereof shall be valid unless in writing and signed by the parties.

Section 12. Provision of Service; Payment of Rates. Upon the continued

accomplishment of all prerequisites contained in this Agreement, the City agrees to allow modified connection to its water and then provide the County with Utility Service, in accordance with City ordinances, resolutions, and policies, and subject to payment of applicable rates, fees, and charges to the City. The County agrees that the City shall be exclusive provider of such Utility Services to the Property.

Section 13. Application of Rules, Regulations and Rates. The City may establish, revise, modify and enforce rules, regulations and rates covering the provision of water service to the County or customer on the Property. Such rules, regulations and rates are subject to the approval of the City Council of the City of Melbourne, Florida. Such rules and regulations shall at all times be reasonable and subject to regulation as may be provided by law or under contract. Rates charged to the County or customers located upon the Property shall be identical to rates charged for the same classification of service. All rules, regulations, and rates in effect, or placed into effect in accordance with the preceding, shall be binding upon the County, upon any other entity holding by, through or under the County, and upon any customer of the water service provided to the Property by the City.

Section 14. Arm's Length Transaction. Both parties have contributed to the preparation, drafting and negotiation of this document and neither has had undue influence or control thereof. Both parties agree that in construing this Agreement, it shall not be construed in favor of either party by virtue of the preparation, drafting, or negotiation of this Agreement.

Section 15. Homestead Property. By execution of this Agreement, the County warrants and guarantees unto the City that the Property is not homestead property.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned by and through their authorized corporate officials have executed this Agreement on the day, month and year set forth below.

Signed in the presence of:

CITY:

\_\_\_\_\_  
Signature of Witness #1

CITY OF MELBOURNE,  
A Florida municipal corporation

\_\_\_\_\_  
Print Name  
900 Strawbridge Ave, Melbourne, FL  
Address

By: \_\_\_\_\_  
Jenni Lamb  
City Manager

(CITY SEAL)

\_\_\_\_\_  
Signature of Witness #2

ATTEST: \_\_\_\_\_  
Kevin McKeown, City Clerk

\_\_\_\_\_  
Print Name  
900 Strawbridge Ave, Melbourne, FL  
Address

Notary for the City:

STATE OF FLORIDA )  
COUNTY OF BREVARD )

The foregoing Annexation Agreement was acknowledged before me by ( ) physical presence or ( ) remote audio-visual means, this \_\_\_\_\_, by Jenni Lamb, as City Manager of the City of Melbourne, a Florida municipal corporation, on behalf of the corporation. He/She is personally known to me.

\_\_\_\_\_  
Notary Public at Large  
State of Florida

My commission expires:

The City of Melbourne encourages property owners to make an informed decision regarding this annexation agreement. If you are interested in exploring the possibility of constructing a well on your property rather than connecting to the City of Melbourne's potable water system, please contact the Brevard County Department of Health at 321-633-2100 prior to executing this agreement.

Signed in the presence of:

Donna Scott

Signature of Witness #1

Donna Scott

Print Name

400 South St. Titusville, FL 32780

Address

Nicole Summers

Signature of Witness #2

Nicole Summers

Print Name

400 South St. Titusville, FL 32780

Address

BREVARD COUNTY:

By: [Signature]

Jason Steele, Chair

As approved by the Board on: 09/17/2024.

ATTEST:

[Signature] (SEAL)  
Rachel Sadoff, Clerk of the Court

Notary for the COUNTY:

STATE OF Florida

COUNTY OF Brevard

The foregoing Annexation Agreement was acknowledged before me by (X) physical presence or ( ) remote audio-visual means, this 17<sup>th</sup> day of September, 2024, by Jason Steele as Chair of the Brevard County Board of County Commissioners. He/She is personally known to me, or has produced \_\_\_\_\_ as identification.

Catherine Louise Lively

Notary Public at Large

State of Florida

My commission expires:

