

Meeting Date
10/10/2017



ADD ON	
AGENDA	
Section	Unfinished Business
Item No.	V C

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Interlocal Agreement between Brevard County Board of County Commissioners, the City of Melbourne and the City of Melbourne Babcock Street Community Redevelopment Agency.
DEPT/OFFICE:	County Manager's Office

Requested Action:
 It is requested that the Board of County Commissioners approve the attached proposed Interlocal Agreement between Brevard County Board of County Commissioners and the City of Melbourne and the Melbourne Community Redevelopment Agency and authorize the Chairman to execute the agreement with any non-substantive modifications that may need to be negotiated to reach an agreement. Any such non-substantive modifications would be subject to the approval of the County Manager and County Attorney.

Summary Explanation & Background:

On May 10, 2017 the Board of County Commissioners, in regular session, directed the County Manger to move forward with interlocal agreement negotiations with the Community Redevelopment Agencies (CRAs) with guidelines, as follows: 1) CRAs prohibited from incurring any new debt with the exception of Cocoa Beach; 2) Bring CRAs to closure prior to the Statutory Sunset dates; 3) The possibility of the Tax Increment Financing (TIF) payments above debt service to go to County roads located within the boundaries of the CRAs; 4) CRAs to provide a universal annual report to be presented to the Board; and to bring the negotiated interlocal agreements back to the Board for its consideration.

On June 23, 2017 the County Manager and County Attorney began negotiations with the City of Melbourne, City Manager. As a result of those negotiations the City and the County have negotiated and prepared a draft Interlocal Agreement for the City of Melbourne City Council to consider during their City Council Meeting on 10/24/17. While City and County staff have agreed to the substantive terms of the agreement, some of the specific language in the draft Interlocal agreement is currently under final review by the City Manager. In an effort to expedite the execution of this agreement by the parties, the proposed Interlocal agreement is attached for the Board's consideration. The terms of this agreement include:

- The County consents to transfer to the City all ownership rights it possesses to the Babcock Street Parcel and to fully cooperate with the City in joint efforts to transfer any remaining FDOT ownership rights over the Babcock parcel to the City, directly if possible.
- The County consents to the CRA incurring an additional \$1.3 million in indebtedness from the City's general resources to be applied solely to the reconstruction of Babcock Street between approximately Hibiscus Street and Apollo Boulevard.
- The County shall contribute an amount of \$500,000 currently set aside for use on the Babcock Street reconstruction project within 30 days of the effective date of the Agreement.
- Upon execution of this Agreement the County and the City agree to execute the documents necessary to formalize the transfer the responsibility for maintenance of the Babcock Street parcel from the County to the City.
- The County will continue its annual contribution to the CRA TIF as required by Florida Statutes until the expiration date of September 9, 2023.
- The City and the CRA agree that future County tax increment payments into the CRA TIF through the expiration date of the CRA shall be used to repay the \$1.3 million in CRA debt.
- The CRA or City shall also submit the annual CRA audit report required by Florida Statutes.
- The CRA agree to limit for administrative services expenses provided to the CRA and payable from the County tax increments to an amount not to exceed 5% of the total County increments.
- The CRA shall expire on September 9, 2023.

Clerk to the Board Instructions:

Exhibits Attached: City of Melbourne Babcock CRA Interlocal Agreement

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



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

October 11, 2017

MEMORANDUM

TO: Frank Abbate, County Manager

RE: Item V.C., Interlocal Agreement with City of Melbourne and City of Melbourne Babcock Street Community Redevelopment Agency

The Board of County Commissioners, in regular session on October 10, 2017, approved the proposed Interlocal Agreement set forth by the City of Melbourne and City of Melbourne Babcock Street Community Redevelopment Agency, subject to the addition of the proposed language, as follows: Nothing in this agreement shall be interpreted as modifying the authority of the Board of County Commissioners as outlined in Section 3(b) of Resolution No. 97-187; and authorized the Chairman to execute the Interlocal Agreement upon addition of the proposed language.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

cc: County Attorney



V.K.
10-10-17
County Attorney's Office
2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

To: Board of County Commissioners
From: Scott Knox, County Attorney; Frank Abbate, County Manager
Subj.: Definition of Substantive Portions of S. Babcock Street Interlocal Agreement
Date: October 10, 2017

Negotiations with the City of Melbourne are on-going with regards to specific details within the "Interlocal Agreement Regarding Rehabilitation and Transfer of S. Babcock Street, Melbourne, Florida." The County Attorney and County Manager request the ability to make non-substantive changes to the interlocal agreement without bringing the agreement back to the Board. The substantive portions of the agreement are those provisions listed in the Brevard County Board of County Commissioners Agenda Report with the following addition. Should the construction project experience a cost overrun beyond the \$1.8M total expected cost, or should actual County TIF contributions unexpectedly fall short of being able to repay the City's \$1.3M loan to the CRA, the County and City agree to split the costs evenly between the County and the City.

Handwritten signature of Frank Abbate in blue ink.

Frank Abbate
County Manager

Handwritten signature of Scott Knox in blue ink.

Scott Knox
County Attorney

Corrected Copy, October 12, 2017



V.C.

County Attorney's Office
2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

To: Board of County Commissioners
From: Scott Knox, County Attorney; Frank Abbate, County Manager
Subj.: Definition of Substantive Portions of S. Babcock Street Interlocal Agreement
Date: October 10, 2017

Negotiations with the City of Melbourne are on-going with regards to specific details within the "Interlocal Agreement Regarding Rehabilitation and Transfer of S. Babcock Street, Melbourne, Florida." The City Attorney and City Manager request the ability to make non-substantive changes to the interlocal agreement without bringing the agreement back to the Board. The substantive portions of the agreement are those provisions listed in the Brevard County Board of County Commissioners Agenda Report with the following addition. Should the construction project experience a cost overrun beyond the \$1.8M total expected cost, or should actual County TIF contributions unexpectedly fall short of being able to repay the City's \$1.3M loan to the CRA, the County and City agree to split the costs evenly between the County and the City.

Handwritten signature of Frank Abbate in blue ink.

Frank Abbate
County Manager

Handwritten signature of Scott Knox in blue ink.

Scott Knox
County Attorney

**INTERLOCAL AGREEMENT
REGARDING REHABILITATION AND TRANSFER
OF S. BABCOCK STREET, MELBOURNE, FLORIDA**

THIS INTERLOCAL AGREEMENT entered into the ____ day of _____, 2017, by and between the CITY OF MELBOURNE, a Florida municipal corporation, 900 E. Strawbridge Ave., Melbourne, Florida 32901 (hereinafter “the CITY”), the CITY OF MELBOURNE BABCOCK STREET COMMUNITY REDEVELOPMENT AGENCY, a Florida dependent special district, 900 E. Strawbridge Ave, Melbourne, FL 32937 (hereinafter “the CRA”), and BREVARD COUNTY, a political subdivision of the State of Florida, in its own name and in behalf of each County Taxing Authority, as defined in section 2b., below), 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter collectively called “the COUNTY”).

WITNESSETH:

WHEREAS, the CITY created the CRA pursuant to CITY Ordinance No. 98-23 after the COUNTY delegated its authority under Part III, ch.163, Florida Statutes, as set forth in COUNTY Resolution 97-187; and

WHEREAS, the CITY created a tax increment redevelopment trust fund (CRA TIF) pursuant to §163.387, Florida Statutes, and CITY Ordinance No. 98-23 as a part of the noted CITY and COUNTY enabling authority; and

WHEREAS, the CITY and COUNTY have continuously paid their respective full CRA TIF payments required by §163.387(1), Florida Statutes, and CITY Ordinance No. 98-23 to the CRA since the first fiscal year of the CRA’s operation; and

WHEREAS, the COUNTY is facing certain budget issues relating to road maintenance, construction and reconstruction due to county charter restrictions on ad valorem tax revenues and other factors; and

WHEREAS, the COUNTY has evaluated multiple options to address these budget issues; and

WHEREAS, part of a solution to the County budget concerns would involve negotiation of an interlocal agreement with various cities and CRAs with the goal of working toward reducing or ceasing the County’s future annual CRA TIF contributions in order to utilize those funds for road maintenance, construction, and reconstruction; and

WHEREAS, the CITY and COUNTY have enjoyed an excellent relationship over the

years, and desire to cooperate in achieving the County's road program goals; and

NOW, THEREFORE, the parties mutually agree as follows:

1. **RECITATIONS**. The foregoing recitations are true and correct and by this reference incorporated herein.

2. **DEFINITIONS**. The terms below shall have the indicated meanings

a. "Increment" or "Tax Increment" shall have the same meaning as "increment" as set forth in §163.387(1)(a), Florida Statutes.

b. "County Taxing Authority" means Brevard County, through its Board of County Commissioners and any County established Municipal Services Taxing Unit (MSTU) or dependent special districts in behalf of which the County levies taxes or approves a budget to the extent such MSTU or dependent special district has contributed a tax increment to the TIF established by the City for the CRA in accordance with the requirements of section 163.387, Florida Statutes.

c. "The Babcock Parcel" means the portion of Babcock St. from the intersection of Babcock Street and U.S. 192, continuing north on Babcock Street to the point where the City's ownership of Babcock Street begins. The location of this point is reasonably believed to be north of Babcock Street's intersection with S. Apollo Blvd in the vicinity of the Florida East Coast Railway's Right of Way across Babcock Street. The Babcock Parcel also includes the retention pond located to the east of Babcock Street between E. Strawbridge Avenue and E. Lincoln Avenue.

d. "The construction project" means the reconstruction and rehabilitation of Babcock Street between Hibiscus Street and Apollo Boulevard.

3. **AUTHORITY**. This agreement is being entered into under the authority vested in the parties by §163.387(3)(b), Florida Statutes and, pursuant to that authority, supersedes any provision or requirement set forth in §163.387, to the extent of any conflict with this agreement and that statutory provision.

4. **PROJECT IDENTIFICATION**. This project involves the CRA acceptance of the construction project as a CRA project to improve a portion of Babcock Street, the transfer of the ownership and maintenance responsibilities of a larger Babcock Parcel to the CITY, and the institution of specific requirements on the CRA's use of County Tax Increments.

5. COUNTY OBLIGATIONS. As consideration for this agreement, the COUNTY:

- a. Consents to the extension of the CRA through September 9, 2023 specifically to facilitate the construction project;
- b. Consents to transfer to the City all ownership rights it possesses to the Babcock Parcel and to fully cooperate with the CITY in joint efforts to transfer any remaining FDOT ownership rights over the Babcock parcel to the CITY, directly if possible;
- c. Consents to the CRA incurring an addition \$1.3 million in indebtedness to be applied solely to the construction project;
- d. Consents to contribute to the construction project an additional amount of \$500,000 that it has currently set aside for use on the construction project within 30 days of the effective date of this Agreement;
- e. Commits to continue its annual contribution to the CRA TIF as required by §163.387, Florida Statutes, in every fiscal year between FY 2017-2018 and FY 2022-2023, and
- f. Agrees to sections 5 a. through e., subject to the conditions below:
 - (1) The CRA amends its community redevelopment plan to specifically identify this construction project as one that qualifies under Florida Statutes for community redevelopment;
 - (2) The City loans \$1.3 million to the CRA from the CITY's general reserves;
 - (3) The CRA commits to repay the \$1.3 million loan (or the CITY may otherwise forgive the indebtedness) on or before September 9, 2023;
 - (4) The City and the CRA agrees that the COUNTY will no longer be required to appropriate tax increment to the CRA TIF after September 9, 2023;
 - (5) The City and the CRA agree that future COUNTY tax increment payments into the CRA TIF through the expiration date of the CRA shall be used to repay the \$1.3 million in CRA debt.

6. CITY OBLIGATIONS. As consideration for this agreement, the CITY:

- a. Shall make its best efforts to enter into a contract for the construction project within 90 days of the date of execution of this agreement;
- b. Shall loan the CRA \$1.3 million for the construction project from its general reserves to be repaid by September 9, 2023;
- c. Shall accept transfer of ownership for the Babcock Parcel as soon as feasible;
- d. Shall assume maintenance of the Babcock parcel beginning on the date of execution of this agreement;
- e. May, subject to applicable law and its discretion, forgive or otherwise negate the \$1.3 million in CRA indebtedness prior to September 9, 2023;
- f. Agrees the COUNTY will no longer be required to appropriate any tax increment to the CRA TIF after September 9, 2023;
- g. Shall assume permittee status on the St. John's Water Management District Permit for the retention pond that is part of the Babcock parcel.

7. CRA OBLIGATIONS. As consideration for this agreement, the CRA:

- a. Shall, in accordance with applicable law and within the next 90 days, properly amend its community redevelopment plan, as necessary, to specifically identify this construction project as one that qualifies under Florida Statute for community redevelopment and list the construction project as a CRA project;
- b. Shall repay the \$1.3 million in CRA indebtedness to the CITY by September 9, 2023;
- c. Agrees the COUNTY will no longer be required to appropriate tax increment to the CRA TIF after September 9, 2023;
- d. Shall apply all future COUNTY tax increment payments through the expiration date of the CRA towards repayment of the \$1.3 million in CRA debt to the CITY.

8. TRANSFER & MAINTENANCE OF BABCOCK PARCEL. Upon execution of this agreement, the COUNTY and the CITY authorize the County Manager and City Manager, with the counsel of the County and City Attorney, to prepare additional detailed documents (to include but not limited to deeds, permits and easements) necessary to effectuate the transfer the Babcock Parcel from the County to the City. As FDOT has some real property rights within the Babcock parcel, the County agrees to fully cooperate with the CITY in joint efforts to transfer any remaining FDOT rights to the Babcock parcel to the CITY, directly if possible. In the interim, as the ownership transfers are processed, the County and the City agree the City will assume all maintenance responsibilities for the Babcock parcel beginning on the date of execution of this agreement.

9. EXPIRATION OF CRA. The CRA shall expire on September 9, 2023. The parties agree that the CITY and COUNTY shall take such actions as may be required to terminate the CRA on the date of expiration, which actions shall include the amendment or repeal of any CITY or COUNTY resolutions or ordinances 1) delegating authority to the CITY to create a CRA and 2) creating the CRA and CRA TIF. In accordance with §163.387(3)(b), Florida Statutes, notwithstanding any provision in §163.387, Florida Statutes to the contrary, after September 9, 2023, the COUNTY shall no longer be required to contribute a tax increment of any amount to the CRA TIF.

10. INDEBTEDNESS. With the exception of the indebtedness terms to which the COUNTY has consented in paragraph 5 above, the Parties agree that the CRA must obtain COUNTY approval to incur any new indebtedness or extend any existing indebtedness for which County increment funds have been pledged as a source of repayment if such new or extended debt obligation has a maturity date beyond September 9, 2023, provided no such consent shall be deemed to require the COUNTY to pay a tax increment into the CRA TIF after September 9, 2023.

11. CITY PAYMENT INTO CRA TIF. Nothing in this agreement shall be deemed to prevent the City from continuing to contribute into the CRA TIF through the expiration date of the CRA or through any extension of the CRA expiration date approved by the COUNTY in the future.

12. ANNUAL AUDIT; REPORT; AND MEETING. The CRA or CITY shall also submit the annual CRA audit report required by section 163.387(8), Florida Statutes. The CITY and CRA agree to contractually require the independent auditor preparing that audit report to examine CRA expenditures and certify that all CRA TIF revenues have been lawfully expended solely in compliance with and for the community redevelopment purposes authorized under the provision of chapter 163, Part III, Florida Statutes. The City Manager of the CITY or Chairperson of the CRA governing body shall annually meet with the County Commissioner in

whose District the CRA is located to discuss the annual and audit reports. The CITY and COUNTY agree that, in accordance with its authority under section 125.01(x), Florida Statutes, at any time during the term of this agreement the COUNTY shall have the right to retain an independent auditor to conduct a performance audit paid for by the County. At the discretion of the County, any performance audit of the CRA required by the COUNTY shall, at the discretion of the COUNTY, include any or all of the matters specified in the definition of "performance audit" set forth in section 11.45(1)(h), Florida Statutes (2016).

13. CRA PROJECT IDENTIFICATION. In accordance with section 163.340, Florida Statutes, the City and County, as taxing authorities subject to section 163.387(2)(a), Florida Statutes, both agree that the construction project is a defective and inadequate roadway that meets the definition of blight. The CRA agrees that the CRA plan will be amended to specifically identify the CRA redevelopment projects to be funded with the County tax increment and the amount of County increment funds proposed to be allocated to each such project. CRA projects are identified in the adopted Redevelopment Plan, as it may be amended from time to time. Nothing in this section shall prevent the CRA, in its discretion, from reallocating plan approved funding to other projects identified in the approved CRA plan, as long as the County tax increment is only used to fund repayment of this construction project.

14. LIMITATION ON ADMINISTRATIVE EXPENSES. The CRA agrees to limit administrative services expenses provided to the CRA as much as possible. In no instance may payments for administrative service expenses payable from COUNTY tax increments exceed 5% of the total County tax increments.

15. EFFECT OF AGREEMENT. This agreement, including the exhibits and all documents and papers delivered pursuant hereto, and any written amendments hereto executed by the parties to this agreement constitute the entire agreement between the parties and supersedes all prior agreements and understandings, oral or written, among the parties to this agreement with respect to the subject matter hereof. This agreement may be amended only by written agreement approved and executed with the same formalities as this Agreement by all parties. This Agreement shall be binding upon and inure to the benefit of the successors in interest, transferees and assigns of the parties.

16. 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.

17. 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 first class mail, postage prepaid by certified

mail:

CITY: City Manager/CRA Director
City Hall, Fifth Floor
900 E. Strawbridge Ave.
Melbourne, FL 32901
(email address available at City Website)

CRA: CRA/Director C/O City Manager
City Hall, Fifth Floor
900 E. Strawbridge Ave.
Melbourne, FL 32901

COUNTY: County Manager
2725 Judge Fran Jamieson Way
Melbourne, FL 32940
(email address available at County Website)

or to such other addresses such by notice in writing to any other parties.

18. 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.

19. 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.

20. EFFECTIVE DATE. This Agreement shall take effect on the date that it is executed by both parties hereto and recorded in the Official Records of Brevard County, Florida by either the City or County.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed on this the first date first above written.



County Attorney's Office
2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

To: Board of County Commissioners
From: Scott Knox, County Attorney; Frank Abbate, County Manager
Subj.: Definition of Substantive Portions of S. Babcock Street Interlocal Agreement
Date: October 10, 2017

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Frank Abbate
County Manager

A handwritten signature in blue ink, appearing to read 'Scott Knox'.

Scott Knox
County Attorney