

Meeting Date
November 3, 2015



AGENDA	
Section	Consent
Item No.	<i>II.A.4.</i>

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Participation Agreement between Brevard County and the City of Melbourne for the Crane Creek St. John's Outfall – Lamplighter Drainage Improvements (D5)
DEPT/OFFICE:	Natural Resources Management Department (NRM)

Requested Action:

It is requested that the Board: (1) Authorize the Chairman to execute an Interlocal Agreement between Brevard County and the City of Melbourne subject to the approval of the County Attorney's Office and Risk Management; (2) Adopt a Resolution supporting the JPA, and (3) Approve associated budget change requests.

Summary Explanation & Background:

During construction of the Crane Creek St. John's Outfall – Lamplighter Drainage project, the County utilized the contractor performing the drainage improvements to also relocate conflicting utilities in coordination with the City of Melbourne. Since relocation of utilities within the County right-of-way is normally an expense borne by the utility company, the City agreed to reimburse the County for the portion of utility relocation costs not covered by the FEMA grant.

The Interlocal Agreement reimburses the County for the cost of relocating City of Melbourne water and sewer lines located within the County right-of-way (up to a maximum of \$55,000).

Fiscal Impact: FY 15-16: Up to \$55,000 reimbursed to the County Stormwater Utility in D5
FY 16-17: No fiscal impact to County

Name: Bach McClure (52409) or Virginia Barker (52435) Natural Resources Management Department

Clerk to the Board instruction: **Wait for AO-29 forms to be sent with final document, then execute two (2) copies and return to Natural Resources for coordination with Melbourne**

Exhibits Attached:
Joint Participation Agreement

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager Stockton Whitten	Assistant County Manager	Department Director/Extension <i>Virginia Barker</i> Virginia Barker/X52435
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Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

November 4, 2015

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Interim Director Attn: Bach McClure

RE: Item II.A.4., Participation Agreement with City of Melbourne for Crane Creek St. Johns Outfall – Lamplighter Drainage Improvements

The Board of County Commissioners, in regular session on November 3, 2015, adopted Resolution No. 15-212, authorizing execution of the Agreement with City of Melbourne for construction of Crane Creek St. Johns Outfall Stage II Lamplighter Drainage Improvements; and approved the Interlocal Agreement with the City of Melbourne, subject to the approval of the County Attorney and Risk Management; and approved the associated budget change requests. Enclosed are two certified copies of the Interlocal Agreement and two certified copies of the Resolution for your action.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/ds

Encls. (4)

cc: Contracts Administration
Finance
Budget

**INTERLOCAL AGREEMENT
FOR COST REIMBURSEMENT OF
CRANE CREEK - ST JOHNS OUTFALL
FEDERAL PROJECT**

This INTERLOCAL AGREEMENT is made and entered into this 3 day of November 2015, by and between, the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA (hereinafter referred to as "County") and the CITY OF MELBOURNE (the "City").

WITNESSETH:

WHEREAS, Part 1 of Chapter 163, Florida Statutes permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege or authority that such agencies share in common and that each might exercise separately; and

WHEREAS, the County and the City are authorized to improve drainage facilities within the Crane Creek drainage basin, and in this capacity, may at its own initiative take necessary steps as soon as practicable and desirable to implement drainage projects; and

WHEREAS, the County has received federal funding in the amount of \$2,825,595.00 under the grant program identified as The Hazard Mitigation Grant Program (HMGP), which provides funds to communities for hazard mitigation planning and the implementation of mitigation projects after a disaster event; and

WHEREAS, funding such plans and projects reduces overall risks to the population and structures, while also reducing reliance on funding from actual disaster declarations; and

WHEREAS, the County was awarded \$2,825,595.00 under the HMGP in order to provide for drainage improvements in the County related to the Crane Creek drainage basin; and

WHEREAS, a portion of such drainage improvements impact property within the City of Melbourne; and

WHEREAS, the County and the City desire to cooperate in the permitting and construction of such drainage improvements; and

WHEREAS, it is in the interest of the public health, safety and welfare to cooperate in the planning and implementation of the Crane Creek - St Johns Outfall Federal Project with the understanding that successful construction of the Crane Creek - St Johns Outfall Federal Project will be shared, in part, by the parties; and

WHEREAS, the bids received and subsequent change orders to construct the project exceed the total federal funding and local share grant amount;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties agree as follows:

1. **STATUTORY AUTHORITY.** This Agreement shall be considered an Interlocal Agreement pursuant to the authority of Section 163.01, Florida Statutes.

2. **RECITALS.** The recitals contained above are true and correct.

3. **DEFINITIONS.** For all purposes of this Agreement, unless the context requires otherwise, the following terms shall have the following meanings

a. "Agreement" means this Interlocal Agreement for Cost-Sharing of Crane Creek - St Johns Outfall Federal Project.

b. "Crane Creek - St Johns Outfall Federal Project" means the public works project funded, in part, by the federal government under the Federal Emergency Management Agency's Hazard Mitigation Program, identified as HMGP Project 1561-142-R, as delineated more specifically in the Application and in the Grant Award Agreement between the County and the federal government dated April 22, 2012, modified December 30, 2014, and as summarized in the Modification to Subgrant Agreement attached as Exhibit A. An extension to the Subgrant Agreement is pending approval by the agencies.

c. "Melbourne Utilities" means that portion of the Crane Creek - St Johns Outfall Federal Project which requires the relocation of City of Melbourne owned water and sewer utilities and is more particularly described as the relocation of water and sewer mains, hydrants, and valves located along John Rodes Blvd and Waveside Drive near Lamplighter Village and substantially as depicted on the attached Exhibit B.

d. "Local Share" means that portion of the costs required by the federal government HMGP to be contributed by the County in conjunction with the county-wide costs of the Federal Project and estimated to be \$934,004.00.

e. "Non-Federal Share" that portion of the costs not reimbursed by the federal government HMGP, including local share.

4. **INTENT AND PURPOSE.** The intent and purpose of this Agreement is to acknowledge joint support for the Crane Creek - St Johns Outfall Federal Project and to define a method for allocation of costs between the County and the City of the Non-Federal Share of costs associated with the Crane Creek - St Johns Outfall Federal Project.

5. **TERM.** The Agreement shall become effective upon execution by the County and the City and recording by the Clerk of Court of Brevard County. The term of this Agreement shall be through December 30, 2015, subject to the cancellation provisions as hereinafter enumerated; provided however that the agreement may be extended thereafter in writing pursuant to terms and conditions mutually agreeable to the parties.

6. **OBLIGATIONS OF THE COUNTY.**

a. The County, being the sub-grantee and applicant of the Federal Project, shall administer the Federal Project in conformance with all applicable federal, state, local government, City and water management district requirements.

b. The County shall manage, design, engineer, construct, and monitor the Federal Project, or shall provide for the same. Construction of the Crane Creek - St Johns Outfall Federal Project within the incorporated boundaries or pertaining to City water and sewer utilities shall be subject to City regulations.

c. The County shall acquire all land required for the Federal Project that are not already controlled by the City or County, and record conveyances for the same in the public records of Brevard County.

d. The County shall obtain all necessary permits to complete the Federal Project.

e. The County shall advance all funding necessary to complete the construction of the Federal Project.

f. Upon completion of the Federal Project, the County shall execute a Bill of Sale in favor of the City for the cost of constructing the Melbourne Utilities.

7. **OBLIGATIONS OF MELBOURNE.**

a. The City shall reimburse the County as set forth in paragraph 8 below.

b. The City shall cooperate with the County in obtaining permits necessary or convenient to the Crane Creek - St Johns Outfall Federal Project.

8. **COST AND REIMBURSEMENT PROVISIONS.**

a. Costs for the Federal Project include, but are not limited to, those costs associated with project management, permitting, design, engineering, construction, acquisition and recording of lands, and monitoring. The Non-Federal Share of the Federal Project will be paid in full by the County.

b. The City agrees to reimburse the County for those costs associated with the relocation of City water and sewer utilities at 25 percent of the bid amount of \$180,488.00 plus any mutually agreed change orders for a total amount not to exceed \$55,000 paid for the completion of water and sewer utilities relocations for the Crane Creek - St Johns Outfall Federal Project.

c. The City agrees to reimburse the County for additional items added to the County's construction contract(s) by Change Order at the City's request.

d. Change Order increases, up to the maximum amount, which are mutually agreed to may be added as Addenda to this agreement upon execution by the directors of Melbourne Utilities Department and Brevard County Natural Resources Management Office.

e. The County shall budget funding necessary to complete the meet the federal funding requirements of the HMGP contract.

9. **MAINTENANCE OF FACILITIES.**

a. The County shall be responsible for the maintenance of all drainage structures, pipes, culverts, ditches, canals and swales that are part of the Crane Creek - St Johns Outfall Federal Project. This maintenance includes, but is not necessarily limited to, cleaning, replacement and repair.

b. The City shall be responsible for the maintenance of the Melbourne Utilities constructed on behalf of the City, as defined in Section 3.c. of this Agreement. This maintenance includes, but is not necessarily limited to, cleaning, replacement and repair.

10. **CANCELLATION OR MODIFICATION OF THE AGREEMENT.**

a. This Agreement may be cancelled or modified only upon the written approval of each party to the agreement.

b. Notices to the respective parties shall be forwarded, in writing, to

If to Brevard County, such notice shall be addressed to:

Stockton Whitten, County Manager
2725 Judge Fran Jamieson Way
Viera, Florida 32940

If to Melbourne, such notice shall be addressed to:

City of Melbourne
Michael A. McNees, City Manager
City Hall
900 East Strawbridge Avenue
Melbourne, Florida 32901

c. Modifications of provisions of this Agreement shall be valid only after they have been written, signed and incorporated into this Agreement.

11. **HOLD HARMLESS.**

a. The County agrees to indemnify and hold harmless the City 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 resulting from negligent acts of the County in relation to the Federal Project. The County agrees that it will, at its own expense, defend any and all actions, writs or

proceedings which are brought against the County or the City and which arise out of circumstances set out previously in this paragraph 11. Each party hereto agrees that it shall be solely responsible for the negligent acts of its employees and agents.

b. Nothing contained in this paragraph 11 shall be construed to be a waiver by either party of any protections under sovereign immunity, Section 768.28, Fla. Stat., or any other similar provision of law. Nothing contained herein shall be constructed to be a consent by either party to be sued by third parties in any matter arising out of this or any other Agreement.

12. **OWNERSHIP OF INTELLECTUAL PROPERTY.** Ownership and copyright to all designs, plans, specifications, reports and accompanying data (in all formats) pertaining to the Crane Creek - St Johns Outfall Federal Project shall be vested in the parties.

13. **MISCELLANEOUS**

a. This Agreement may be executed in one or more counterparts, each of which shall be considered an original.

b. The headings used are for convenience only and they shall be disregarded in the construction and interpretation of this Agreement.

c. The drafting of this Agreement constituted a joint effort of the parties and the Agreement's interpretation shall assume that no party had more input or influence than any other. All words, terms, and conditions herein contained are to be read in concert, each with the other, and a provision contained under one heading may be considered to be equally applicable under another heading in the interpretation of this Agreement.

d. This Agreement is solely for the benefit of the parties to this Agreement and no other causes of action shall accrue upon or by reason hereof to or for the benefit of any third parties.

e. In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.

f. Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

14. **SEVERABILITY.** If any section subsection, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision. Such holding shall not affect the validity of the remaining portions of this Agreement.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature.

ATTEST:

BY: _____

Scott Ellis, Clerk
(Seal)

BREVARD COUNTY, FLORIDA by and through its Board of County Commissioners

BY: _____

Robin Fisher, Chairman

As approved by the Board on November 3, 2015

Approved as to legal form and content

Assistant County Attorney

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IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature.

ATTEST:

BREVARD COUNTY, FLORIDA by and through its Board of County Commissioners

BY: _____
Scott Ellis, Clerk
(Seal)

BY: _____
Robin Fisher, Chairman
As approved by the Board on _____

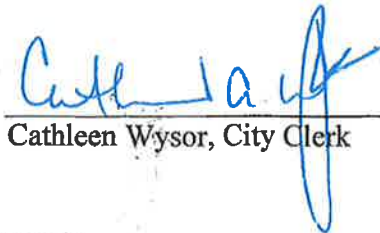
Approved as to legal form and content



Assistant County Attorney

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BY:


Cathleen Wysor, City Clerk

CITY OF MELBOURNE,
a Florida municipal corporation

BY:


Michael A. McNees, City Manager

As approved by City Council on **SEP 22 2015**

Attachments

Ex. A: Summary of Federal Project

Ex. B: Depiction of Crane Creek - St Johns Outfall Federal Project

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Attachment A

(2nd Revision)

Budget and Scope of Work

Scope of Work

As a Hazard Mitigation Grant Program project, the Recipient, Brevard County Commissioners proposes to improve the drainage of Crane Creek St. Johns Outfall located in Brevard County, Florida by increasing the capacity of the existing infrastructure. The project also includes culvert upgrades, additional culvert installation, channel regarding, and the conversion of an existing borrow pit into a wet detention pond for treatment and attenuation of storm water runoff. The design plans indicate the use of best management practices through silt fencing, hay bales and floating turbidity barriers. The completed project will provide protection against a 25-year storm event.

Requirements and Project Conditions:

Environmental

- 1) The Recipient must follow all applicable state, local and federal laws regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. If project work is delayed for a year or more after the date of the CATEX, then coordination with and project review by regulatory agencies must be redone.
- 2) Any change, addition or supplement to the approved Scope of Work that alters the project (including other work not funded by FEMA, but done substantially at the same time) will require re-submission of the application to FEMA for NEPA re-evaluation before starting project work.
- 3) If historic or archeological materials (or evidence thereof) are discovered, the Recipient shall stop work immediately, notify FEMA, and take all reasonable measures to avoid or minimize harm to the property. The Recipient will not proceed with work until FEMA, in consultation with the State Historic Preservation Officer (SHPO) and Florida Division of Emergency Management (FDEM), State Environmental Liaison Officer, determines that he appropriate measures have been taken to ensure that the project is in compliance with the National historic Preservation Act.
- 4) Construction vehicles and equipment used for this project shall be maintained in good working order to minimize pollutant emissions.
- 5) Best management practices will be used during project work to minimize soil erosion, sediment migration and turbidity. The Recipient will need to prepare and implement a Storm Water Pollution Prevention Plan (SWPPP). The Recipient must obtain a National Pollutant Discharge Elimination System (NPDES) stormwater permit (if area of disturbance will be greater than one acre). The Applicant will need to provide a copy of the Notice of Intent (NOI) submitted to use the State of Florida Generic Permit for stormwater discharge from construction activities; response letter from Florida Department of Environmental Protection (FDEP) if provided; and a copy of the Notice of Termination (NOT) at project closeout.
- 6) For projects involving groundwater dewatering activities at the construction site, provide documentation of coverage under the Florida Department of Environmental Protection (FDEP) "Generic Permit for the Discharge of Produced Ground Water from any Non-contaminated Site Activity."
- 7) The Seminole Tribe of Florida's Tribal Historic Preservation Office (STOF-THPO) has received the FEMA notification concerning the aforementioned project. The STOF-THPO has no objections to the proposal at this time, given that the "unexpected discovery conditions" are followed. Additionally, the STOF-THPO would like to be informed if cultural resources that are potentially ancestral or historically relevant to the Seminole Tribe of Florida are discovered at any point during the construction process.

- 8) Verification of compliance with USACE nationwide permit #43 (SAJ-2008-3790 (NW-EPB) conditions will be required at project closeout.
- 9) Of note are the Standard Protection Measures for the Eastern Indigo Snake provided in the permit.
- 10) All wetland areas or water bodies that are outside the specific limits of construction authorized by this permit must be protected from erosion, siltation, scouring or excess turbidity, and dewatering.
- 11) The St. Johns River Water Management District Permit No. 4-009-119341-2, dated October 4, 2010 authorizes 1.94 acres of surface water ditch impact and the conversion of a 32.1 acre surface water borrow pond to a surface water treatment pond. No other impacts to wetlands or other surface waters are authorized under this permit.

This is FEMA project number 1561-142-R, funded under 1561-DR-FL.

The Period of Performance (POP) for this project ends on September 14, 2015.

Schedule of Work

Permitting:	3 Months
Construction	30 Months
Potential Weather Delays:	3 Months
Final Inspection:	3 Months
Closeout:	3 Months
Total Period of Performance:	42 Months

Budget

Line Item Budget*:

	<u>Project Cost</u>	<u>Federal Share</u>	<u>Local Share</u>
Phase II – Construction:	\$3,736,017.00	\$2,802,013.00	\$934,004.00
Administrative Cost:	\$0.00	\$23,582.00	\$0.00
Total Project Cost:	\$3,736,017.00	\$2,825,595.00	\$934,004.00

**Any line item amount in this Budget may be increased or decreased 10% or less without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

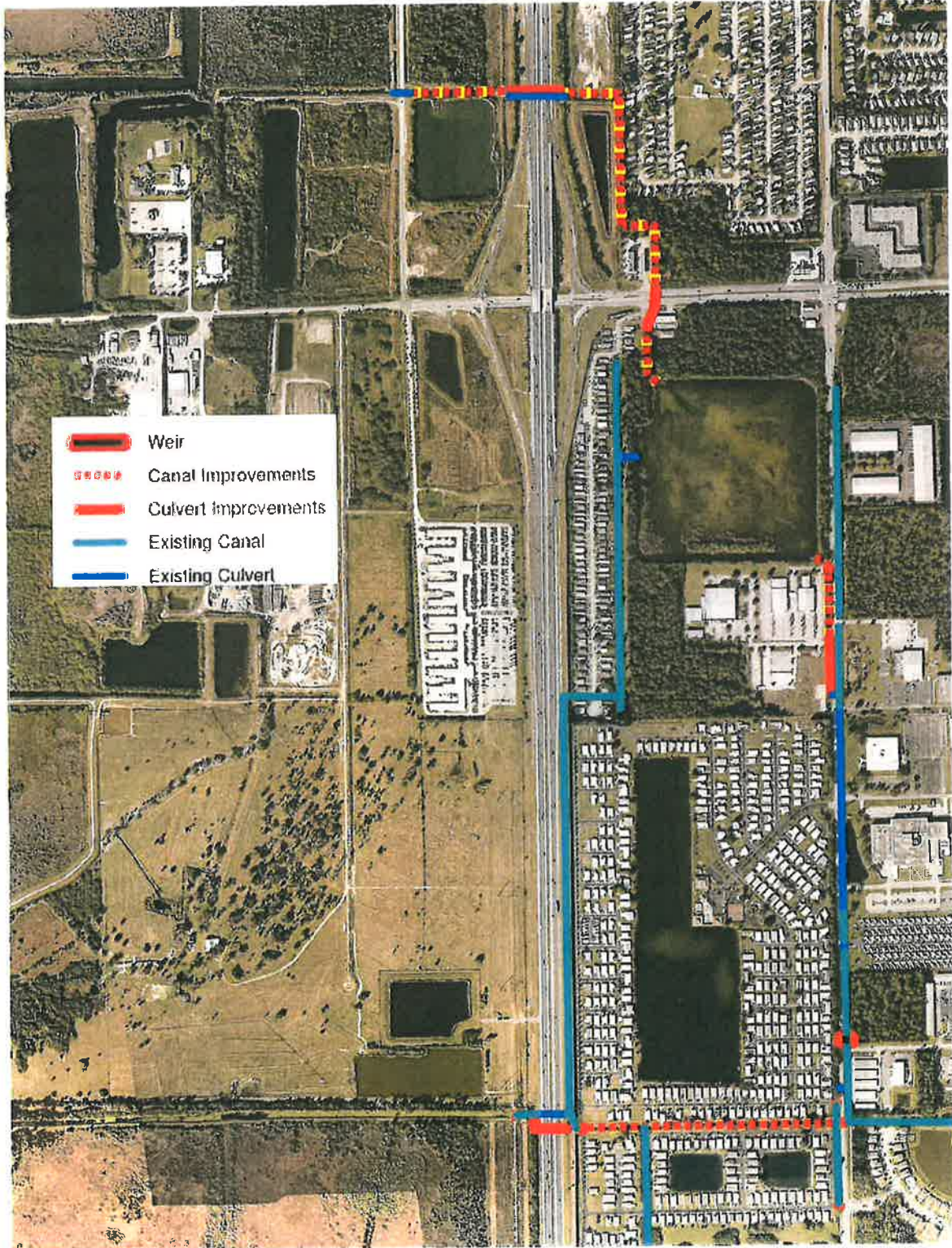
Funding Summary

Federal Share :	\$2,802,013.00	(75%)
Local Share:	\$934,004.00	(25%)
Total Project Cost:	\$3,736,017.00	(100%)

Recipient Administrative Allowance up to \$23,582.00.

ATTACHMENT B

CRANE CREEK - ST JOHNS OUTFALL



RESOLUTION NO. 15- 212

A RESOLUTION AUTHORIZING EXECUTION OF THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF MELBOURNE AND BREVARD COUNTY FOR CONSTRUCTION OF THE BREVARD COUNTY CRANE CREEK -ST. JOHNS OUTFALL STAGE II DRAINAGE IMPROVEMENT PROJECT.

WHEREAS, the City of Melbourne (CITY) and Brevard County (COUNTY) desired to facilitate the Construction of the Brevard County Crane Creek - St. Johns Outfall Stage II Drainage Improvement Project; and

WHEREAS, the CITY has requested COUNTY to execute and deliver to the CITY the Interlocal Agreement for the Brevard County Crane Creek - St. Johns Outfall Stage II Drainage Improvement Project.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that Andy Anderson, Chairman, of the Board of County Commissioners, is hereby authorized to make, execute, and deliver to the CITY the Interlocal Agreement for the Brevard County Crane Creek - St. Johns Outfall Stage II Drainage Improvement Project.

DONE, ORDERED AND ADOPTED in regular session this 3rd of November, 2015.

ATTEST:



SCOTT ELLIS, CLERK



**ROBIN FISHER, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA**

As approved by the BCC on: 11-03-15