

FLORIDA'S SPACE COAST

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

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December 22, 2021

MEMORANDUM

TO:

Marc Bernath, Public Works Director

Attn: Lucy Hamelers

RE:

Item F.15., Approval of Conveyance of Ellis Road from Wickham Road to Technology Drive (East)

to the City of West Melbourne

The Board of County Commissioners, in regular session on December 21, 2021, adopted Resolution 21-175, authorizing conveyance of Ellis Road from Wickham Road to Technology Drive (East) to the City of West Melbourne; executed and approved the County Deed; executed and approved the Interlocal Agreement with the City of West Melbourne relating to the transfer of roadway ownership, maintenance, drainage, and associated functional responsibilities for Ellis Road from Wickham Road to Technology Drive (East); and authorized the Chair to approve and execute any future amendments to the Interlocal Agreement pertaining to the construction phase of the Ellis Road Widening Project. Enclosed are fully-executed Resolution, executed Interlocal Agreement, and the executed County Deed.

Upon execution by the City of West Melbourne and recordation of the Interlocal Agreement, please return the recorded Interlocal 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

/sm

Encls. (3)

CC:

County Manager County Attorney

INTERLOCAL AGREEMENT BETWEEN BREVARD COUNTY AND THE CITY OF WEST MELBOURNE RELATING TO THE TRANSFER OF ROADWAY OWNERSHIP, MAINTENANCE, DRAINAGE, AND ASSOCIATED FUNCTIONAL RESPONSIBILITIES FOR ELLIS ROAD FROM WICKHAM ROAD TO TECHNOLOGY DRIVE (EAST)

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into by and between BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (the "COUNTY") and the CITY OF WEST MELBOURNE, FLORIDA, a municipal corporation of the State of Florida, whose address is 2240 Minton Road, West Melbourne, Florida 32904 (the "CITY").

WITNESSETH:

WHEREAS, the COUNTY and the CITY desire to coordinate providing quality transportation facilities to enhance the quality of life for residents of Brevard County and West Melbourne, Florida; and

WHEREAS, the Parties have the common power to construct and maintain roadways and drainage systems within their geographical jurisdictions; and

WHEREAS, on September 7, 2021, the CITY adopted Resolution 2021-28 recognizing the CITY's longstanding ownership and maintenance responsibilities of the portion of Ellis Road from Wickham Road to Technology Drive (East) (the "Ellis Segment"), which is identified in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, the COUNTY and the CITY are agreeable to transfer ownership, maintenance, and all associated functional responsibilities of and for the Ellis Segment, and associated roadway drainage facilities and other allied uses, from the COUNTY to the CITY; and

WHEREAS, in order to move forward with the Ellis Road Widening Project, the COUNTY and CITY wish to advise the Florida Department of Transportation (the "F.D.O.T.") of this Agreement by means of the COUNTY providing the F.D.O.T., District 5, with a recorded copy of this Agreement and County Deed conveying ownership and maintenance obligations for the Ellis Segment to the CITY; and

WHEREAS, this Agreement is authorized pursuant to the provisions of Chapters 125, 163, and 166, Florida Statutes, and other applicable laws; and

WHEREAS, the Parties hereto have determined that this Agreement is in furtherance of the community health, safety, and welfare; serves a public benefit; and is in the public interest.

NOW, THEREFORE, in consideration of the premises herein, the Parties hereby agree as follows:

Section 1. Recitals. The above recitals are deemed true and correct and are hereby incorporated herein by this reference.

Section 2. Purpose. The purpose of this Agreement is for the COUNTY to assign and transfer to the CITY, ownership and jurisdiction over and full functional responsibility of the Ellis Segment, and associated roadway drainage facilities and other allied uses, including, but not limited to, permit authority within the right-of-way.

Section 3. Transfer of Responsibility. Attached as Exhibit B to this Agreement is a deed in accordance with Section 125.411, Florida Statutes, executed by the COUNTY transferring ownership, maintenance, and all associated functional responsibilities for the Ellis Segment, and associated roadway drainage facilities and other allied uses, to the CITY. The COUNTY shall be responsible for the cost to record the deed and this Agreement in the public records of Brevard County, Florida. Upon execution of this Agreement, which shall operate as acceptance of the Ellis Segment, the CITY shall have ownership of, plenary authority over and full responsibility for the functional operation and maintenance of the Ellis Segment, as specified in Section 2 above. All of the COUNTY's rights, responsibilities, liabilities, duties, and obligations as to the Ellis Segment shall be transferred to and assumed by the CITY and said right(s)-of-way shall be deemed the CITY's responsibility for all intents, purposes, and effects.

Section 4. Limitations of Agreement. It is not the intent of this Agreement to change the jurisdiction of the Parties in any manner except as specifically provided herein. All other policies, rules, regulations, and ordinances of the COUNTY and the CITY, respectively, will continue to apply as to the properties located within the jurisdictional boundaries of each party hereto. The maintenance of side roads, street name signs, and stop signs are the responsibilities of the Party in whose jurisdiction such road(s) and sign(s) are located, except as otherwise proved herein.

<u>Section 5.</u> Other Agreements. The Parties agree to execute such instruments and documents as may be required to effectuate this Agreement.

<u>Section 6.</u> Indemnification. Neither Party to this Agreement, its officers, employees, or agents, shall be deemed to assume any liability for the acts, omissions, or negligence of the other Party, its officers, employees, or agents. Each Party's indemnity and liability obligations shall be subject to the common law right of sovereign

immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing herein shall constitute a waiver of the respective Party's sovereign immunity.

Section 7. Notices.

(a) Whenever either Party desires to give notice to the other Party, notice shall be sent to:

For the COUNTY

Brevard County Public Works Department C/O Rachel Gerena, P.E. 2725 Judge Fran Jamieson Way Building A, Room 204 Viera, FL 32940

For the CITY

Scott Morgan, City Manager City Hall 2240 Minton Road West Melbourne, FL 32904

- (b) The COUNTY Manager or CITY Manager may change, by written notice as provided herein, the addresses or persons for receipt of notices. Each such notice shall be deemed delivered on the date delivered if by personal delivery or on the date of transmission if by facsimile, or on the date upon which the return receipt is signed or delivery is refused or notice is designated by the postal authorities as not deliverable, as the case may be, if mailed or date of delivery by overnight delivery services as evidenced by a service receipt.
- <u>Section 8.</u> Counterparts. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.
- Section 9. Entire Agreement. This Agreement, along with the County Deed, constitutes the entire agreement of the Parties with respect to the subject matter hereof, and neither this Agreement nor any portion of it may be altered, modified, waived, deleted, or amended except by a written instrument signed by both Parties' authorized representatives. This Agreement supersedes all oral agreements and negotiations between the Parties relating to the subject matter of this Agreement.
- Section 10. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the successors in interest, transferees, and assigns of the Parties.
- Section 11. Public Records. The Parties shall allow public access to all documents, papers, letter, or other materials subject to the provisions of Chapter 119, Florida Statutes, which have been made or received in conjunction with this Agreement.

<u>Section 12.</u> Conflict of Interest. Both Parties agree that they will not commit any act in the performance of its obligations pursuant to this Agreement that would create a conflict of interest, as defined by Chapter 112, Florida Statutes.

Section 13. Effective Date. This Agreement shall take effect upon the date of recording in the Public Records of Brevard County, Florida.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement through their authorized representative on the date last written below.

By Kristine Zonka, Chair DATE

As approved by the Board on: 12-212021

Approved as to legal form and sufficiency as to Brevard County:

Alex Esseesse, Assistant County Attorney

ATTEST:

SEAL FLORIDA

7959

Cynthyla Hanscom, City Clerk

By Hal J. Rose, Mayor DATE

As authorized by the City of West
Melbourne City Council on: January 18, 2022

Approved as to legal form and sufficiency as to the City of West Melbourne:

Moms Richardson, City Attorney

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Exhibit A

LEGAL DESCRIPTION: ELLIS ROAD TRANSFER PARCEL (BY SURVEYOR) LOCATED AT BREVARD COUNTY SURVEY BOOK 15 PAGE 82 DESCRIBED AS FOLLOWS:

A PARCEL OF LAND BEING ALL OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 620, PAGE 859 AND OFFICIAL RECORD BOOK 641, PAGE 991 AND BEING A PORTION OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 36; AND OFFICIAL RECORDS BOOK 609, PAGE 36; AND OFFICIAL RECORDS BOOK 614, PAGE 359, ALL OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING LOCATED WITHIN SECTIONS 25 AND 36, TOWNSHIP 27 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 36; THENCE SOUTH 87° 52' 25" WEST ALONG THE NORTH LINE OF SAID SECTION 36 FOR A DISTANCE OF 456.27 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE SOUTH 02° 07' 35" EAST FOR A DISTANCE OF 50.00 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 620, PAGE 859, SAID POINT ALSO BEING A POINT ON THE WESTERLY RIGHT OF WAY LINE OF WICKHAM ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 9186, PAGE 2972; THENCE SOUTH 87° 52' 25" WEST ALONG SAID SOUTH RIGHT OF WAY LINE FOR A DISTANCE OF 878.49 FEET TO A POINT ON THE EAST LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 641, PAGE 991; THENCE SOUTH 87° 52' 25" WEST ALONG THE SOUTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 641, PAGE 991 FOR A DISTANCE OF 1329.72 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 36, SAID POINT ALSO BEING A POINT ON THE EAST LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 30; THENCE SOUTH 86° 29' 41" WEST ALONG SAID SOUTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 30 FOR A DISTANCE OF 395.69 FEET; THENCE DEPARTING SAID SOUTH RIGHT OF WAY LINE, RUN NORTH 03° 30' 19" WEST FOR A DISTANCE OF 50.00 FEET TO A POINT ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36; THENCE CONTINUE NORTH 03° 30' 19" WEST FOR A DISTANCE OF 50.00 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 36 AND OFFICIAL RECORDS BOOK 614, PAGE 359; THENCE NORTH 86° 29' 41" EAST ALONG SAID NORTH RIGHT OF WAY LINE FOR A DISTANCE OF 399.00 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 25, SAID POINT ALSO BEING A POINT ON THE WEST PLAT LINE OF LAKE IBIS, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 21, PAGE 58; THENCE SOUTH 00° 24' 16" EAST ALONG THE AFORESAID EAST AND WEST LINES FOR A DISTANCE OF 50.07 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 25, SAID LINE ALSO BEING THE SOUTH LINE OF SAID PLAT BOOK 21, PAGE 58, AND SAID LINE ALSO BEING THE NORTH LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 641, PAGE 991: THENCE NORTH 87° 52' 25" EAST ALONG SAID SOUTH AND NORTH LINES FOR A DISTANCE OF 1331.86 FEET TO A POINT ON THE WEST LINE OF SAID DESCRIBED LANDS IN OFFICIAL RECORDS BOOK 620, PAGE 859; THENCE NORTH 87° 52' 25" EAST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 25, SAID LINE ALSO BEING THE NORTH LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 620, PAGE 859, AND SAID LINE ALSO BEING THE SOUTH PLAT LINE OF SILVER SAND SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 13, PAGE 93, FOR A DISTANCE OF 876.95 FEET TO THE POINT OF BEGINNING, CONTAINING 3.45 ACRES (150,107 SQUARE FEET), MORE OR LESS.

Prepared by and return to: EXHIBIT B
Office of the County Attorney
2725 Judge Fran Jamieson Way, Building C
Viera, Florida 32940

COUNTY DEED

(STATUTORY FORM - SECTION 125.411, Florida Statutes)

THIS DEED, made this 21st day of December, 2021, between Brevard County, Florida, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida, 32940, party of the first part, and the City of West Melbourne, a municipal corporation of the State of Florida, whose address is 2240 Minton Road, West Melbourne, Florida 32904, party of the second part,

(Whenever used herein the terms "party of the first part" and "party of the second part" include all the parties to this instrument and their heirs, legal representatives, successors and assigns. "Party of the first part" and "party of the second part" are used for singular and plural, as the context requires and the use of any gender shall include all genders)

WITNESSETH that the party of the first part, for and in consideration of the sum of Ten Dollars, to it in hand paid by the party of the second part, receipt whereof is hereby acknowledged, has granted, bargained and sold to the party of the second part, its successors and assigns forever, any interest it holds in the following described land lying and being in Brevard County, Florida, to wit:

The property as fully described in Exhibit "A" attached hereto and incorporated herein by this reference, the first party transfers ownership, maintenance, and all associated functional responsibilities for that portion of Ellis Road from Wickham Road to Technology Drive (East), and associated roadway drainage facilities and other allied uses, together with all riparian and littoral rights appertaining thereto, and all interests in subsurface oil, gas, and minerals pursuant to Section 270.11(3), Florida Statutes. In the event the property ceases to be used and/or maintained for a public roadway, with associated roadway drainage facilities and allied uses, the party of the first part does not retain any right to re-enter and repossess the property.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair of said Board, the day and year aforesaid.

ATTEST:	BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA
	Ву:
Rachel Sadoff, Clerk	Kristine Zonka, Chair
	(As approved by the Board on 12-21-2021

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