

Meeting Date
September 16, 2014



AGENDA	
Section	Public Hearing
Item No.	III. G.

**AGENDA REPORT**  
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval of Amendments to Inter-local Agreement with Merritt Island Redevelopment Agency (MIRA) and Approval of an Ordinance Establishing and Implementing the Lakes at Veterans Memorial Park Redevelopment Stormwater Tie-in and Credit Program.
DEPT/OFFICE:	Natural Resources Management Department (NRM) and MIRA (District 2)

Requested Action:  
 It is requested the Board of County Commissioners approve amendments to the May 28, 2009, Inter-local Agreement between Brevard County and MIRA and approve an ordinance that establishes and implements the Lakes at Veterans Memorial Park redevelopment stormwater tie-in and credit program.

Summary Explanation & Background:  
 On May 28, 2009, MIRA and Brevard County entered into an agreement for the acquisition, construction and operation of a stormwater utility that would be designed to benefit approximately 165 acres within the MIRA boundary. The goal of this project was to meet the regulatory requirements of all properties within the 165 acre area, thus providing a significant redevelopment incentive for those properties by allowing offsite stormwater treatment. In that the treatment, absent of the redevelopment potential, provides significant water quality benefit to the Indian River Lagoon, the Board approved the Stormwater Program to expend approximately \$4.1M to construct the stormwater treatment facility. Public Works, while performing required road repair, also upgraded the failing stormwater conveyance system along Fortenberry, Plumosa and Sykes Creek Blvd. Construction of the pond was completed in May 2014.

The Board approved 2009 Interlocal Agreement provides for the administration of a redevelopment stormwater credit "buy-in" program for those properties within the 165 acre boundary. The program is to be administered by the County through enabling ordinance. This agenda item requests that the Board amend the 2009 Agreement to add several redevelopment tools and improved implementation procedures. The key amendments of the draft documents are highlighted below:

- Provides credit buy-in criteria through which properties may use the Lakes at the Veterans Memorial Park facility to meet their regulatory stormwater requirements. Buy-in may be monetary, transfer of real property; tangible property of other non- monetary consideration of value comparable to the pro-rata contribution.
- Any revenues collected from the Buy-in Program will be re-invested into stormwater improvements and operations within the MIRA 165 acre boundary.
- Provides for a credit towards the pro-rata contribution requirement for those properties that currently treat stormwater on site, proportionate to the amount of existing treatment provided. This credit is leveraged against MIRA's \$1.5M investment in this stormwater facility.
- Provides for the resale of available fill from the project to be sold at cost to Bona Fide Redevelopment Projects within the MIRA 165 acre boundary.

**Fiscal Impact:** Will provide pro-rata cost recovery for expenses associated with pond construction.

**Name:** Ernest Brown NRM, 633-2016

Clerk to the Board Instructions: Please attest upon execution and return an original to the Department

Exhibits Attached: **Attachment A:** Amendment to Inter-local Agreement, **Attachment B:** Ordinance

Contract /Agreement (If attached):		Reviewed by County Attorney	Yes <input type="checkbox"/>	No <input type="checkbox"/>	PR <input type="checkbox"/>
County Manager	Assistant County Manager	Department Director / Extension			
Stockton Whitten	Mel Scott	Ernest N. Brown/52439			



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

September 17, 2014

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

**TO:** Ernest Brown, Natural Resources Management Director

**RE:** Item III.G., Ordinance and Amendment to Interlocal Agreement with Merritt Island Redevelopment Agency (MIRA) for Lakes at Veterans Memorial Park Redevelopment Stormwater Tie-In and Credit Program

The Board of County Commissioners, in regular session on September 16, 2014, adopted Ordinance No. 14-29, and executed Interlocal Agreement with Merritt Island Redevelopment Agency (MIRA), establishing and implementing the Lakes at Veterans Memorial Park Redevelopment Stormwater Tie-In and Credit Program. Enclosed are two certified copies of the Ordinance, and original Interlocal Agreement.

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

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

Encls. (3)

cc: Contracts Administration

**ORDINANCE NO. 14- 29**

**AN ORDINANCE AMENDING CHAPTER 62, DIVISION 6, ARTICLE 10, CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA, TO CREATE A NEW SUBSECTION, 62-3757 TO ALLOW PAYMENT OF AN OPTIONAL PRO RATA CAPITAL CONTRIBUTION PAYMENT STORMWATER ALLOWING TIE-IN TO CERTAIN COUNTY STORMWATER TREATMENT FACILITIES WITHIN THE MERRITT ISLAND REDEVELOPMENT AREA IN LIEU OF CONSTRUCTION OF ON SITE STORMWATER CONTROL; -; PROVIDING FOR ALTERNATIVES TO PAYMENT OF A CAPITAL CONTRIBUTION PAYMENT; PROVIDING FOR RESOLUTION OF CONFLICTING PROVISIONS PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Board of County Commissioners has determined that establishment of an improved storm water treatment and public storm water management system provides positive environmental impacts in the Merritt Island Redevelopment Area (MIRA) which is within the jurisdiction and subject to the authority granted by law and County Ordinance to the Merritt Island Redevelopment Agency and is in the public interest; and

**WHEREAS**, development of regional storm water ponds with capacity to accept and treat storm water to current water quality standards in the MIRA storm water basin promotes development and redevelopment potential and economic opportunities beneficial to the public; and

**WHEREAS**, the Board of County Commissioners wishes to provide a mechanism to allow properties to develop in MIRA by using a regional storm water system and eliminate the need to construct on-site storm water facilities,

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY FLORIDA, as follows:**

Officially filed with the Secretary of State 9-23-2014

**SECTION 1.** Chapter 62, Article 10, Division 6, of the Code of Ordinance of Brevard County, Florida, is hereby amended to add a new subsection, 62-3757 as follows:

**62-3757. Optional Pro Rata Capital Contribution Payment Allowing Tie—in to County Constructed Stormwater Systems in Lieu of Constructing Private Stormwater Facility within the Merritt Island Redevelopment Area (MIRA).**

(a) At the option of both the County and any property owner engaged in a development or redevelopment project within the 165 acres of property lying within the Merritt Island Redevelopment Area, as shown on Exhibit A, the property owner may apply to pay a pro rata capital contribution (pro rata contribution) to the County which will allow the property owner to tie-in and discharge stormwater from the project to County stormwater facilities (hereafter called the “Lakes at Veterans Memorial Park”) constructed for the purpose of treating stormwater runoff from existing impervious areas within the basin and providing additional capacity to serve future impervious area within the specific 165 acres of property shown in Exhibit A. This pro rata contribution is not a mandatory fee or contribution. Upon receipt of written approval from the St. Johns River Water Management District or its successor agency for such discharge of water into the Lakes at Veterans Memorial Park, payment of the pro rata contribution may be made to the County by a property owner/applicant in lieu of constructing any stormwater facility that would have been required to be built on the property under existing stormwater regulations. Nothing herein shall be construed to require the County to approve any request to pay a fee for use of such County owned stormwater facilities.

(b) The amount of the pro rata contribution is based on the proportionate cost of the construction of the stormwater facility established at \$.50 per square foot of the property being treated by the County Facility. Any modification to the rate shall be by a Resolution of the Board of County Commissioners based upon the square footage of the entire property to be served by

the Lakes at Veterans Memorial Park. Each situation will be analyzed by the County and a specific written decision will be developed for each property that is the subject of an application as follows:

1. The Lakes at Veterans Memorial Park will be built in phases (Phase 1- treatment for 102 acres and Phase 2 treatment for an additional 63 acres).The pro rata contribution formula is calculated on the redevelopment and final build out of approximately 165 acres within the Merritt Island Redevelopment Area (as shown on Exhibit A) for which stormwater treatment and capacity is available.

2. The pro rata contribution will be determined for each applicant by calculating the total stormwater capacity of the completed Lakes at Veterans Memorial Park and the associated construction costs of the facilities and then determining the pro rata share of the applicant's discharge of stormwater (quantity and quality) from the applicant's development or redevelopment project. The ratio of the applicant's projected stormwater discharge to the total capacity of the Lakes at Veterans Memorial Park shall be multiplied by the most current annual determination of the present value of the total construction cost of planned or constructed Lakes at Veterans Memorial Park to determine the pro rata fee payable for the current year.

3. Each application will be evaluated based upon the cumulative impacts from the proposed development or redevelopment. This process will not apply to privately owned stormwater facilities designed to provide stormwater collection and treatment services for properties within the Merritt Island Redevelopment Area.

4. In lieu of a pro rata cash contribution to allow an applicant to tie-in to the Lakes at Veterans Memorial Park, the applicant may offer and the County may accept from an applicant 1) a credit under the provisions of subsection (c) of this ordinance; or 2) a negotiated transfer of

real property, tangible personal property or other non-monetary considerations of a value comparable to the pro rata contribution, while still meeting the purpose and intent of this section. Any negotiated transfer credits shall be applied to reduce the amount of the pro rata contribution calculated for the applicant in the manner described in subparagraph 2. above.

5. Payment or delivery of a pro rata contribution shall be a condition precedent to the issuance of a building permit for any property where development or redevelopment for which an onsite stormwater facility is not being built is proposed within the Merritt Island Redevelopment Area. For such properties, neither construction of the project nor the use of the Lakes at Veterans Memorial Park may be commenced until the pro rata contribution is paid.

6. The revenues generated by the pro rata contribution shall only be used for 1) new stormwater infrastructure construction related to the Lakes at Veterans Memorial Park 2) for reimbursement to the County for expenses related to construction of the Lakes at Veterans Memorial Park stormwater infrastructure or 3) the reimbursement of MIRA in the amount of that agency's monetary contribution toward land acquisition costs related to the County-owned Lakes at Veterans Memorial Park, to the extent that the applicant has not received a credit in the manner prescribed in section (c) of this ordinance.

7. The pro rata contribution program will cease when the Lakes at Veterans Memorial Park have reached design capacity.

8. An applicant's payment of a pro rata contribution or receipt of a credit under section (c) of this ordinance shall not prevent nor be construed to prevent Brevard County from establishing and collecting the annual stormwater utility fee applicable within the District 2 Benefit Area.

(c) For properties that currently treat all or a portion of their stormwater regulatory requirement on site, as an alternative to the cash payment of a pro rata contribution allowing an applicant to tie-in to the Lakes at Veterans Memorial Park to meet but not exceed the treatment value currently met on the applicants property, an applicant may request a tie-in credit based on being a bona fide redevelopment project as approved by the Merritt Island Redevelopment Agency in accordance with the terms of any interlocal agreement with Brevard County relating to redevelopment incentives.

**SECTION 2. CONFLICTING PROVISIONS.** In the case of a direct conflict between any provision of this ordinance and a portion and provision of any other appropriate federal, state or county law, rule, code or regulations, the more restrictive shall apply.

**SECTION 3. SEVERABILITY.** If any section, subsection, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such invalid unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, provided the remaining portions effectuate purpose and intent of this ordinance.

**SECTION 4. AREA ENCOMPASSED.** This ordinance shall take effect within the unincorporated area of Brevard County, Florida.


**SECTION 5. EFFECTIVE DATE.** This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

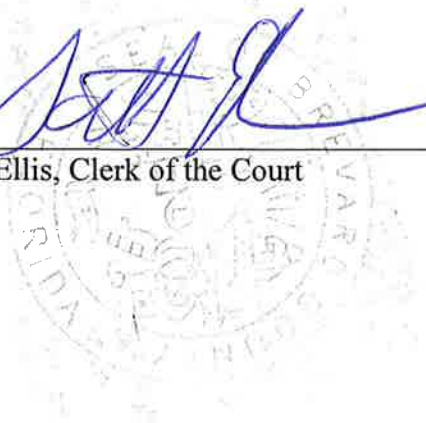
**DONE, ORDERED AND ADOPTED** in Regular Session, this \_\_\_\_ day of \_\_\_\_, 2013.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
\_\_\_\_\_  
Scott Ellis, Clerk of the Court

BY   
\_\_\_\_\_  
Mary Bolin Lewis, Chairman  
(As approved by the Board on 09/16/2014)





## Natural Resources Management Department

2725 Judge Fran Jamieson Way  
Building A, Room 219  
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

## Inter-Office Memo

**TO:** Merritt Island Redevelopment Agency  
**FROM:** Ernest Brown, Director, NRM  
**DATE:** July 22, 2014  
**SUBJECT:** The Lakes at Veterans Memorial Park –  
MIRA Stormwater Utility and Redevelopment Program

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In May 2005, Pulte Homes and Brevard County entered into a joint participation agreement for the design, construction and maintenance of a 5-7 acre Fortenberry Stormwater Treatment Pond Project on Merritt Island. The 2005 project will provide stormwater treatment on county-owned property for 35 acres (out of approximately 165 acres) of untreated impervious and developed areas along the State Road 520 commercial corridor within the boundaries of the Merritt Island Redevelopment Agency (MIRA).

On February 16, 2009, Pulte Homes contacted the County indicating an interest in selling their 52 acre parcel abutting the stormwater project. The site was permitted and prepared for development of 516 residential condo and carriage units bordering the Indian River Lagoon, the Merritt Square Mall and the existing Veterans Memorial Park.

Upon consideration of the acquisition, On April 19, 2009, it was determined that significant public benefit existed if the property was acquired. These benefits are as follows:

- Expansion of the pond to treat all 165 acres of stormwater on the south side of the SR 520 commercial corridor to meet State and federally mandated water quality restoration mandates.
- Re-development of commercial properties within this area by treating water off-site. This would facilitate better design and utilization of valuable commercial properties which are required by the Water Management District to treat their stormwater using 25% to 50% of the site for ponds. Land owners would purchase credits for treatment from the County, off-setting the cost of the land acquisition and construction. They would then be able to develop their entire site.
- Expansion of the Veterans Memorial Park. The Board has attempted to acquire this site twice in the past but was unsuccessful due to funding limitations. Acquisition and development of the stormwater facilities would provide space for additional Veteran's memorials, exhibits and space for relocation of the Viet Nam Veteran's Service Center. Other passive recreational uses on the site that overlooks Newfound Harbor would also be possible as well as the construction of The lakes and Veterans Memorial Park.
- Removal and remediation of more than 60,000 cubic yards of non hazardous landfill material formally deposited on the property in the 1940-1960s.

On May 28 2009, The Merritt Island Redevelopment Agency (MIRA) and Brevard County entered into agreement for the construction and operation of a stormwater utility benefitting approximately 165 acres within the MIRA boundary. This original agreement resulted in the acquisition of land using MIRA funds (approximately \$2.2M less \$750K from Parks = \$1.5M) and the construction of a 24 acre pond sufficient to meet the regulatory requirements of all properties within the 165 acre area, thus providing a significant redevelopment incentive for those properties by allowing offsite stormwater treatment. In that the treatment, absent of the redevelopment potential, provides significant water quality benefit to the Indian River lagoon, the County expended approximately 4.1M to construct the stormwater treatment facility and additional funds to upgrade the conveyance system along Fortenbery, Plumosa and Sykes Creek Blvd. Once funding was secured, the County initiated Phase I of the Lakes at Veterans Memorial Park in 2012. The final Phase (Phase II) construction in May 2014.

The 2009 Inter-local agreement provided for the administration of a redevelopment stormwater credit "buy-in" program for those properties within the 165 acre boundary. The program is to be administered by the County through enabling ordinance. The draft ordinance is attached. Since 2009, several additional redevelopment tools have become evident to benefit the program in addition to improved procedural mechanisms. These are outlined in the attached draft ordinance and draft inter-local agreement amendment draft. The key elements of the draft documents are highlighted below:

- Provides credit buy-in criteria through which properties may use the Lakes at Veterans Memorial Park facility to meet their regulatory stormwater requirements. Buy-in may be monetary, transfer of real property; tangible property of other non monetary consideration of value comparable to the pro rate contribution.
- Any revenues collected from the Buy-in Program will be re-invested into stormwater improvements and operations within the MIRA 165 acre boundary.
- Provides for a MIRA issued credit towards the pro rata contribution requirement for those properties that currently treat stormwater on site, proportionate to the amount of existing treatment provided. This credit is leveraged against \$1.5 M initial MIRA contribution.
- Provides for the resale of available fill from the project to be sold at cost to Bona Fide Redevelopment Projects within the MIRA 165 acre boundary.

The outcome of these efforts will result in the treatment of nutrient laden stormwater runoff from more than 165 acres of intensely and historically untreated discharged to the Indian River Lagoon, enhanced redevelopment tools for the region, greatly enhanced recreation amenities and improved visibility of our appreciation of our veterans.

## AMENDMENT TO INTERLOCAL AGREEMENT

This amendment to that certain Interlocal Agreement (Agreement) dated May 28, 2009 between Brevard County through its Board of County Commissioners (COUNTY) and the Merritt Island Redevelopment Agency (MIRA) is made between the COUNTY and MIRA this 16 day of September, 2014:

**WHEREAS**, MIRA and the COUNTY entered into an interlocal agreement dated May 28, 2009 providing for MIRA's contribution-in-aid of construction to allow the COUNTY to purchase the land (PROPERTY) described in Exhibit A to the Agreement and construct a stormwater collection and treatment system known as the Lakes at Veterans Memorial Park (STORMWATER SYSTEM) designed to service existing properties and businesses lying within approximately 165 acres located in the Merritt Island Redevelopment Area (MIRA area), said area being described in the attached Exhibit A; and

**WHEREAS**, the terms of the agreement authorize the COUNTY to administer and manage any stormwater assessment credit program affecting the MIRA area; and

**WHEREAS**, no stormwater credit program for the MIRA area is formally established in the Agreement; and

**WHEREAS**, in lieu of COUNTY reimbursement of the MIRA contribution-in-aid of construction in the manner contemplated by the current Agreement, the parties desire to establish a STORMWATER SYTEM credit program as a tool to incentivize redevelopment activity in the MIRA area; and

**WHEREAS**, disposition of excess fill excavated from the PROPERTY is addressed in the agreement; and

**WHEREAS**, the parties desire to substitute a tie-in STORMWATER SYSTEM credit program for authorized redevelopment projects within the MIRA area, including tie-in credits provided through the COUNTY'S transfer of excess fill from the PROPERTY to the developer or owner of a redevelopment project, as well as other credit mechanisms in lieu of the existing provisions in Section 5 of the agreement; and

**WHEREAS**, MIRA is empowered to approve grants and other inducements within the MIRA area, including STORMWATER SYSTEM tie-in credits derived from contribution-in-aid of construction reimbursement proceeds MIRA would have realized for useable fill dirt sold by the COUNTY under Section 5 of the Agreement; and

**WHEREAS**, the parties hereby recognize MIRA's intent to convert its contractual property interest in the funds derived from the fill dirt excavated by the COUNTY on the PROPERTY, as well as MIRA's intent to utilize the agency's interest in those funds as the source of tie-in credits in the STORMWATER SYSTEM tie-in credit program being created under this amendment to the Agreement;

**NOW THEREFORE**, for value received and in consideration of the following promises, covenants and conditions, the parties hereto agree as follows:

1. **Recitals.** The parties hereby acknowledge that the recitals set forth above are true and correct and the same are hereby incorporated by reference herein.
2. **Deletion and Replacement of Section 5.** Section 5 of the Agreement, as it currently exists, is declared deleted, repealed, null, void and unenforceable by either Party.
3. A new Section 5 in the Agreement is hereby substituted for the existing Section 5 as follows:

**Section 5. Redevelopment Credit Incentive Program Established.** The COUNTY and MIRA hereby agree to the establishment and implementation of a STORMWATER SYSTEM tie-in redevelopment credit program within the MIRA area as follows:

a. MIRA and the COUNTY agree that, as part of its stormwater collection and treatment program, the COUNTY will create a STORMWATER SYSTEM tie-in credit program for the MIRA area. The total amount of all tie-in credits granted in the MIRA area shall not exceed the COUNTY's cost for excavating and transporting useable clean fill from the PROPERTY after January 1, 2014.

b. Upon approval of a STORMWATER SYSTEM tie-in credit application by the COUNTY for any property within the MIRA area that is the subject of a bona fide redevelopment proposal as determined by MIRA, that currently treats all or a portion of its stormwater regulatory requirement upon its own site and desires to transfer said existing treatment to the COUNTY facility, the property owner or their authorized agent shall, at the time the tie-in connection fee is due to be paid, be granted a tie-in fee credit in the amount proportionate to the existing on site treatment value. as determined by the COUNTY.. Credits shall be first come first serve and shall not exceed the original amount contributed by MIRA.

c. In the event the applicant/owner of a property proposed as a site for a bona fide redevelopment project, as determined by MIRA, seeks to acquire useable fill excavated from the PROPERTY, MIRA must first assign its contractual interest in the amount of fill material sought to the applicant/owner. If an assignment is granted, the applicant/owner must pay the excavation cost and the cost of transporting the fill to the applicant/owner's redevelopment project site.

4. **Ratification of Remainder of the Agreement.** All other terms and conditions of the Agreement not modified by this amendment are hereby ratified and confirmed in full and shall remain in full force and effect between the parties.

5. **Conflicting Provisions.** To the extent of any conflict between this amendment and other terms of the Agreement, the terms of this amendment shall be deemed to supersede the conflicting terms and provisions in the Agreement.


6. **Effective Date.** This amendment shall be deemed to take effect upon the latest date a party executes the amendment.

IN WITNESS WHEREOF, the parties have executed this amendment to the Agreement on the dates recited below.

Merritt Island Redevelopment District

Brevard County

BY: \_\_\_\_\_

BY:  \_\_\_\_\_

Sue Nisbet-Lawrence, Chair

Mary Bolin Lewis, Chairman

(As approved by the Board on Sept. 16, 2014)

DATE: \_\_\_\_\_, 2014

DATE: September 19, 2014



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

September 23, 2014

Honorable Scott Ellis  
Clerk  
Board of County Commissioners  
Brevard County  
Post Office Box 999  
Titusville, Florida 32781-0999

Attention: Mr. John Lynch, Clerk to the Board

Dear Mr. Ellis:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 2014-29, which was filed in this office on September 23, 2014.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb



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

September 17, 2014



MEMORANDUM

TO: Ernest Brown, Natural Resources Management Director

RE: Item III.G., Ordinance and Amendment to Interlocal Agreement with Merritt Island Redevelopment Agency (MIRA) for Lakes at Veterans Memorial Park Redevelopment Stormwater Tie-In and Credit Program

The Board of County Commissioners, in regular session on September 16, 2014, adopted Ordinance No. 14-29, and executed Interlocal Agreement with Merritt Island Redevelopment Agency (MIRA), establishing and implementing the Lakes at Veterans Memorial Park Redevelopment Stormwater Tie-In and Credit Program. Enclosed are two certified copies of the Ordinance, and original Interlocal Agreement.

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

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

Encls. (3)

cc: Contracts Administration

## AMENDMENT TO INTERLOCAL AGREEMENT

This amendment to that certain Interlocal Agreement (Agreement) dated May 28, 2009 between Brevard County through its Board of County Commissioners (COUNTY) and the Merritt Island Redevelopment Agency (MIRA) is made between the COUNTY and MIRA this 16 day of September, 2014:

**WHEREAS**, MIRA and the COUNTY entered into an interlocal agreement dated May 28, 2009 providing for MIRA's contribution-in-aid of construction to allow the COUNTY to purchase the land (PROPERTY) described in Exhibit A to the Agreement and construct a stormwater collection and treatment system known as the Lakes at Veterans Memorial Park (STORMWATER SYSTEM) designed to service existing properties and businesses lying within approximately 165 acres located in the Merritt Island Redevelopment Area (MIRA area), said area being described in the attached Exhibit A; and

**WHEREAS**, the terms of the agreement authorize the COUNTY to administer and manage any stormwater assessment credit program affecting the MIRA area; and

**WHEREAS**, no stormwater credit program for the MIRA area is formally established in the Agreement; and

**WHEREAS**, in lieu of COUNTY reimbursement of the MIRA contribution-in-aid of construction in the manner contemplated by the current Agreement, the parties desire to establish a STORMWATER SYTEM credit program as a tool to incentivize redevelopment activity in the MIRA area; and

**WHEREAS**, disposition of excess fill excavated from the PROPERTY is addressed in the agreement; and

**WHEREAS**, the parties desire to substitute a tie-in STORMWATER SYSTEM credit program for authorized redevelopment projects within the MIRA area, including tie-in credits provided through the COUNTY'S transfer of excess fill from the PROPERTY to the developer or owner of a redevelopment project, as well as other credit mechanisms in lieu of the existing provisions in Section 5 of the agreement; and

**WHEREAS**, MIRA is empowered to approve grants and other inducements within the MIRA area, including STORMWATER SYSTEM tie-in credits derived from contribution-in-aid of construction reimbursement proceeds MIRA would have realized for useable fill dirt sold by the COUNTY under Section 5 of the Agreement; and

**WHEREAS**, the parties hereby recognize MIRA's intent to convert its contractual property interest in the funds derived from the fill dirt excavated by the COUNTY on the PROPERTY, as well as MIRA's intent to utilize the agency's interest in those funds as the source of tie-in credits in the STORMWATER SYSTEM tie-in credit program being created under this amendment to the Agreement;

**NOW THEREFORE**, for value received and in consideration of the following promises, covenants and conditions, the parties hereto agree as follows:

1. **Recitals.** The parties hereby acknowledge that the recitals set forth above are true and correct and the same are hereby incorporated by reference herein.
2. **Deletion and Replacement of Section 5.** Section 5 of the Agreement, as it currently exists, is declared deleted, repealed, null, void and unenforceable by either Party.
3. A new Section 5 in the Agreement is hereby substituted for the existing Section 5 as follows:

**Section 5. Redevelopment Credit Incentive Program Established.** The COUNTY and MIRA hereby agree to the establishment and implementation of a STORMWATER SYSTEM tie-in redevelopment credit program within the MIRA area as follows:

a. MIRA and the COUNTY agree that, as part of its stormwater collection and treatment program, the COUNTY will create a STORMWATER SYSTEM tie-in credit program for the MIRA area. The total amount of all tie-in credits granted in the MIRA area shall not exceed the COUNTY's cost for excavating and transporting useable clean fill from the PROPERTY after January 1, 2014.

b. Upon approval of a STORMWATER SYSTEM tie-in credit application by the COUNTY for any property within the MIRA area that is the subject of a bona fide redevelopment proposal as determined by MIRA, that currently treats all or a portion of its stormwater regulatory requirement upon its own site and desires to transfer said existing treatment to the COUNTY facility, the property owner or their authorized agent shall, at the time the tie-in connection fee is due to be paid, be granted a tie-in fee credit in the amount proportionate to the existing on site treatment value. as determined by the COUNTY.. Credits shall be first come first serve and shall not exceed the original amount contributed by MIRA.

c. In the event the applicant/owner of a property proposed as a site for a bona fide redevelopment project, as determined by MIRA, seeks to acquire useable fill excavated from the PROPERTY, MIRA must first assign its contractual interest in the amount of fill material sought to the applicant/owner. If an assignment is granted, the applicant/owner must pay the excavation cost and the cost of transporting the fill to the applicant/owner's redevelopment project site.

4. **Ratification of Remainder of the Agreement.** All other terms and conditions of the Agreement not modified by this amendment are hereby ratified and confirmed in full and shall remain in full force and effect between the parties.

5. **Conflicting Provisions.** To the extent of any conflict between this amendment and other terms of the Agreement, the terms of this amendment shall be deemed to supersede the conflicting terms and provisions in the Agreement.


6. **Effective Date.** This amendment shall be deemed to take effect upon the latest date a party executes the amendment.

**IN WITNESS WHEREOF**, the parties have executed this amendment to the Agreement on the dates recited below.

Merritt Island Redevelopment District

BY:   
Sue Nisbet-Lawrence, Chair

Brevard County

BY:   
Mary Bolin Lewis, Chairman

(As approved by the Board on Sept. 16, 2014)

DATE: 10-7, 2014

DATE: September 19, 2014