



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.10.

11/14/2023

Subject:

Approval, Re: Conveyance of Championship Circle NW Right-of-Way to the City of Palm Bay-District 5.

Fiscal Impact:

None

Dept/Office:

Public Works Department / Land Acquisition

Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chair to execute the attached: 1) Interlocal Agreement, 2) Resolution, and 3) County Deed.

Summary Explanation and Background:

The subject property is located in Section 33, Township 28 South, Range 36 East, on the north side of Malabar Road NW in Palm Bay.

In regular session on January 26, 2016, the Board of County Commissioners approved the transfer of Palm Bay Regional Park, now known as Fred Poppe Regional Park, to the City of Palm Bay. The right-of-way legal description for Championship Circle NW was not included in the overall legal description for the park parcel. The County has not maintained the right-of-way and the Brevard County Property Appraiser's website shows the right-of-way as included in the park parcel. The City has requested the County to officially transfer roadway ownership, maintenance, drainage, and associated functional responsibilities for Championship Circle NW to the City. The County agrees that the City's proposed use of the property for roadway purposes will promote public health, safety or welfare, and will serve the public interest as well as a public purpose. The County has determined that said property is not needed for County purposes, and desires to cooperate with and assist the City by conveying the property.

At the regular Council meeting on November 2, 2023, the City executed a Resolution accepting the transfer, and executed the attached Interlocal Agreement. Section 15, Counterparts, of the Interlocal Agreement, allow for separate signatures.

The User Department approves this request.

This acquisition follows the policies and procedures as set forth in Administrative Order 37 and Section 125.38, Florida Statutes.

Clerk to the Board Instructions:

Upon execution by the Chair, Public Works Department will contact the Clerk's office to make arrangements to pick up the original executed Resolution and County Deed.



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

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

November 15, 2023

MEMORANDUM

TO: Marc Bernath, Public Works Director

RE: Item F.10., Approval for Conveyance of Championship Circle NW Right-of-Way to the City of Palm Bay

The Board of County Commissioners, in regular session on November 14, 2023, adopted Resolution No. 23-132, authorizing conveyance of County property; and approved and authorized the Chair to execute the Interlocal Agreement and County Deed with the City of Palm Bay for conveyance of Championship Circle NW right-or-way. Enclosed is the fully-executed Resolution, and County Deed, and an executed Interlocal Agreement.

Upon execution by all parties and recordation, please return a fully-executed copy of the 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

for: Donna Scott
Kimberly Powell, Clerk to the Board

Encls. (3)

cc: Land Acquisition

**INTERLOCAL AGREEMENT BETWEEN BREVARD COUNTY AND THE
CITY OF PALM BAY RELATING TO THE TRANSFER OF ROADWAY
OWNERSHIP, MAINTENANCE, DRAINAGE, AND ASSOCIATED
FUNCTIONAL RESPONSIBILITIES FOR CHAMPIONSHIP CIRCLE NW
LOCATED IN PALM BAY, FLORIDA**

This Interlocal Agreement is made and entered into the date of last signature below by and between Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "County," and the City of Palm Bay, a Florida municipal corporation, hereinafter referred to as the "City."

WHEREAS, the County and the City desire to provide efficient transportation facilities to enhance the quality of life for the residents of Brevard County and Palm Bay, Florida; and

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

WHEREAS, the City has requested that the County transfer its ownership rights and maintenance obligations of Championship Circle NW located in Palm Bay to the City, which is further described in **Exhibit A** attached hereto and incorporated herein by this reference; and

WHEREAS, the Parties acknowledge that the County has never improved or maintained Championship Circle NW; and

WHEREAS, the Parties have determined that this Agreement and the transfer of Championship Circle NW is in furtherance of the community health, safety, and welfare, serves a public purpose, and is in the public interest.

NOW, THEREFORE, the County and City covenant and agree that they have full power and authority to enter into this Agreement and bind their respective governmental entities as follows:

Section 1 – Recitals. The above recitals are true and correct and by this reference are hereby incorporated into and made an integral part of this Agreement.

Section 2 – Statutory Authority. This Agreement shall be considered an Interlocal Agreement pursuant to authority of Section 335.0415, Florida Statutes, and Chapters 125, 163, and 166, Florida Statutes, and other applicable laws.

Section 3 – Purpose. The purpose of this Agreement is for the County to assign and transfer to the City, to the maximum extent, ownership and jurisdiction over and full functional responsibility of Championship Circle NW, and associated roadway drainage facilities and other allied uses, including, but not limited to, permit authority within the right-of-way.

Section 4 – Transfer of Responsibility. This Agreement is intended to satisfy the requirements of Section 335.0415(3), Florida Statutes, and in accordance thereto, the City and the County hereby agree to the permanent transfer of Championship Circle NW, as described in **Exhibit A**. In accordance with Section 125.411, Florida Statutes, the County deed attached thereto as **Exhibit B** will be executed by the County, after approval by the Board of County Commissioners, transferring ownership, maintenance, drainage, and all associated functional responsibilities and allied uses for Championship Circle NW 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 Championship Circle NW, to the maximum extent granted by the County, the City shall have ownership of, plenary authority over, and full responsibility for the functional operation and maintenance of Championship Circle NW. All of the County's rights, responsibilities, liabilities, duties, and obligations as to Championship Circle NW 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 5 – 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, stop signs, and other traffic control devices are the responsibilities of the Party in whose jurisdiction such items are located, except as otherwise provided herein.

Section 6 – Other Agreements. The Parties agree to execute such instruments and documents as may be required to effectuate this Agreement.

Section 7 – Notices. All notices required under this Agreement shall be in writing and delivered to the parties by mail or electronic delivery, as follows:

City Representative

Joseph W. Hale
City Surveyor
120 Malabar Road
Palm Bay, Florida 32909
Joe.hale@palmbayflorida.org

County Representative

Jeanette Scott
Contracts Supervisor
2725 Judge Fran Jamieson Way, Suite A-201
Viera, Florida 32940
Jeanette.scott@brevardfl.gov

With a copy to:
Tammy Thomas-Wood
Support Services Manager

2725 Judge Fran Jamieson Way, Suite A-201
Viera, Florida 32940
Tammy.Thomas-Wood@brevardfl.gov

Section 8 – 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. Nothing contained within this Agreement requires either Party to indemnify the other party for any losses, damages, or injuries caused by or otherwise arising from the negligent or wrongful act or omission of its officers, employees, or agents. Neither party, by execution of this Agreement, will be deemed to have waived its statutory right/defense of sovereign immunity. Each party shall retain all rights, defenses, and remedies under Florida law in the event of any claims, suits or other disputes arising from its performance of the obligations under this Agreement. Nothing in this Agreement shall be interpreted to create any causes of action for any third parties not a party to this Agreement. This indemnification provision shall survive termination.

Section 9 – Default. Either Party to this Agreement, in the event of any act of default by the other, shall have all remedies available to it under the laws of the State of Florida.

Section 10 – Venue and Non-Jury Trial. Venue for any 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.**

Section 11 – Attorney's Fees. 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.

Section 12 – Severability. If any part of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties contained herein are not materially prejudiced and if the intentions of the parties can still be accomplished.

Section 13 – Entirety. This Agreement represents the understanding and agreement of the Parties in its entirety. There shall be no amendments to the Agreement unless such amendments are in writing and signed by the authorized representatives from both Parties.

Section 14 – Effective Date and Recording. Pursuant to Chapter 163, Florida Statutes, the effective date of this Agreement shall be the date on which it is recorded with the Clerk of the Circuit Court in and for Brevard County. The County shall be responsible for recording a fully executed original of this Agreement in the public records

of Brevard County, and shall return a recorded original of the Agreement to the City Representative identified herein.

Section 15 – Counterparts. This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original and such counterparts, together, shall constitute one in the same instrument.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES TO FOLLOW.


IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals on the day and year written below.

ATTEST:



Rachel Sadoff, Clerk

BREVARD COUNTY, FLORIDA



Rita Pritchett, Chair
As approved by the Board on 11-14-2023

Reviewed for legal form and content for Brevard County:

Deputy County Attorney

ATTEST:

CITY OF PALM BAY

Terese M. Jones, City Clerk

J. Robert Medina, Mayor
As approved by the City Council on _____

Reviewed for legal form and content for the City of Palm Bay:

Patricia Smith, City Attorney

EXHIBIT "A"

ROAD RIGHT OF WAY

A road Right-of-Way 100 feet in width lying in Section 33, Township 28 South, Range 26 East, Brevard County, Florida containing 8.494 acres, more or less and being more particularly described as follows:

Commence at the Southwest corner of said Section 33; thence run N 89° 42' 12" E along the south line of the Southwest one-quarter of said Section 33 a distance of 2475.45 feet; thence run N 0° 36' 34" E a distance of 33.00 feet to the north Right-of-Way line of Malabar Road (S.R. 514) and the Point of Beginning, thence run N 0° 36' 34" E a distance of 2605.82 feet; thence S 89° 43' 06" W a distance of 10.00 feet, thence run N 0 36' 34" E a distance of 1094.30; thence run N 89° 42' 17" E a distance of 100.01 feet to the west line of a canal Right-of-Way (150' width): thence runs S 0° 36' 34" W along said west Right-of-Way line a distance of 1094.32 feet; thence run N 89° 43' 06" E a distance of 10.00 feet; thence runs S 0° 36' 34" W along the west line of a canal Right-of-Way (130' width) a distance of 2605.80 feet to the north Right-of-Way of said Malabar Road; thence run S 89° 42' 12" W along said Right-of-Way a distance of 100.01 feet to the Point of Beginning.

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

EXHIBIT "B"

COUNTY DEED
(STATUTORY FORM - SECTION 125.411, Florida Statutes)

THIS DEED, made this 14th day of November 2023, 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 Palm Bay, a municipal corporation of the State of Florida, whose address is 120 Malabar Road, Palm Bay, Florida 32907, 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:

See Exhibit "A" attached and incorporated by this reference, 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 is not used, maintained or ceases to be used and maintained for a public roadway with associated retention and detention ponds, the COUNTY does not retain any right to reenter 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

Rachel Sadoff, Clerk of the Court

By: _____
Rita Pritchett, Chair

(As approved by the Board on November 14, 2023)

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(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:

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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:


Rachel Sadoff, Clerk of the Court

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 
Rita Pritchett, Chair

(As approved by the Board on November 14, 2023)

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RESOLUTION NO. 23-132

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA, PURSUANT TO SECTION 125.38, FLORIDA
STATUTES, AND SECTION 2-247, BREVARD COUNTY CODE OF
ORDINANCES, AUTHORIZING CONVEYANCE OF COUNTY PROPERTY; AND
PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Brevard County, Florida, a political subdivision of the State of Florida (hereinafter the "COUNTY"), has certain public road rights-of-way within the City of Palm Bay, a municipality incorporated under the laws of Florida (hereinafter the "CITY"); and

WHEREAS, the particular right-of-way for said public road in this case is referred to as Championship Circle NW (hereinafter "CHAMPIONSHIP"), which is further described in **Exhibit A**, attached hereto and incorporated herein by this reference; and

WHEREAS, in regular session on January 26, 2016, the Board of County Commissioners of Brevard County, Florida, approved the transfer of Palm Bay Regional Park, now known as Fred Poppe Regional Park, to the CITY; and

WHEREAS, the legal description for CHAMPIONSHIP, which abuts Palm Bay Regional Park, was not included in the conveyance of the Park to the CITY; and

WHEREAS, the COUNTY has never maintained the road right-of-way of CHAMPIONSHIP; and

WHEREAS, the CITY has requested the COUNTY officially transfer its ownership and maintenance rights to the CITY; and

WHEREAS, the COUNTY agrees that the CITY's proposed use of the property for roadway purposes will promote public health, safety or welfare, will serve the public interest, and will serve a public purpose. The COUNTY has determined that said property is not needed for COUNTY purposes, and desires to cooperate with and assist the CITY by conveying the property.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that:

1. The foregoing recitals are true and correct and incorporated to this Resolution by this reference.
2. CHAMPIONSHIP is fully described in **Exhibit A**, which is attached hereto and incorporated herein by this reference. CHAMPIONSHIP is located within the boundary of the CITY and is not needed for COUNTY purposes.
3. The COUNTY finds the CITY has requested the conveyance and the CITY will use and maintain CHAMPIONSHIP as a public roadway to provide safe and well-kept roadways for the

community.

4. In the event CHAMPIONSHIP is not used, maintained, and/or ceases to be used and maintained for a public roadway, the COUNTY does not retain any right to reenter and/or repossess the property.
5. The COUNTY authorizes the Chair of the Board of County Commissioners to execute all necessary documents to convey CHAMPIONSHIP to the CITY by County Deed for nominal consideration.
6. This Resolution shall take effect immediately upon its adoption.

This Resolution is **DONE, ORDERED, AND ADOPTED** in Regular Session, this 14th day of November, 2023.

ATTEST:


Rachel Sadoff, Clerk to the Court

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA


Rita Pritchett, Chair

As approved by the Board on: November 14,
2023

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BOARD OF COUNTY COMMISSIONERS

AGENDA REVIEW SHEET

AGENDA: Conveyance of Championship Circle NW Right-of-Way to the City of Palm Bay – District 5

AGENCY: Public Works Department / Land Acquisition

AGENCY CONTACT: Lucy Hamelers, Land Acquisition Supervisor

CONTACT PHONE: 321-350-8336

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Lucy Hamelers, Supervisor	<u>LA</u>	<u> </u>	<u>10-24-23</u>
COUNTY ATTORNEY ALEXANDER ESSEESSE Deputy County Attorney	<u>AE</u>	<u> </u>	<u>10/25/23</u>

LOCATION MAP

Section 35, Township 27 South, Range 36 East - District: 5

PROPERTY LOCATION: 1951 Malabar Road in Palm Bay

OWNERS NAME(S): Brevard County, Florida

