

**CITY OF MELBOURNE - BREVARD COUNTY**  
**JOINT PLANNING and REVIEW INTERLOCAL AGREEMENT**

This Joint Planning and Review Interlocal Agreement is made and entered this \_\_\_ day of \_\_\_\_\_, 2000, by and between the City of Melbourne, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter "City") and Brevard County, Florida, a charter county and political subdivision of the State of Florida (hereinafter "County").

**PREAMBLE**

WHEREAS, the County and the City recognize that proper intergovernmental coordination is essential for sound growth management; and

WHEREAS, the County and City seek to have compatible land uses adjacent to their common boundary; and

WHEREAS, section 163.01(4), Florida Statutes, Florida Interlocal Cooperation Act of 1969, allows the County and the City to jointly exercise any power, privilege or authority which they share in common, in this case land development regulation, and which each might exercise separately; and

WHEREAS, pursuant to Part II of Chapter 163, Florida Statutes, the Local Government Comprehensive Planning and Land Development Regulation Act (the "Act"), and Chapters 9J-5 and 9J-12, Florida Administrative Code, the City and the County adopted Comprehensive Plans on September 8, 1988 (County) and December 22, 1998 (City) and have subsequently amended them from time to time (hereinafter referred to as the "Comprehensive Plan[s]"); and

WHEREAS, the State Comprehensive Plan requires local governments to direct development to those areas which have in place the land and water resources, physical abilities and service capacity to accommodate growth in an environmentally acceptable manner and use incentives and disincentives to achieve a separation of urban and rural land uses; and

WHEREAS, the State Comprehensive Plan requires local governments to protect the substantial investment in public facilities which already exist and to plan for and finance new facilities in a timely, orderly and efficient manner; and

WHEREAS, the City and the County are desirous of engaging in joint efforts to comprehensively plan and review certain areas within the City limits of the City of Melbourne and as

well as certain areas located within the boundaries of the County of Brevard, which areas are collectively and individually referred to herein as the "Joint Planning and Review Area" or the "JPA"; and

WHEREAS, the City and the County wish to agree on certain procedures for the timely review and processing of annexation and development proposals within the JPA; and

WHEREAS, annexation of properties can affect the responsibility for maintenance of public facilities such as roadways and drainage facilities; and

WHEREAS, there is no intent for this Agreement to restrict the County's authority to amend its Comprehensive Plan, Official Zoning Map, or apply land development regulations consistent with the provisions contained herein, or otherwise to make land use decisions for unincorporated areas within the JPA; and

WHEREAS, there is no intent for this Agreement to restrict the City's authority to amend its Comprehensive Plan, Official Zoning Map, or apply land development regulations consistent with the provisions contained herein, or otherwise to make land use decisions for lands within the corporate areas within the JPA; and

WHEREAS, a Joint Planning and Review Interlocal Agreement will provide a basis for the evaluation of future development applications and annexation proposals as well as for the adequate provision of public services; and

WHEREAS, the City and County wish to identify a joint planning and review area and have determined that such an agreement will foster intergovernmental coordination and cooperation, economical provision of services, and adequate utilization of existing and proposed infrastructure; and

WHEREAS, this Agreement provides the City and the County with ample opportunities to renegotiate the Agreement in response to changed circumstances, including the ability to seek refinement or expansion of the Joint Planning and Review Area Boundary; and

WHEREAS, a public hearing with due public notice has been held by the City and the County prior to approval of this Agreement and as set forth in Section 163.3171(3), Florida Statutes;

WHEREAS, it is the intent of the City and the County that this Agreement shall be immediately applicable to any issuance of a Development Order, as defined in Article II of this Agreement, for a parcel of land located in the JPA and submitted to the County or City after \_\_\_\_\_ 2000; and

WHEREAS, the County and City desire to enter into this Joint Planning and Review Interlocal Agreement to address post-annexation issues related to road right-of-way and drainage facility maintenance responsibility as well as development order requests within a joint planning and review area.

WHEREAS, it is desirable for the City and the County to enter into such an agreement to better identify areas proposed for future municipal service and jurisdiction and to ensure better coordination of government services and reduce or eliminate substantial future non-conformities; and

WHEREAS, the establishment of this agreement will provide for a more well defined boundary between the City and the County including the elimination of enclaves and reduction of confusion to residents and service providers;

WHEREAS, the agreement will facilitate the flow of information regarding land development issues between the City and the County;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the City and the County agree with each other to create and participate in the following Joint Planning and Review Area agreement (hereinafter referred to as the "Agreement") as follows:

#### **ARTICLE I - INCORPORATION OF PREAMBLE**

1. Incorporation of Preamble. The Preamble above is true and correct and is incorporated into this Agreement as if fully set forth below. This Agreement shall be considered an Interlocal Agreement pursuant to the authority within Section 163.01, 163.3177(6)(h)(1)(a) as well as Chapter 171, Florida Statutes.

#### **ARTICLE II - DEFINITIONS**

1. 'Act' means and refers to the "Local Government Comprehensive Planning and Land Development Regulation Act" set forth in Chapter 163.3162 et. seq., Florida Statutes, as the same may be amended or superseded from time to time.

2. 'Agreement' means and refers to this Joint Planning and Review Interlocal Agreement, as the same may be amended or supplemented as provided for herein.

3. 'City' means the City of Melbourne, a Florida municipal corporation.

4. 'City Comprehensive Plan' means the comprehensive plan adopted pursuant to the Act, by the City Ordinance No. 98-62, and as may have been otherwise amended or may, in the future, be amended from time to time.

5. 'Collector Road' is as defined in either the City or the County Land Development Regulations or Comprehensive Plans and may include arterial roads.

6. 'County Comprehensive Plan' means and refers in the case of the County to the County's Comprehensive Plan, adopted pursuant to the Act.

7. 'County Commission' means the elected legislative governing board of Brevard County referred to as the "Board of County Commissioners of Brevard County".

8. 'Council' means the elected legislative governing board of the City of Melbourne and referred to as the "Melbourne City Council".

9. 'County' means Brevard County, Florida, a political subdivision of the State of Florida.

10. 'County Maintained Roads' - (See Exhibit 'C') Refers to those roadways defined as local, collector or arterial, or segments thereof, along with the associated drainage facilities, which may or may not have been transferred to the County for maintenance responsibility by the State of Florida as outlined in Chapter 335.04 Florida Statutes. The County agrees to continue to maintain these facilities until transferred to the City of Melbourne in accordance with the terms of this Interlocal Agreement, or as said Agreement is modified pursuant to Article IV below.

11. 'Development Order' means any determination or decision requiring either legislative or administrative review and approval by either governing body related to Annexations, Comprehensive Plan Amendments, Site Plans, Site Plans resulting in greater than 50% expansion, Developments of Regional Impact (DRIs), Planned Unit Developments (PUDs), Subdivisions, Rezoning, Special Exceptions, Infrastructure or Utility Improvements, Binding Development Plans (BDP) or Conditional Uses making possible development of or construction upon any parcel of land.

12. 'Enclave' means any unincorporated land which is enclosed within and bounded on all sides by the City of Melbourne; other municipalities; natural features like oceans, rivers and lakes; railroad tracks; or Interstate Highway (I-95).

13. 'Future Land Use Element' means and refers to that section of either the City's or County's Comprehensive Plan, which includes all of the requirements of Section 163.3177(6)(a), Florida Statutes, as the same may be amended or renumbered from time to time.

14. 'Future Sewer Service Area' (see Exhibit 'B') means and refers to the area(s) within the JPA identified for future County sewer service line extension or City sewer service line extension. The goal of this sewer service section of the Agreement shall be to efficiently provide sewer services and to avoid duplication of facilities.

15. 'Governing Body' means in the case of the County, the Board of County Commissioners, and in the case of the City, the Melbourne City Council.

16. 'Joint Planning and Review Area' means and refers to that area depicted in Exhibit 'A'.

17. 'JPA' means the Joint Planning and Review Area.

18. 'JPA Map' means and refers to the map attached and incorporated herein by reference as Exhibit "A", which designates parcels of land encompassed by this Agreement.

19. 'Land Development Regulation' means ordinances enacted by the City or the County for the regulation of any aspect of development.

20. 'Local Planning Agency' means the recommending agency appointed by the Board or City Council to review Comprehensive Plan and zoning code amendments. The City LPA is currently the City Planning Commission. The County LPA is currently the County Planning and Zoning Board.

21. 'Parcel of Land' means any quantity of land capable of being described with such precision or exactness that its location and boundaries may be established, which is designated by the City, by the County, or by its owner or developer as land to be used, or developed as, a unit or which has been used or developed as a unit.

22. 'Pre-Annexation Agreement' means any official recorded document between the City of Melbourne and an entity petitioning the City of Melbourne for annexation. The document contains language binding the City and the petitioner to develop any property subject to the Pre-Annexation Agreement in accordance with the land development regulations of the City as well as other conditions stipulated in the body of the agreement. Said document may, upon the request of the City of Melbourne, be made into a binding development agreement as set forth in the Florida State Statutes.

23. 'Infrastructure or Utility Improvements' means any proposed sewer, water, right-of-way or roadway improvements plans, parks, open space improvements, public building, public or private utilities, public drainage and retention conveyance structures owned and operated by a local government or private entity.

### **ARTICLE III - PROCEDURES FOR REVIEWING AND COMMENTING ON DEVELOPMENT ORDERS**

1. Joint Planning and Review Area Created. This area shall be such land as identified in Exhibit "A".

2. City/County Review of Development Order Applications within the JPA. In addition to the evaluation and comments normally prepared by the agency initially accepting a Development Order application, any comments submitted by the agency of secondary jurisdiction in their review of the courtesy copy of said Development Order application shall be considered by the agency of primary jurisdiction in the review of said Development Order including examination of the relationship between the application, the City and County's Comprehensive Plans, and this Agreement.

3. Forwarding of Development Order Applications from County to City and City to County. The City and the County, within five (5) calendar days of receipt of any applications or preliminary plans associated with a Development Order (as defined herein) including infrastructure or utility improvement plans within the JPA, shall provide a courtesy copy of such application and plans to the designated office of the other party as described in Section 6., Article IV herein. The City or County may request a meeting to discuss such applications and plans related to the impact of such development on the neighboring jurisdiction subject to this Agreement.

The County/City staff shall provide to the City/County its comments on annexations and Development Order courtesy copies generated within the JPA, within fifteen (15) calendar days of receipt of a courtesy copy of said plans or applications. No final decision on such Development Orders by the agency of primary jurisdiction shall be considered until receiving comments from the neighboring governmental jurisdiction, provided said comments are forwarded consistent with this Agreement.

If a written letter of objection is submitted by the neighboring jurisdiction to the party of primary jurisdiction within fifteen (15) calendar days after receipt of a particular Development Order plan or application courtesy copy, then the processing of said plan or application by the agency of primary jurisdiction shall be delayed for a period not to exceed fifteen (15) calendar days to permit time to resolve the concerns noted. The noted time frames may be extended by consent of both parties in order for the City staff and the County staff to meet and review the objecting party's comments. The noted time frames may also be extended by consent of both parties in order for the elected body of secondary jurisdiction to consider such Development Order or application courtesy copies during its next available public hearing.

Such comments may include, but may not be limited to: the existing or proposed Future Land Use, Zoning designation(s) or Residential Density on the subject property; development standards related to signage, landscaping, land clearing; provisions for and connections to open spaces; parking; traffic volumes or traffic distribution patterns potentially generated by the proposal; drainage conveyance from the proposed development; whether the development can or will be served by public sewer or private septic systems; whether the development can or will be served by private well or public water services; service inefficiencies created by unincorporated enclaves; and post-annexation maintenance of adjacent right-of-ways and drainage systems.

4. Development Orders within the City's portion of the JPA. The governing and/or administrative body of the City shall consider the courtesy copy comments of the County in the City's evaluation of Development Orders (as defined in Article II of this Agreement) occurring within the City's portion of the Joint Planning and Review Area shown on Exhibit 'A'. No provisions of this Agreement shall supercede any development order review procedures or time frames already established by law or ordinance.

5. Development Orders within the County's portion of the JPA. The governing and/or administrative body of the County shall consider the courtesy copy comments of the City in the County's evaluation of Development Orders (as defined in Article II of this Agreement) occurring within the County's portion of the Joint Planning and Review Area shown on Exhibit 'A'. When receiving any Development Order plans/applications for properties within the County portion of the JPA which are, at the same time, also bound by a City of Melbourne Pre-Annexation Agreement, the County shall attach staff review comments and forward such plans/applications directly to the City. Formal review of said plans/applications along with permitting, inspection and the issuance of Certificates of Occupancy on such properties shall then be deferred to the City and such properties shall develop according to the City of Melbourne's land development regulations. The collection of review, permitting and / or inspection fees for such applications shall also be deferred to the City.

6. Future Sewer Service Area. The City of Melbourne shall not expand the City's sewer service beyond those areas identified as the City's *Current & Proposed City Sewer Service Area* as shown on Exhibit 'B'. In those areas identified on Exhibit 'B' as *Not In the JPA*, the County and City shall coordinate the expansion of either the City or County sewer systems into those areas in order to effectively provide sewer services while avoiding duplication of services.

7. Terms of Annexation Related Transfer of Infrastructure. All future municipal annexation-related transfers of infrastructure shall occur consistent with the following terms:

Upon annexation of at least fifty one percent (51%) of the existing front footage of property abutting any subject road right-of-way between the two nearest collector street (or streets with a larger classification) intersecting right-of-ways (i.e. cross streets), except those roads specifically exempted from this Agreement as identified in Exhibit 'C', the City shall assume maintenance responsibility for the entire road right-of-way and associated drainage facilities, not terminating at any right-of-way centerline, but between and extending to and including the above mentioned collector cross street intersections, or as maybe mutually designated.

8. Right-Of-Way Maintenance Responsibility Transfers from County to City. Future maintenance responsibility transfers from the County to the City related to road right-of-ways and their associated drainage facilities shall require an agreement between the City and the County. Until this Agreement is modified pursuant to Article IV below, the County agrees to continue to maintain, regardless of any adjacent annexations, the particular roadways or segments thereof, and associated drainage facilities within the JPA as depicted or listed within Exhibit 'C'.

#### ARTICLE IV - GENERAL PROVISIONS

1. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of the formal parties herein and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal named party hereto. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon or give any person or corporation other than the parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereto; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the parties hereto and their respective and express representatives, successors and assigns.

2. Re-negotiation. The County or City may call for re-negotiation of this Agreement by written notice to the other party at any time. Upon such written notice, for a period of 90 days thereafter, the City and the County shall attempt to renegotiate this Agreement in good faith. During that 90 day period, where either party, in its sole discretion and in good faith, determines that such renegotiations have reached an impasse, it may invoke the conflict resolution procedures set forth in

Chapter 164, Florida Statutes, as provided for by the East Central Florida Regional Planning Council. If no Agreement is negotiated during the 90 day period or during the conflict resolution process, the terms of this Agreement shall continue to govern and remain in full force and effect. Should the City or the County seek judicial review of law or in equity of this Agreement, or to enforce this Agreement, the City and the County recognize that venue will be properly located in Brevard County, Florida, for any action regarding this Agreement. The failure of any party to this Agreement to enforce any provision contained herein shall in no event be deemed a waiver of its rights to thereafter enforce this Agreement. Utilization of one remedy to enforce this Agreement shall not be deemed the only method by which to enforce the provisions of this agreement.

3. Severability. In the event that any section, subsection, sentence, clause, or word of this Agreement shall be held by a court of competent jurisdiction to be partially or wholly invalid or unenforceable for any reason whatsoever, any such invalidity, illegality, or unenforceability shall not affect any of the other remaining Articles, sections, subsection, sentences, clauses or words of this Agreement, and this Agreement shall be read and/or applied as if the invalid, illegal, or unenforceable section, sub-section, sentence, clause, or word did not exist.

4. Effective Date. Prior to this Agreement becoming effective, it shall be approved and executed by both parties hereto, and pursuant to Section 163.01 (11), Florida Statutes (1999), this Agreement shall become effective immediately after filing of this Agreement with the Clerk of the Circuit Court of Brevard County, Florida. This Agreement shall be recorded in the Public Records of Brevard County, Florida, and the cost thereof, if any, shall be shared equally by both governing bodies.

5. Termination and Amendment.

a. Termination. This Interlocal Agreement shall terminate automatically after five (5) years from the date of final adoption unless it is renewed, for an additional 5 year period, in writing, more than 30 calendar days prior to the expiration date mentioned herein. Either party may terminate this Agreement by delivering written notice to the other party of its intent to terminate.

b. Amendment. This Agreement may be amended at any time provided that at least a numerical majority of the total membership of both City and County governing bodies authorize said amendment.

c. Amendment or Termination of Agreement to be in Writing. Except as provided for herein, no amendment or termination of this Agreement shall be binding on either party unless a written instrument terminating or amending this Agreement is executed by the County Commission

Chairman and the Mayor of the Melbourne City Council after being duly authorized to do so by their respective governing bodies, and such termination or amendment shall not be effective until after it has been filed with the Clerk of the Circuit Court of Brevard County, Florida. Except as set forth herein, all instruments amending or terminating this Agreement shall be recorded in the Public Records of Brevard County, Florida, and the cost of recordation, if any, shall be shared by both parties.

6. Notice; Proper Form. Any notice required or allowed to be delivered hereunder to either the City or the County by the other shall be in writing and shall be deemed to be delivered when: (a) hand delivered to the official designate hereunder with receipt acknowledged in writing, or (b) upon receipt of such notice when deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the party at the address set forth opposite the party's name below, or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith. Copies need not, but are encouraged to be sent pursuant to the above referenced provisions. Mere delivery of copies shall not be determined to be a compliance with the requirements hereof:

<p>COUNTY:      If by mail or hand delivery:                           County Manager or Designee                           Brevard County Government Center                           2725 Judge Fran Jamieson Way                           Viera, FL 32940</p>	<p>CITY:            If by mail or hand delivery;                           City Manager or Designee                           City of Melbourne                           900 E. Strawbridge Avenue                           Melbourne, Florida 32901</p>
---	--

7. Rules of Construction. As used in this Agreement, the plural includes the singular, and the singular includes the plural. Use of one gender includes all genders. Subtitles or catchlines for Articles, Sections, and Subsections herein are used for each in reading this Agreement, and the subtitles or catchlines do not form a substantive part of this Agreement. This Agreement shall be liberally interpreted to achieve its goals and purposes.

IN WITNESS WHEREOF, the Chairman of the Board of County Commissioners of Brevard County, Florida and the Mayor of the City of Melbourne, each being authorized by their respective Commission or Council, as the case may be, have set their hands and seals on the date set forth below.

DONE, ORDERED AND ADOPTED, in regular session this \_\_\_\_ day of \_\_\_\_\_, 2000.

Attest:

**BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA**

\_\_\_\_\_  
Sandy Crawford, Clerk

(SEAL)

\_\_\_\_\_  
Nancy N. Higgs, Chairman

As approved by the Board on \_\_\_\_\_, 2000

**STATE OF FLORIDA**

**COUNTY OF BREVARD**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2000,  
by \_\_\_\_\_, who is personally known to me, as Chairman of the BOARD  
OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of  
the State of Florida.

NOTARY PUBLIC

\_\_\_\_\_  
State of Florida at Large

My Commission Expires:

**CITY OF MELBOURNE, FLORIDA, a Florida Municipal Corporation**

ATTEST:

\_\_\_\_\_  
Cathy Wysor, City Clerk

(SEAL)

\_\_\_\_\_  
John Buckley, Mayor

Date Executed:

**STATE OF FLORIDA**

**COUNTY OF BREVARD**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2000, by, \_\_\_\_\_, who is personally known to me as Mayor of the Melbourne City Council, for the CITY OF MELBOURNE, FLORIDA, a political subdivision of the State of Florida.

NOTARY PUBLIC

\_\_\_\_\_

State of Florida at Large

My Commission Expires:

**BREVARD COUNTY / CITY OF MELBOURNE  
JOINT PLANNING AGREEMENT**

**EXHIBIT "C"**

- |     |                      |   |
|-----|----------------------|---|
| 1.  | Croton Road          | Sarno Road to Post Road                       |
| 2.  | Post Road            | Wickham Road to Turtle Mound Road             |
| 3.  | Parkway Drive        | Wickham Road to Turtle Mound Road             |
| 4.  | Lake Washington Road | Wickham Road to Turtle Mound Road             |
| 5.  | Parkway Drive        | Turtle Mound Road to Harlock Road             |
| 6.  | Lake Washington Road | Turtle Mound Road to Lake Washington          |
| 7.  | Turtle Mound Road    | Post Road to Aurora Road                      |
| 8.  | Aurora Road          | U.S. 1 to Harlock Road                        |
| 9.  | John Rodes Boulevard | Aurora Road to Ellis Road                     |
| 10. | Sarno Road           | Wickham Road to U.S. 1                        |
| 11. | Riverside Drive      | Eau Gallie Boulevard to Pinetree Drive        |
| 12. | Evans Road           | NASA Boulevard to New Haven Avenue (U.S. 192) |
| 13. | Eber Road            | Dairy Road to Hollywood Boulevard             |
| 14. | Florida Avenue       | Dairy Road to Hollywood Boulevard             |
| 15. | Dairy Road           | U.S.192 (New Haven Avenue) to Palm Bay Road   |
| 16. | Palm Bay Road        | Babcock Street to Dairy Road                  |
| 17. | Wickham Road         | Pineda Causeway to NASA Boulevard             |
| 18. | Apollo Boulevard     | Sarno Road to Babcock Street                  |