

8. Consideration of an Interlocal Agreement with Brevard County to transfer ownership rights and maintenance of a right-of-way located within Cisna Park Subdivision.



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, City Manager

**THRU:** Valentino Perez, Public Works Director

**DATE:** May 2, 2024

**RE:** Consideration of an Interlocal Agreement with Brevard County to transfer ownership rights and maintenance of a right-of-way located within Cisna Park Subdivision.

### SUMMARY:

The City is requesting Brevard County to transfer its ownership rights and maintenance obligations of a 30-foot right-of-way known as Cisna Park Unnamed Road.

The existing unimproved parcel was platted in 1933. Because Palm Bay was not incorporated at that time, Brevard County was the agency which assumed jurisdiction for the right-of-way. Recent annexations of the adjoining properties did not include this parcel. The City's request for the transfer is to provide complete legal ownership of the right-of-way. The parcel does not meet City minimum requirements for road right-of-way width and therefore cannot be developed as a private or public road. The proposed transfer will be as a utility corridor and recreation area.

### REQUESTING DEPARTMENTS:

Public Works

### FISCAL IMPACT:

None. If adjoining properties choose to use the property, private maintenance will be required.

### STAFF RECOMMENDATION:

Motion to approve Interlocal Agreement transferring ownership, maintenance, drainage, and associated responsibilities of Unnamed 30-foot-wide right-of-way located in CISNA Park Subdivision from Brevard County to City of Palm Bay.

### ATTACHMENTS:

Honorable Mayor and Members of the City Council

Legislative Memorandum

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1. Applicable Interlocal Agreement for Transfer of Reference Property
2. Cisna Park Unnamed Road Location Map A
3. Cisna Park Unnamed Road Location Map B

**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 CISNA PARK UNNAMED  
ROAD 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 Cisna Park Unnamed Road 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 Cisna Park Unnamed Road; and

**WHEREAS**, the Parties have determined that this Agreement and the transfer of Cisna Park Unnamed Road 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 Cisna Park Unnamed Road, 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 Cisna Park Unnamed Road, 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 Cisna Park Unnamed Road 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 Cisna Park Unnamed Road, 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 Cisna Park Unnamed Road. All of the County's rights, responsibilities, liabilities, duties, and obligations as to Cisna Park Unnamed Road 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:

**BREVARD COUNTY, FLORIDA**

\_\_\_\_\_  
Rachel Sadoff, Clerk

\_\_\_\_\_  
Rita Pritchett, Chair  
As approved by the Board on 10-24-2023

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 \_\_\_\_\_

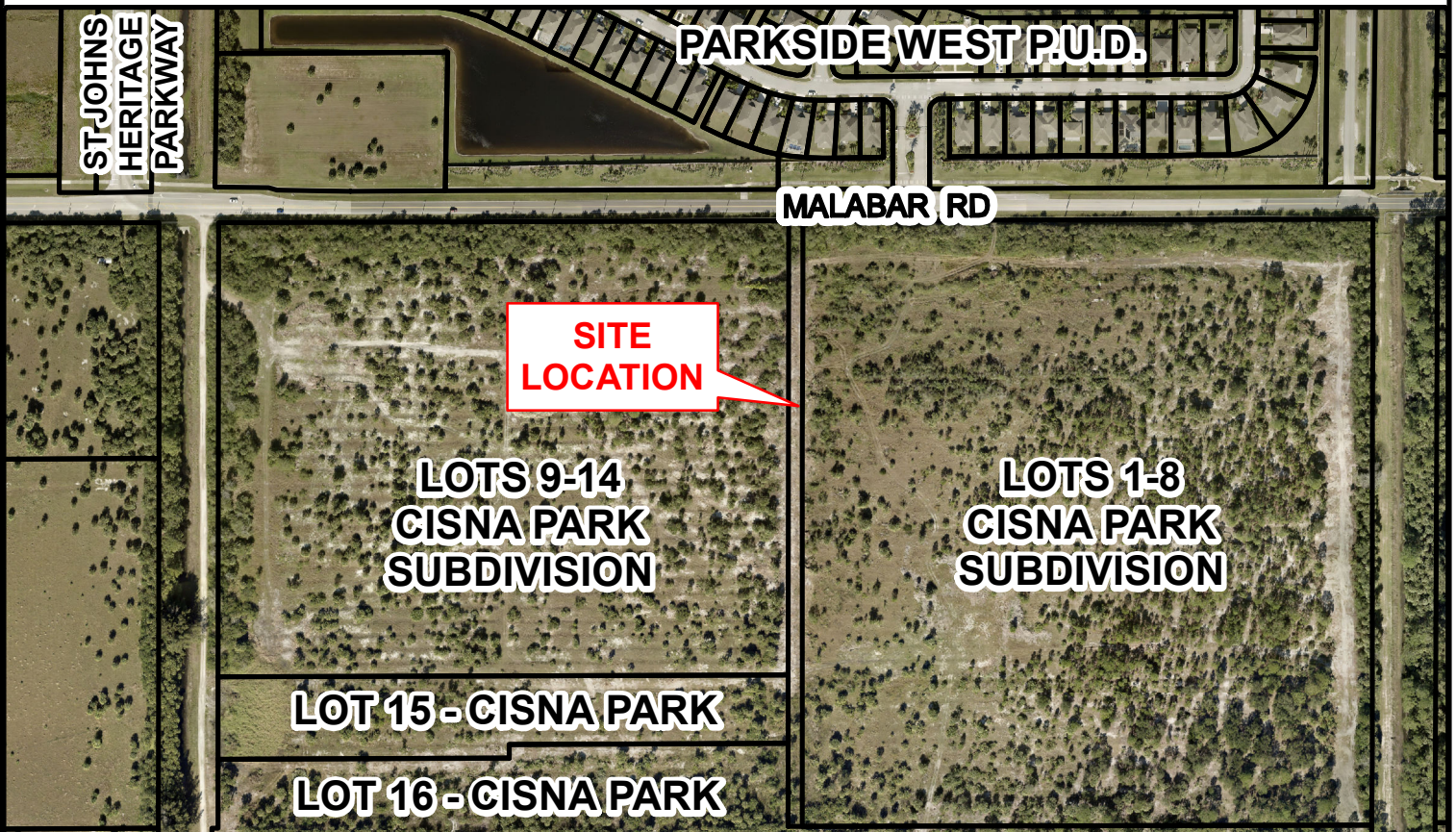
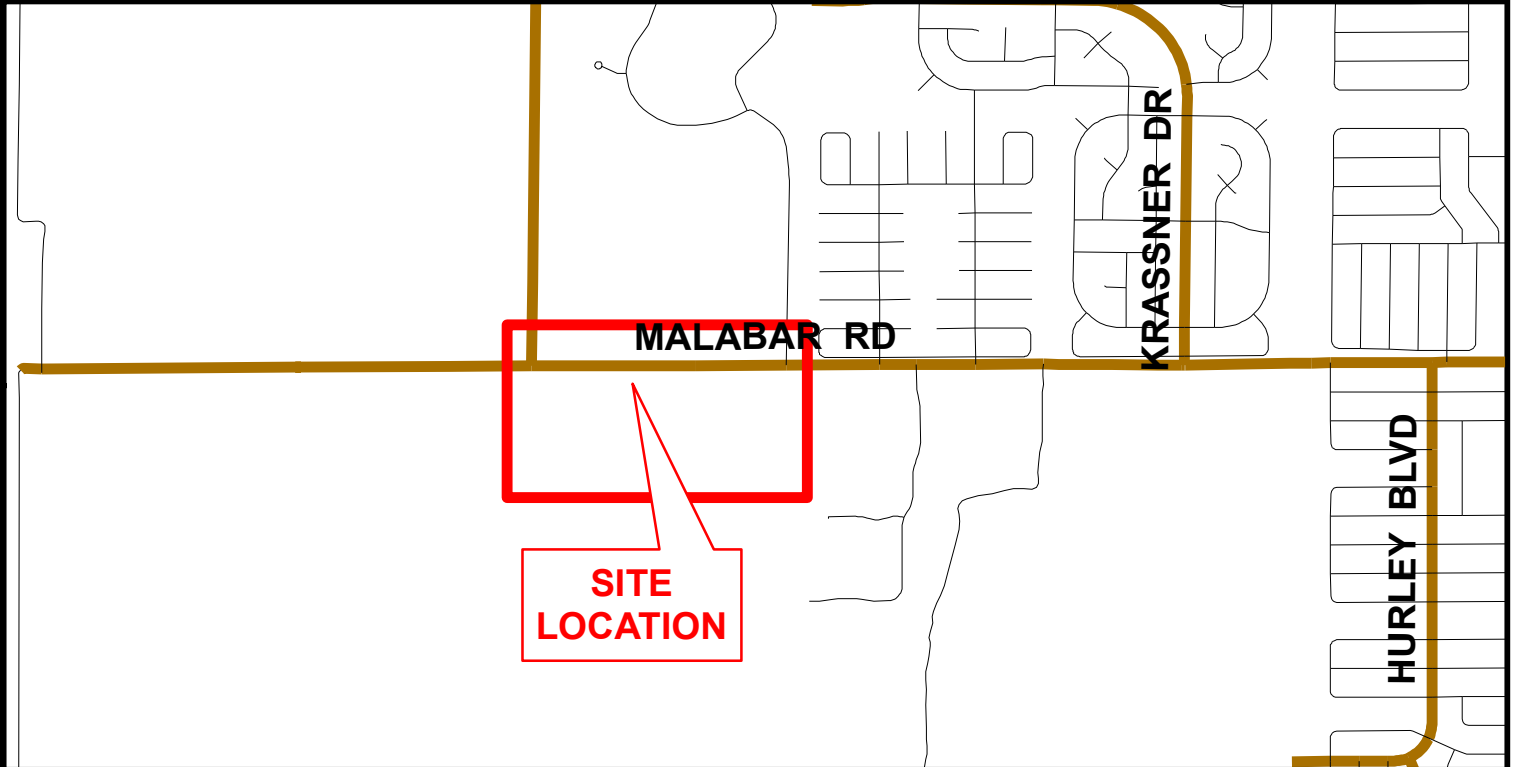
Reviewed for legal form and content  
for the City of Palm Bay:

\_\_\_\_\_  
Patricia Smith, City Attorney





# LOCATION MAP



Map is for illustrative purposes only!  
Not to be construed as binding or a survey.  
Map created by the City of Palm Bay  
Public Works Department (RSD), on April 9, 2024.

**CISNA PARK**  
**30' ROAD R/W**

0 100 200 400  
Feet  
1 inch = 400 feet



FRED POPPE REGIONAL PARK

ST JOHNS HERITAGE PKWY NW

CHAMPIONSHIP WAY NW

PARKSIDE WEST P.U.D.

MALABAR RD

CISNA PARK  
SUBDIVISION  
LOTS 9-14

CISNA PARK  
SUBDIVISION  
LOTS 1-8

SITE

30' WIDE ROAD R/W

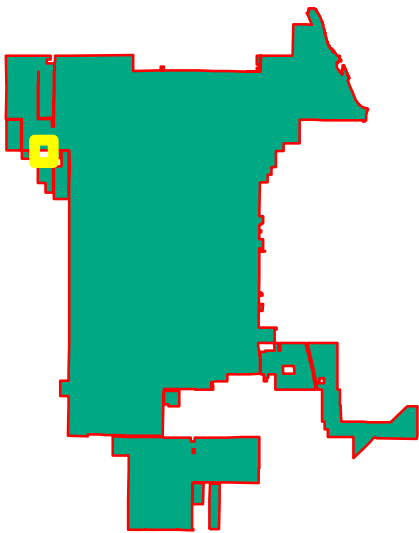
CISNA PARK - LOT 15

CISNA PARK - LOT 16

SOUTH 1/2 OF THE  
NW 1/4 OF SECTION 4,  
TOWNSHIP 29 SOUTH,  
RANGE 36 EAST

LEGEND

PARCEL LINES



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# CISNA PARK 30' ROAD R/W

0 100 200 400  
Feet  
1 inch = 400 feet