

**INTERLOCAL AGREEMENT BETWEEN THE
CITY OF BROOKSVILLE, FLORIDA, AND HERNANDO COUNTY, A
POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,
REGARDING FUNDING, DESIGNING, ENGINEERING,
CONSTRUCTING AND MAINTAINING
POTABLE WATER, AND SANITARY SEWER INFRASTRUCTURE
IMPROVEMENTS IN THE AREA KNOWN AS "SOUTH BROOKSVILLE"
AND AGREEMENT FOR CITY AND COUNTY STAFF TO PREPARE AND
PROCESS PROPOSED COMPREHENSIVE PLAN AMENDMENTS RELATIVE
TO THE "SOUTH BROOKSVILLE PLANNED DEVELOPMENT DISTRICT"**

THIS INTERLOCAL AGREEMENT is made and entered into as of the 3rd day of May, 2010 (the "Agreement"), by and between the City of Brooksville, whose address is 201 Howell Avenue, Brooksville, FL 34601 (the "City" or "Brooksville") and Hernando County, a political subdivision of the State of Florida, through its elected Board of County Commissioners, whose address is 20 N. Main Street, Suite 263, Brooksville, FL 34601 (the "County" or "Hernando") regarding funding, designing, engineering, constructing and maintaining potable water, and sanitary sewer infrastructure improvements in the area known as "South Brooksville" and agreement for City and County staff to prepare and process proposed Comprehensive Plan Amendments relative to "South Brooksville Planned Development District" and the parties state:

Recitals

WHEREAS, the area known as "South Brooksville" lies within a portion of unincorporated Hernando County and within a portion of the City of Brooksville and is depicted within the shaded area of the map attached as **Exhibit "1"** hereto and made a part hereof and which area has historic heritage; and,

WHEREAS, the area comprising South Brooksville lies completely within the *City of Brooksville / Hernando County Enterprise Zone # 2701*, as depicted on the three maps attached as composite "**Exhibit 2**" hereto and made a part hereof; and,

WHEREAS, Enterprise Zones in Florida are established pursuant to Chapter 290 of the Florida Statutes entitled 'Urban Development' and the creation of Enterprise Zones within Florida are intended to encourage the revitalization of "areas that chronically display extreme and unacceptable levels of unemployment, physical deterioration and economic disinvestment"; and,

WHEREAS, the County Planning Department and the City Planning Department are each preparing Amendments to their respective Comprehensive Plans to formally establish and create the '*South Brooksville Planned Development District*' ("PDD"), and which would

represent a new PDD on the respective Future Land Use Maps ("FLUM") of the County and the City; and,

WHEREAS, the proposed South Brooksville PDD lies generally between SR 50 on its southern boundary, SR 50 A on its northeastern boundary, Russell and ACL Streets on its northern boundaries, and Main Street on its western boundary, and as approximately depicted in the map attached as **Exhibit "1"** and,

WHEREAS, the proposed amendment to the County Comprehensive Plan is scheduled to be heard by the County Planning and Zoning Commission in May and is scheduled to be heard by the Hernando County Board of County Commissioners (the "BOCC") in June, 2010, and, if approved, then transmitted to the Florida Department of Community Affairs ("DCA") for their review and consent; and,

WHEREAS, a similar hearing and transmittal process is currently underway by the City; and,

WHEREAS, the respective Comprehensive Plan Amendments establishing the South Brooksville PDD, subject to and following approvals by the respective elected governing bodies, would encourage the development/re-development of a mixed-use community containing retail, industrial, transit-oriented, institutional, service, recreational and open space land uses catering to residents and workers; and,

WHEREAS, the land uses proposed for the South Brooksville PDD are proposed at levels (including level of retail, service, recreational, cultural and social amenities) intended to provide economic and improve quality-of-life opportunities to landowners and residents within the PDD; and,

WHEREAS, the respective Comprehensive Plan Amendments of the County and the City include a set of jointly prepared plan objectives and policies designed to provide standards and direction for the establishment of the South Brooksville PDD and to promote the development of infrastructure, services and facilities that will support the community; and,

WHEREAS, prior to the City and the County undertaking these steps to create the South Brooksville PDD, a South Brooksville Community Initiative Team (committee) was formed consisting of residents, business owners, property owners, church and community leaders of the South Brooksville area as a crucial step in identifying the specific problems and issues – and potential solutions – relative to the South Brooksville area; and,

WHEREAS, some of the existing potable water and sanitary sewer facilities which serve the South Brooksville area (including its residents, property owners and businesses)

are severely inadequate, outdated, failing and/or under-serving – or in some instances non-existent (the “Water and Sewer Problems”); and,

WHEREAS, the purpose of this Agreement is to address the Water and Sewer Problems in the South Brooksville area related to potable water and sanitary sewer facilities and infrastructure which are inadequate, outdated, failing and/or under-serving, or in some instances non-existent; and,

WHEREAS, City and County staff, including staff from the respective Engineering, Public Works and Utilities Departments, have been working together and diligently on designing potential solutions to the Water and Sewer Problems affecting the South Brooksville area, its residents, property owners, and businesses; and,

WHEREAS, the total of all potable water and sanitary sewer facilities and infrastructure (including repairing, enlarging, expanding existing facilities and infrastructure together with building new facilities and infrastructure as necessary) for the South Brooksville area shall be collectively referred to as the “Water and Sewer Improvements” for the purposes of this Interlocal Agreement; and,

WHEREAS, City and County staff have estimated the cost for the Water and Sewer Improvements at \$6,000,000 (the “Targeted Funding for the Water and Sewer Improvements”); and,

WHEREAS, a conceptual drawing has been prepared which shows how the Water and Sewer Improvements “could” be laid out/located (attached as **Exhibit “3”** hereto and made a part hereof); and,

WHEREAS, the actual layout and location of new or expanded Water and Sewer Improvements will be determined by the City, with the cooperation and assistance of the County, and with the input from the South Brooksville community, during the design and engineering phases of the project, all subject to project funding; and,

WHEREAS, the City and the County agree that the proposed Water and Sewer Improvements would greatly benefit the South Brooksville area, its property owners, residents, and businesses, and promote the general health, safety and welfare of all residents; and,

WHEREAS, neither the City nor the County have the funds necessary to implement and construct the proposed Water and Sewer Improvements and must rely upon outside assistance if the Water and Sewer Improvements are to occur; and,

WHEREAS, the United States Department of Housing and Urban Development (“HUD”), through its Community Development Block Grant (“CDBG”) programs, has funds

available to address local infrastructure needs and assist areas such as South Brooksville; and,

WHEREAS, the United States Department of Agricultural (“USDA”), through programs that assists local governments such as its Rural Development program, has funds available to address infrastructure and assist areas such as South Brooksville; and,

WHEREAS, it is not in the best interest of South Brooksville for the City and the County to separately apply or compete for such grant or loan funds that may exist; and,

WHEREAS, the best chance for funding the design and construction of the proposed Water and Sewer Improvement projects exist through the joint and mutual cooperation of the City and the County and the parties working together to implement same; and,

WHEREAS, the parties agree that the County should take the lead in preparing the appropriate grant and/or loan applications (including, but not limited to, applying to the USDA and HUD) and to apply for such grants and/or loans except where the funding agency requires or affirmatively indicates that the City, as the grant/loan applicant, would be eligible for greater funding due to specific grant criteria wherein the City shall take the lead; and,

WHEREAS, the parties further agree that the City, in cooperation with and assistance from the County, will be the responsible party for overseeing, designing, engineering, and constructing, or having constructed, the Water and Sewer Improvements, subject to available funding; and,

WHEREAS, upon completion of the Water and Sewer Improvements, these improvements will be owned and maintained by the City (absent any subsequent separate agreement to the contrary), with the parties splitting all approved unfunded project costs related to Water and Sewer Improvements (*i.e.* all costs related to the Water and Sewer Improvements project which are not covered by the sum of all grants and loans received by County and the City) and all required “local match” funds on a sixty percent (60%)/forty percent (40%) basis with the City’s share being sixty percent (60%) and the County’s share being forty percent (40%); and,

WHEREAS, the parties further agree that separate infrastructure construction accounts will be maintained by the City and the County, respectively, with the County’s accounts subject to the financial oversight of the Clerk for the County as per § 125.17, Florida Statutes, and that all funds received in connection with these projects are deposited into these accounts and duly accounted for at all times; and,

WHEREAS, in the event that it is necessary for the County to hire a consultant in connection with the preparation of the afore-referenced grant and loan applications, following consultation with and approval of the City regarding such engagement, then the

parties agree to equally split (50%/50%) the costs of this consultant and the City will reimburse the County appropriately; and,

WHEREAS, Florida law encourages interlocal agreements between and among local governmental entities and units pursuant to Chapters 125, 163 and 166, Florida Statutes.

WHEREAS, a “draft” of this Agreement was presented to and discussed by the South Brooksville Community Initiative Team at their meeting on April 8, 2010 and, following citizen comments, revisions were thereafter made to this Agreement; and,

WHEREAS, on April 22, 2010, the South Brooksville Community Initiative Team met again to discuss this Agreement (as revised) and at their meeting voted in favor of endorsing this Agreement and recommending its approval by the respective City and County elected governing bodies; and,

WHEREAS, during the time this Agreement was being discussed and prepared, the City up-fronted the costs to plan, design and permit the first phase of water and sewer improvements for the South Brooksville area (“Phase I Water and Sewer Project”); and,

WHEREAS, the Phase I Water and Sewer Project is a subset of – and consistent with – the overall Water and Sewer Improvements discussed herein; and,

WHEREAS, at this time, the Phase I Water and Sewer Project is a “*Shovel Ready*” project subject only to obtaining the necessary funding; and,

WHEREAS, this Agreement is scheduled for public hearing, and approval, by the Hernando County Board of County Commissioners and the City of Brooksville City Council on April 27, 2010 and May 3, 2010, respectfully.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid by the parties hereto each to the other, simultaneously with the execution and delivery of these presents, and in consideration of the mutual understandings and agreements hereinafter set forth and contained, the parties agree as follows:

Section 1. Recitals. The Recitals above are incorporated herein and made a part hereof.

Section 2. Purpose. The purpose of this Interlocal Agreement is to state what responsibilities the City will have and what responsibilities the County will have in regards to: (i) applying for federal and state funding (because neither the City or the County have the roughly \$6,000,000 needed to do the Water and Sewer Improvements in the South Brooksville area); (ii) designing; (iii) engineering; (iv) constructing; and (v) maintaining the

Water and Sewer Improvements – if federal and/or state funding is received. The further purpose of this Interlocal Agreement is to be eligible for certain federal and state grants and loans that the City or the County would not otherwise be eligible for without a binding interlocal agreement in effect between the municipal governing body and the county governing body. The further purpose of this Interlocal Agreement is for the City and the County to acknowledge and agree that all outside grants and funds received pursuant to this Interlocal Agreement shall be spent only for the Water and Sewer Improvements (and related roads, drainage improvements and sidewalks restoration) within the South Brooksville area; however, the actual layout and location of new or expanded Water and Sewer pipes, improvements and infrastructure will be determined by the City, with the cooperation and assistance of the County, and with the input from the South Brooksville community, during the design and engineering phases of the project – all subject to project funding and which funding is anticipated to occur in phases (with the Phase I Water and Sewer Project anticipated to be the first project since it is *Shovel Ready*).

Section 3. Authority for Agreement. The City and the County are authorized to execute this Agreement in accordance with Florida law including, but not limited to, Chapters 125, 163, and 166 Florida Statutes.

Section 4. Exhibits. Exhibits “1” thru “3” as identified in Recitals above are incorporated herein by reference and made a part hereof for all purposes.

Section 5. Effective Date. This Agreement shall take effect upon the date executed by the last party hereto (the “Effective Date”).

Section 6. Term of Agreement. As to each provision which follows (in sequentially numbered sections and subsections), that provision shall terminate and sever from this Agreement upon the party or parties who must perform that obligation fully and competently completing all obligations described therein, or by operation of applicable law, whichever occurs first. Additionally, at any time prior to either party entering into a grant or loan agreement binding said party, either party may cancel this agreement by giving the other party one hundred and twenty (120) days prior written notice to the other party; however, if no prior notice to cancel has been made and either party enters into a binding grant and/or loan agreement, then this latter provision shall become null and void and both parties shall remain bound to this Agreement for the duration of said grant and/or loan agreement.

Section 7. Definitions. All terms which have been defined in the Recitals above shall apply throughout this Agreement.

Section 8. Identification of potential funding/financing sources. The following additional definitions/acronyms identify potential funding or financing sources for grant and/or low interest loan assistance.

A. Federal Agencies/Assistance:

- “USDA” shall refer to the United States Department of Agriculture which administers/funds the Rural Development Funding (“RDF”) programs, without limitation.
- “HUD” shall refer to the United States Department of Housing and Urban Development which administers/funds the Community Development Block Grant (“CDBG”) programs.
- “USEDA” shall refer to the United States Economic Development Administration.
- “USEPA” shall refer to the United States Environmental Protection Agency.

B. State Agencies/Assistance:

- “FDCA” shall refer to the Florida Department of Community Affairs, which administers/funds various CDBG programs and funding, without limitation.
- “FDEP” shall refer to the Florida Department of Environmental Protection which administers/funds the State Revolving Loan Fund (“SRF”) and the Small Disadvantaged Community Grant (“SDCG”) program, without limitation.
- “OTTED” shall refer to the State of Florida Office of Tourism, Trade and Economic Development.

C. Regional Agencies/Assistance:

- “SWFWMD” shall refer to the Southwest Florida Water Management District.

Section 9. Duties/Obligations. The parties shall have the following obligations:

- A. Grant/Loan Applications. The parties agree that the County should take the lead in preparing the appropriate grant and/or loan applications (including, but not limited to, applying to the USDA and HUD) and to apply for such grants and/or loans except where the funding agency requires or affirmatively indicates that the City, as the grant/loan applicant, would be eligible for greater funding due to specific grant

criteria wherein the City shall take the lead. The lead party shall obtain the other parties input and review in connection with the application process.

B. Designing/Engineering/Constructing the Water and Sewer Improvements. The City, in cooperation with and assistance from the County, agrees, subject to project funding, to do all acts reasonably related to the designing, engineering and constructing of the Water and Sewer Improvements.

- (1) All work shall be performed in accordance with the applicable standards, regulations and building codes and shall comply with those conditions, if any, reasonably imposed pursuant to any grant and/or loan. Best Management Practices (“BMPs”) shall be used wherever required or as may be practicable. Further, to the extent the Water and Sewer Improvements require tearing up or degrading any roads, drainage improvements and/or sidewalks, the restoration of such roads, drainage improvements and/or sidewalks (to at least their preexisting condition) shall be part of the total work performed.
- (2) The parties agree to give each other reasonable advance notice and to seek the other’s input and approval prior to the award of any outside design and/or engineering professional services contract(s).
- (3) If additional testing/reporting requirements are imposed as the consequence or condition of any grant and/or loan including, but not limited to, environmental assessments, soil tests, groundwater tests, surveys, topographies, archeological surveys, appraisals, etc., then the parties agree to have such tests/reports performed by a professional duly qualified in said area(s), the foregoing subject to availability of project funds.
- (4) The lead party agrees to furnish the other with a copy of all contractor bids received in connection with the Water and Sewer Improvements project and to allow the other party a reasonable time to review same and give its input and approval prior to any contract award.

C. Right-of Ways/Easements. To the extent right-of-ways or easements are required on land or lands owned by the City or the County, respectively, and which are necessary to accomplish the Water and

Sewer Improvements, then the parties agree to furnish such right-of ways or easements unless doing so would cause undue costs or impracticality such as the result of relocating existing utilities or infrastructure that would cause disruption of service or be cost prohibitive to relocate.

- D. Ownership of Water and Sewer Improvements and Accounting. Subject to funding and upon completion of the Water and Sewer Improvements, these improvements will be owned and maintained by the City (absent any subsequent separate agreement to the contrary), with the parties splitting all approved unfunded project costs related to the Water and Sewer Improvements (*i.e.* all costs related to the Water and Sewer Improvements project which are not covered by the sum of all grants and loans received by the County and the City) and all required “local match” funds on a sixty percent (60%)/forty percent (40%) basis with the City’s share being sixty percent (60%) and the County’s share being forty percent (40%). The parties further agree that the City shall get credit for all design and engineering costs it has spent to date (in the approximate amount of \$25,000 for the Phase I Water and Sewer Project) together with any new advances made (regarding expanding the size of the area covered by the proposed Phase I scope of work and specifically in furtherance of obtaining potential grants and/or loans).
- E. In the event that it is necessary for the County to hire a consultant in connection with the preparation of the afore-referenced grant and loan applications, following consultation with and approval of the City regarding such engagement, then the parties agree to equally split (50%/50%) the costs of this consultant and the City will reimburse the County appropriately.

Section 10. Comprehensive Plan Amendments. The City and the County Planning Departments, respectively, are each preparing, or will be preparing, Amendments to their respective Comprehensive Plans to formally establish and create the ‘*South Brooksville Planned Development District*’ (“PDD”), and which would represent a new PDD on the respective Future Land Use Maps (“FLUM”) of the County and the City subject to the elected governing bodies of the City and the County approving and adopting said Plan Amendments following all required public hearings, and further subject to approval by the FDCA.

Section 11. Notice. All notices, demands, and other writings required under this Agreement shall be deemed to have been fully given or made or sent when (i) mailed in writing and deposited the United States Mail, postage prepaid, and addressed to the parties

at the addresses noted in this Agreement or (ii) delivered by nationally recognized courier, receipt of recipient acknowledged by signature. Any notice or disclosure required under this Agreement and any changes to addresses shall be made in accordance with this notice provision. Notices shall be sent to:

HERNANDO COUNTY

David Hamilton
County Administrator
Hernando County
20 N. Main Street, 2nd Floor
Brooksville, FL 34601

CITY OF BROOKSVILLE

T. Jennene Norman-Vacha
City Manager
City of Brooksville
201 Howell Avenue
Brooksville, FL 36401

With a copy to:

Garth Coller
County Attorney
20 N. Main Street, 4th Floor
Brooksville, FL 34601

The Hogan Law Firm, LLC
20 S. Broad Street
Brooksville, FL 36401

Section 12. Force Majeure. The parties agree that failure or delay of the City or the County in performing any of the terms of this Agreement shall be excused if and to the extent the failure or delay is caused by any acts of God, wars, fires, strikes, floods, weather, or any law, ordinance, rule or regulation beyond the control of the City or the County.

Section 13. Entire Agreement. This Agreement contains the entire agreement of the parties regarding the Water and Sewer Improvements project and Plan Amendments as described above. No oral statements, representations or prior written matter relating to said subjects, but not contained herein, shall have any force or effect.

Section 14. Modification. No modification of this Agreement shall be valid or binding unless such modification is in writing and duly executed by both the City and the County.

Section 15. Binding Effect. This Agreement shall be binding upon the respective successors, administrators, executors, heirs, and assigns of the parties hereto.

Section 16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one and same instrument.

Section 17. Covenants of Further Assurances. The City and the County agree that from and after the date of execution hereof, each will, upon the request of the other, execute

and deliver such other documents and instruments and take such other action as may be reasonably required to carry out the purpose and intent of this Agreement.

Section 18. Governing Law. This Agreement shall be interpreted and construed in accordance with Florida law.

Section 19. Headings and Captions. Headings and captions shall not be given any interpretative value in construing this Agreement.

Section 20. Disputes. The City Manager for the City and the County Administrator for the County shall use their best efforts and diligence to amicably resolve any dispute or disagreement concerning any provision of this Agreement; however, failing which after best efforts and diligence, then any dispute to this Agreement shall be resolved by a civil court located in Hernando County. For purposes herein, the parties agree that should such dispute result which necessitates judicial intervention, that all conditions and prerequisites under the Florida Governmental Conflict Resolution Act (set forth in Chapter 164, Florida Statutes) shall be deemed to have been met and that the parties shall be presumed to be at impasse for all purpose including judicial review. Further, to the extent allowed by law, the parties expressly waive all procedures, processes and time frames set forth in Chapter 164, Florida Statutes. Each party shall be responsible for its own costs and attorneys fees in the event of any dispute, claim, action or appeal related to or arising from this Agreement.

Section 21. Validity and Severability. It is declared to be the intent of the parties to this Agreement that, if any section, subsection, clause, sentence, phrase, term, condition or provision of this Agreement is for any reason held unconstitutional, invalid or unenforceable, the invalidity, unconstitutionality or unenforceability thereof shall not affect the validity of the remaining portions. In the event that any one or more provisions contained in this Agreement is for any reason held invalid, illegal or unenforceable in any respect, this Agreement will be construed as if the invalid, illegal or unenforceable provision had never been contained herein and each term provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 22. Joint Preparation. The preparation of this Agreement has been a joint effort of the parties hereto and the resulting document shall not, solely as a matter of judicial construction be construed more severely against one of the parties than the other.

IN WITNESS WHEREOF, the parties hereto have caused the execution by their duly authorized officials on the dates indicated below.

[–CONTINUED ON NEXT PAGE–]

ATTEST:


Janice L. Peters, City Clerk

(SEAL)

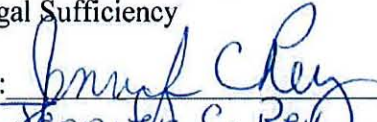
CITY OF BROOKSVILLE, FLORIDA

By: 
Lara Bradburn, Mayor

4-5-3-10

Date

Approved as to Form and
Legal Sufficiency

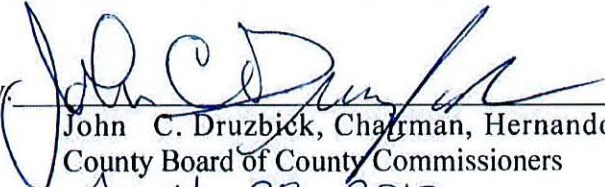
By: 
Jennifer C. Reif
The Hogan Law Firm, LLC

ATTEST:


Karen Nicolai, Clerk


(SEAL)

HERNANDO COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF FLORIDA

By: 
John C. Druzbiek, Chairman, Hernando
County Board of County Commissioners

April 28, 2010

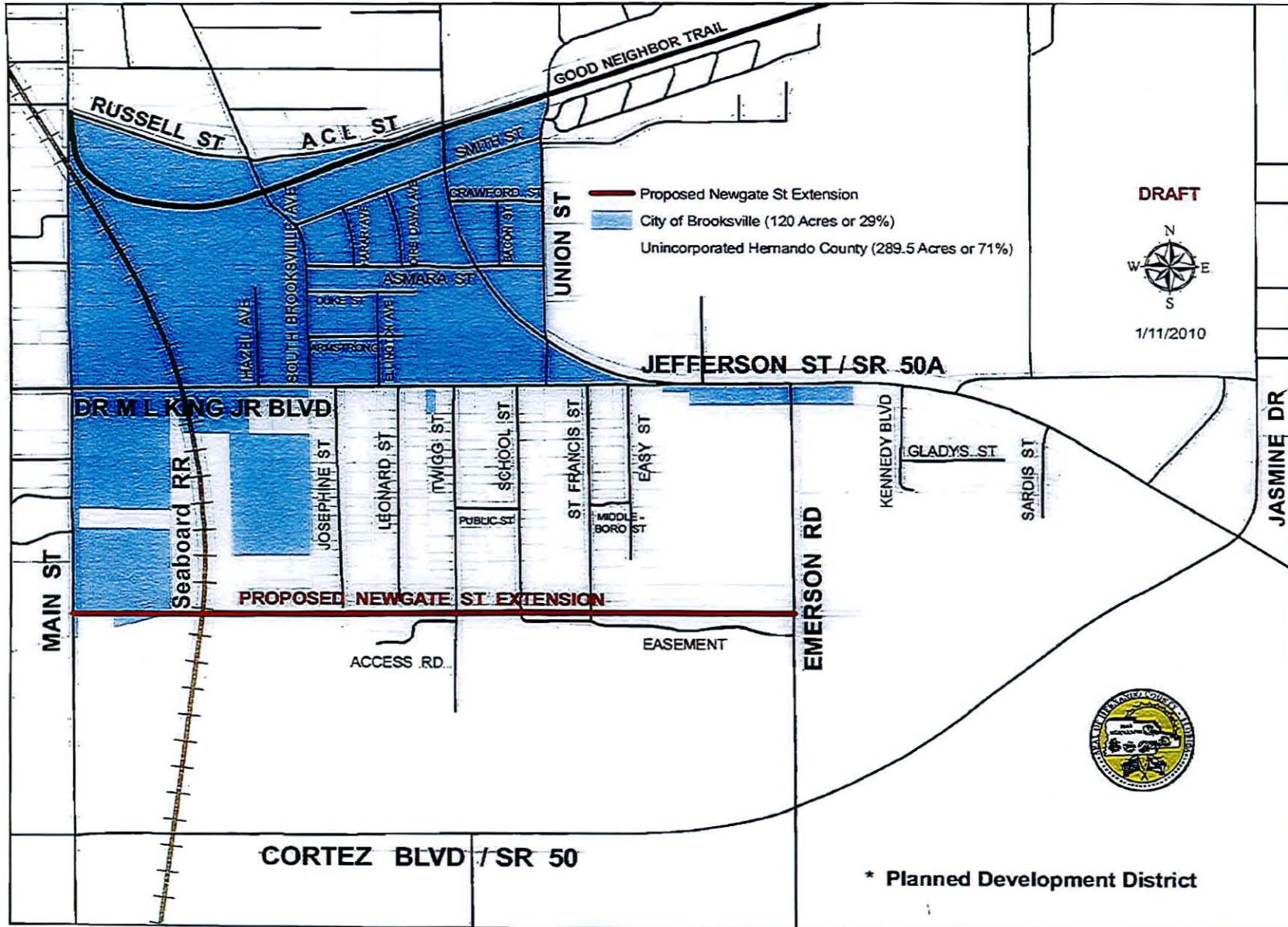
Date

Approved as to Form
And Legal Sufficiency:

By: 
Assistant County Attorney

Exhibit “1”

Proposed South Brooksville PDD* (409.5 Acres)



DRAFT



1/11/2010



* Planned Development District

0 0.25 0.5 Miles

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Exhibit “2”

*City of Brooksville / Hernando County Enterprise Zone #2701**

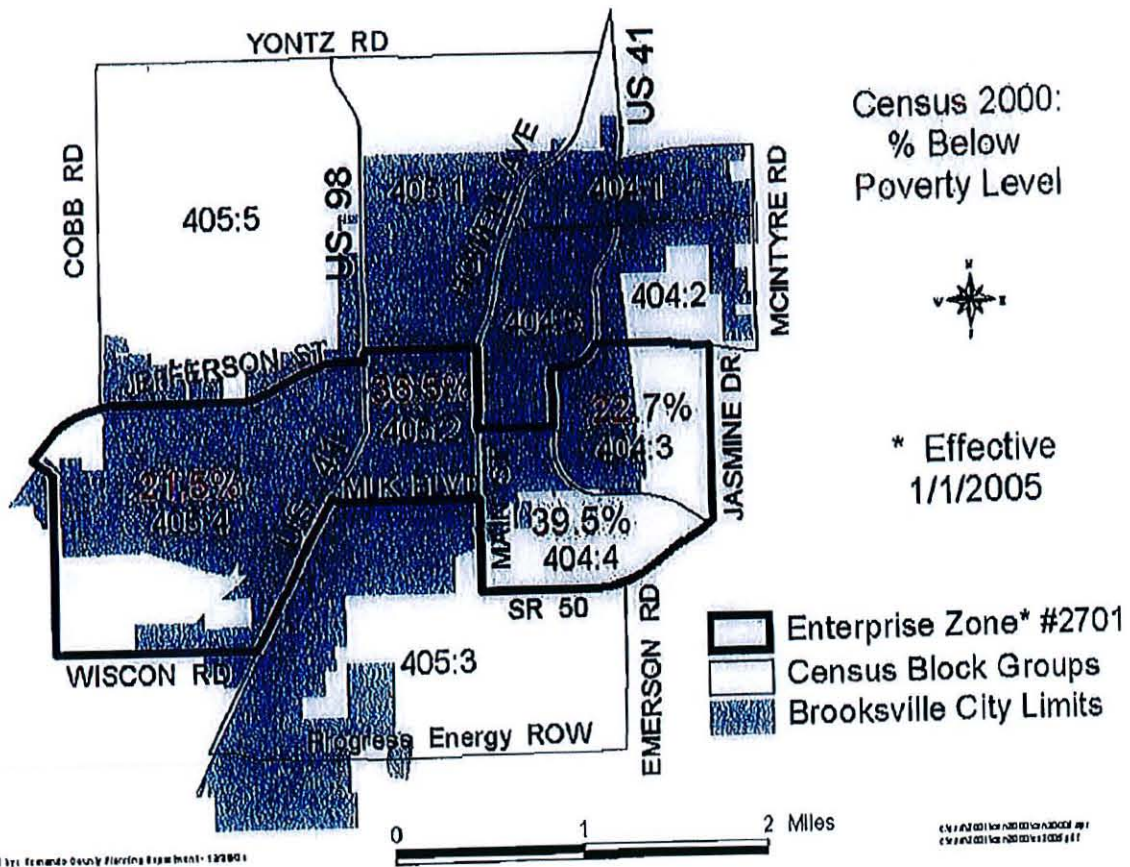
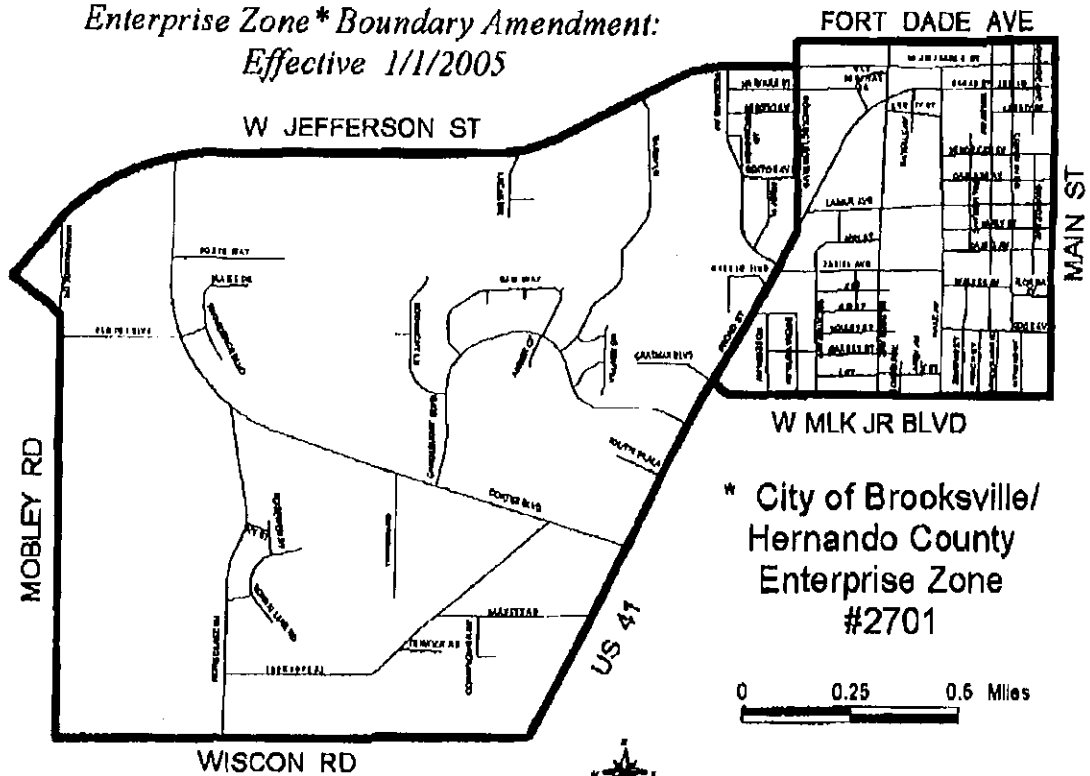


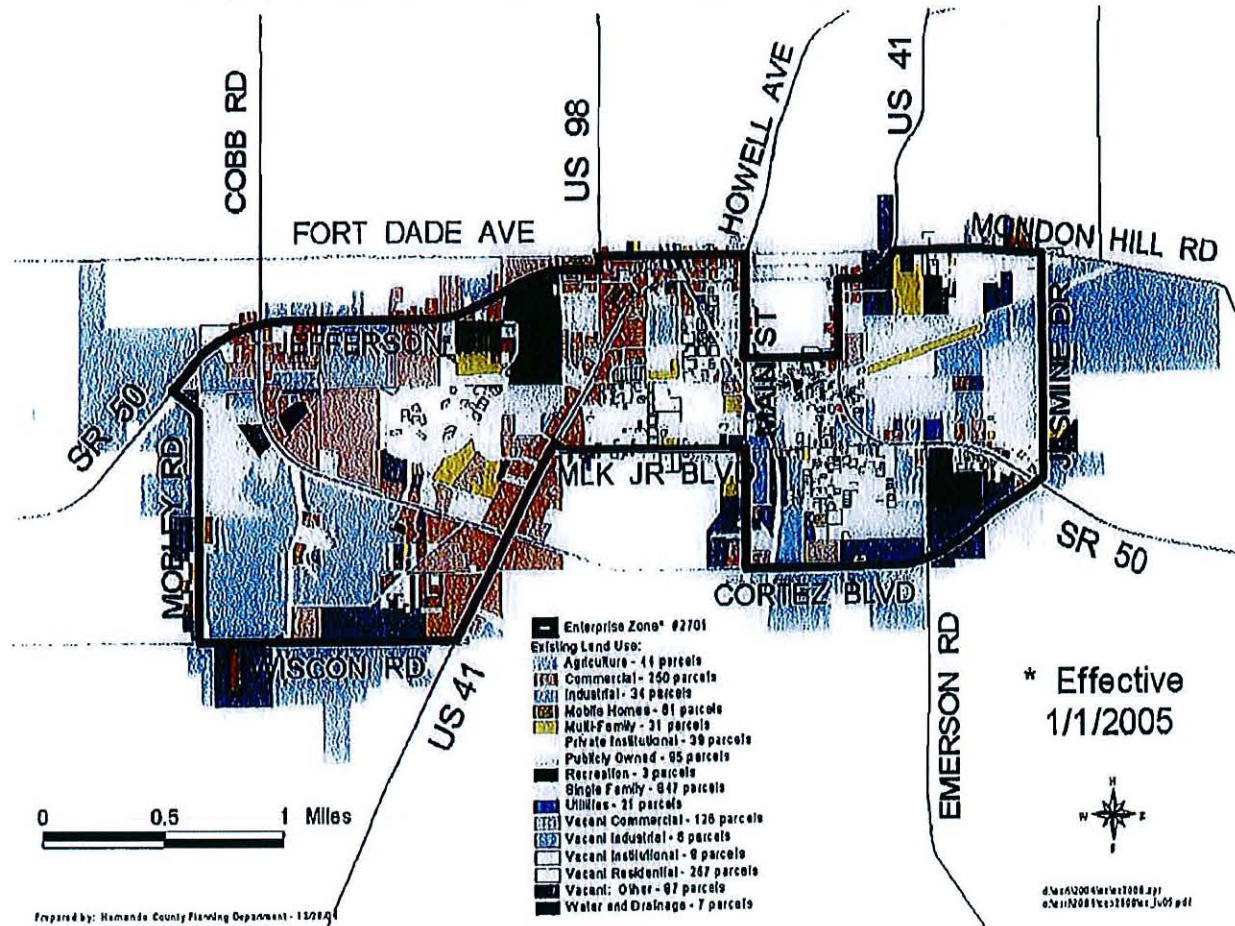
Exhibit "2"

Enterprise Zone Boundary Amendment:
Effective 1/1/2005*



* City of Brooksville/
Hernando County
Enterprise Zone
#2701

City of Brooksville / Hernando County Enterprise Zone #2701*

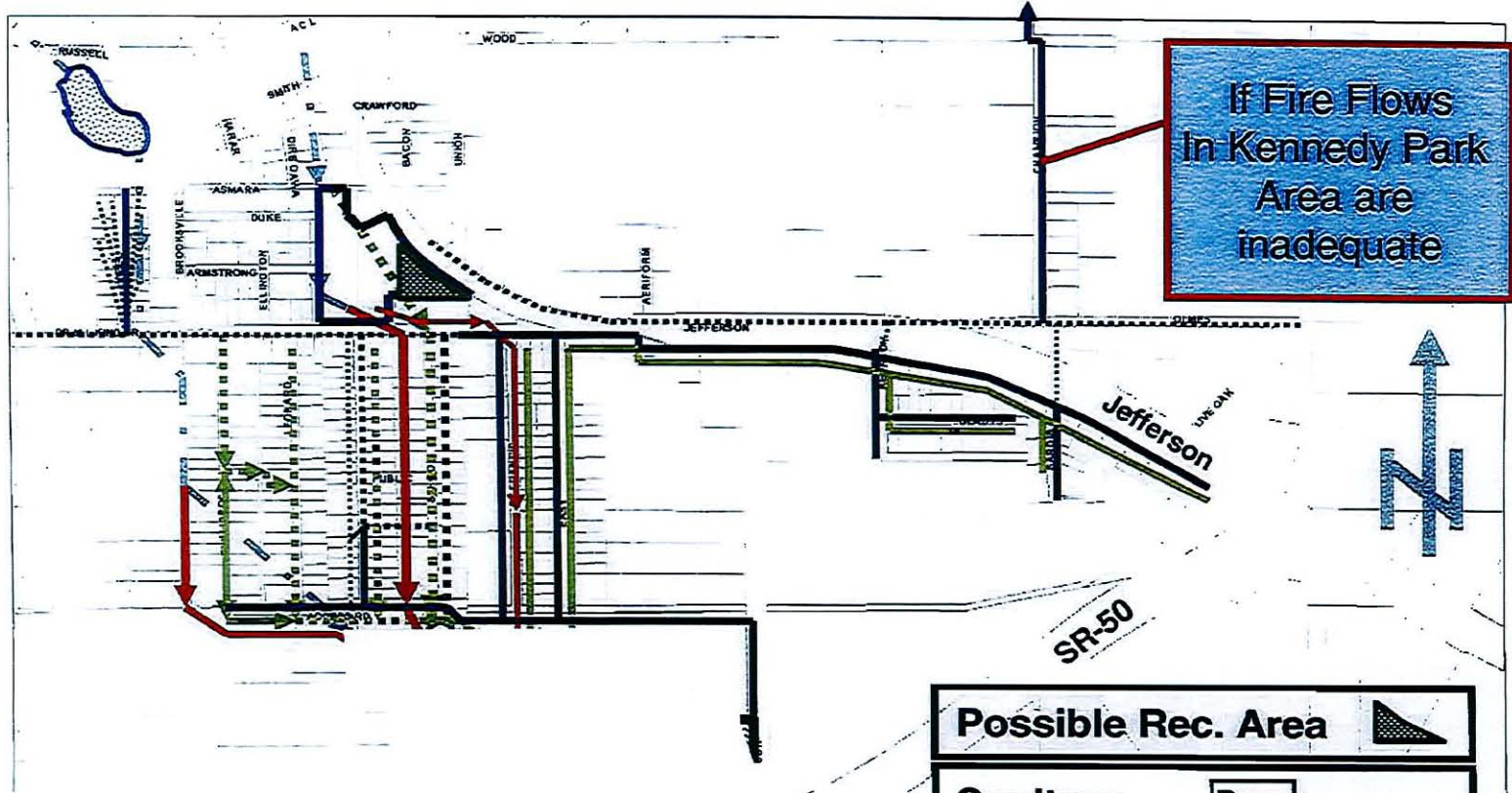


0 0.5 1 Miles

* Effective 1/1/2005






Exhibit “3”



If Fire Flows
In Kennedy Park
Area are
inadequate

POTENTIAL LAYOUT/DESIGN OF PROPOSED
WATER AND SEWER IMPROVEMENTS

Possible Rec. Area		
Sanitary	Prop.	
	Exist.	
Water Main	Prop.	