

**MUTUAL RELEASE AND HOLD HARMLESS
AGREEMENT**

THIS MUTUAL RELEASE AND HOLD HARMLESS AGREEMENT (Agreement) is made and entered into between **Timothy E. Hayden** and **Cindy L. Petrat-Hayden**, husband and wife (collectively, **Hayden**), whose mailing address is 6924 26th Street West, Bradenton, Florida 34207-5710, and **MANATEE COUNTY**, a political subdivision of the State of Florida (**County**), whose mailing address is Post Office Box 1000, Bradenton, Florida 34206, and whose street address is 1112 Manatee Avenue West, Bradenton, Florida 34205, and is intended to settle all claims and allegations by and between Hayden and County relative to an existing drainage pipe. Hayden and County are sometimes collectively referred to herein as **Parties** and individually as **Party**.

1. **COMPROMISE**: It is agreed and understood that the payment of the sum provided for herein and this Agreement is being made to resolve all allegations and claims asserted or that could be asserted by and between Hayden and County and is intended to fully and finally settle all matters in dispute, or that could be in dispute, between Hayden and County arising from the existing drainage pipe, and that the payment does not constitute and is not construed as an admission by County of fault, liability, malfeasance, misfeasance, negligence, or wrongdoing concerning the existing drainage pipe, and that any allegations and claims of fault, liability, malfeasance, misfeasance, negligence, or wrongdoing are expressly denied. Through this Agreement the Parties have agreed to avoid the distractions, inconvenience, and inherent uncertainties associated with legal proceedings, as well as the corresponding costs, fees, and expenses.

2. **EFFECTIVE DATE**: For purposes of this Agreement, the **Effective Date** shall be the date upon which the Agreement is executed by County.

3. **EXHIBITS**: The only Exhibit attached, incorporated, and made a part of this Agreement is Exhibit A, a legal description and sketch of certain land owned by the Haydens (**Property**).

4. **RELEASE BY COUNTY**: In exchange for and in consideration of the promises of performance as provided for herein, the sufficiency of which County acknowledges is adequate, fair, and reasonable, County shall and does hereby agree to fully release, acquit, discharge, remise, and hold harmless Hayden from any and all causes of action, suits, debts, dues, damages, sums of money, attorneys' fees and costs, experts' fees and costs, claims, and demands of whatsoever kind or nature, in law, or in equity, which County ever had, now has, or may hereinafter acquire against Hayden arising from the existing drainage pipe located in the vicinity of the northern boundary of the Property. This release by County shall become effective on the Effective Date of this Agreement

and shall automatically expire after Completion of the Work, end of Notice Period, and, if any, Remediation (as such capitalized terms are defined below in section 6).

5. RELEASE BY HAYDEN: In exchange for and in consideration of the payment of TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$25,000.00) by County to Hayden, County's Completion of the Work, and for such other consideration as provided for herein, the sufficiency of which Hayden acknowledges is adequate, fair, and reasonable, Hayden shall and does hereby agree to fully and forever release, acquit, discharge, remise, and hold harmless County, its agents, representatives, insurers, successors, employees, officers, directors, administrators, and affiliates, from any and all causes of action, suits, debts, dues, damages, sums of money, attorneys' fees and costs, experts' fees and costs, claims, and demands of whatsoever kind or nature, in law, or in equity, which Hayden ever had, now has, or which any legal guardian, attorney-in-fact, personal representative, successor, family member, heir, or assign of Hayden now has or may hereinafter acquire against County arising from the existing drainage pipe located in the vicinity of the northern boundary of the Property. This release by Hayden shall become effective immediately upon expiration of the release by County in accordance with section 4 above. Unless otherwise specified in this Agreement, all references to currency, monetary values, and dollars set forth herein shall mean United States dollars and all payments hereunder shall be made in United States dollars. Within thirty days after the Effective Date of this Agreement, Hayden shall cause a current Form W-9 Request for Taxpayer Identification Number and Certification for Hayden's counsel, Grimes Hawkins Gladfelter & Galvano, P.L., to be completed and submitted to County. Within thirty days after receipt of same, County shall issue its check payable to Trust Account of Grimes Hawkins Gladfelter & Galvano, P.L. and send same via U. S. Mail to Grimes Hawkins Gladfelter & Galvano, P.L., Attention: Derin Parks, The Professional Building, 1023 Manatee Avenue West, Bradenton, Florida 34205 for appropriate disbursement to Hayden.

6. INFRASTRUCTURE: The Parties agree that the County has no obligation to remove the existing drainage pipe in the vicinity of the northern boundary of the Property or to otherwise address any surface subsidence concerns relative to the Property arising from the existing drainage pipe, but is authorized to utilize same to properly address drainage in the vicinity of Property from the Effective Date of this Agreement until Completion of the Work (as defined below in this section 6). Hayden is expressly prohibited from filling the existing drainage pipe with cement, removing the existing drainage pipe, or otherwise actively impacting the existing drainage pipe before Completion of the Work. County shall within 365 days after the Effective Date, at County's sole cost and expense, properly address drainage in the vicinity of the Property (**Work**) within lands owned by the County or where the County has a valid easement. **Completion of the Work** shall consist of (1) the issuance of a letter or memorandum from the Manatee County Public Works Department Director on behalf of the County to Hayden certifying

that the Work has been inspected and has been deemed by the County to be in compliance with applicable governmental codes and requirements and (2) adoption of a resolution by the County formally abandoning the existing drainage pipe in the vicinity of the northern boundary of the Property. After Completion of the Work, Hayden shall have thirty days (the "Notice Period") to notify County of any damage to the Property or improvements thereon, including landscaping and the underground storage tank. Upon receipt of such notice from Hayden, County shall promptly and diligently remediate any and all such damages at County's sole cost and expense (the "Remediation"). Failure by Hayden to so notify County shall constitute a valid and effective waiver by Hayden of any right to pursue a claim for damage against County, which waiver need not be in writing as otherwise required by section 19 below. After Completion of the Work, Hayden shall within a reasonable time, but in no event before Hayden performs their planned swimming pool improvements on the Property, fill the existing drainage pipe with cement, remove the existing drainage pipe, or otherwise adequately address any surface subsidence concerns on the Property relative to the existing drainage pipe, all at Hayden's sole cost and expense.

7. **AMENDMENTS**: This Agreement may not be amended, canceled, changed, discharged, modified, rescinded, supplemented, or terminated other than as expressly provided herein, except by an instrument in writing executed by both Parties.

8. **ASSIGNABILITY**: The Parties may not assign this Agreement or any right or obligation of this Agreement without prior written consent of the other Party.

9. **AUTHORIZATION**: Each Party represents to the other that such Party has the requisite power and authority under all applicable laws to enter into this Agreement, that all of the procedural requirements imposed by law upon each Party for the approval and authorization of this Agreement have been properly completed, and that the persons who have executed this Agreement on behalf of each Party are authorized and empowered to execute this Agreement.

10. **BINDING EFFECT**: This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors, and permitted assigns.

11. **CLERK AUTHORIZATION**: The Manatee County Clerk of the Circuit Court Finance Department is hereby authorized to issue any checks in furtherance of this Agreement and its terms.

12. **SUCCESSOR OWNER**: Before conveying the Property or any portion thereof, Hayden shall furnish a complete copy of this Agreement to any potential buyer or owner of the Property or portion thereof or successor in interest of the Property or portion thereof.

The intent of this provision is to ensure that any future owner of the Property is made aware by Hayden of the existence of this Agreement between Hayden and the County relative to the existing drainage pipe and the Parties' respective rights and responsibilities regarding same.

13. ENTIRE AGREEMENT: This Agreement and the Exhibit attached hereto contain the final and entire understanding between the Parties with respect to the existing drainage pipe and are intended to be an integration of all prior negotiations and understandings. This Agreement supersedes all prior negotiations, understandings, representations, or agreements, both written and oral. Hayden and County shall not be bound by any terms, conditions, statements, warranties, or representations, written or oral, not contained herein.

14. FLORIDA LAW AND MANATEE COUNTY VENUE: This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Florida. Venue for resolution of all disputes, whether by arbitration, litigation, or mediation, shall lie in Manatee County, Florida.

15. FORCE MAJEURE: The Parties shall be excused from performing any obligations pursuant to this Agreement so long as performance is delayed, hindered, or prevented by a Force Majeure Event. The following shall be deemed a Force Majeure Event: an act of God, an epidemic, a failure or disruption of utility services, a fire, a flood, a hurricane, a pandemic, a tornado, or other like cause, and which by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome.

16. HEADINGS: The headings contained in this Agreement are for convenience and reference and shall not affect the meaning or interpretation of this Agreement.

17. INPUT AND INTERPRETATION: Each Party has had equal input into the drafting of this Agreement and has been represented by counsel in negotiating this Agreement's terms. Neither this Agreement nor any ambiguity or uncertainty in this Agreement shall be construed against Hayden or County, whether under any rule of construction or otherwise. This Agreement shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of the Parties. The Parties have each carefully read the terms and conditions of this Agreement and know and understand the contents and effect of this Agreement.

18. LEGAL FEES AND COSTS: In the event it becomes necessary for either party to enforce the provisions of this Agreement, the prevailing party in such dispute shall be entitled to recover from the non-prevailing party its attorneys' fees and costs and paralegals' fees and costs in any dispute, litigation, trial, appeal, bankruptcy proceeding,

post-judgment proceeding, dispute resolution proceeding, settlement negotiation or pre-litigation negotiation, or otherwise arising under this Agreement.

19. NOTICE: Any and all notices, approvals, claims, consents, demands, requests, or other communications between the Parties (**Notices**) shall be in writing. All Notices shall be given by hand delivery in person or by registered or certified mail, postage prepaid to the following addresses:

If to Hayden: Timothy E. Hayden or Cindy L. Petrat-Hayden
6924 26th Street West
Bradenton, Florida 34207-5710

and Grimes Hawkins Gladfelter & Galvano, P.L.
Attention: Derin Parks
The Professional Building
1023 Manatee Avenue West
Bradenton, Florida 34205

If to County: Manatee County Government
Attention: Director, Public Works Department
1022 26th Avenue East
Bradenton, Florida 34208

and Manatee County Government
Attention: County Attorney
Office of the County Attorney
1112 Manatee Avenue West, Suite 969
Bradenton, Florida 34205

All Notices shall be deemed effective and received upon actual receipt by the Party to which such notice is given or five days after mailing, whichever occurs first.

20. SEVERABILITY: If any one or more of the provisions of this Agreement should be held contrary to law or public policy, or should for any reason whatsoever be held invalid or unenforceable by a court of competent jurisdiction, then such provision or provisions shall be null and void and shall be deemed separate from the remaining provisions of this Agreement, which remaining provisions shall continue in full force and effect, provided that the rights and obligations of the Parties contained herein are not materially prejudiced and the intentions of the Parties continue to be effective.

21. TIME OF THE ESSENCE: Time is of the essence with regard to all dates and times set forth in this Agreement. Any reference herein to time periods of seven days or

less shall, in the computation thereof, exclude Saturdays, Sundays, and legal holidays under the laws of the State of Florida or the United States of America. Any time period provided for herein which shall end on a Saturday, Sunday, or legal holiday under the laws of the State of Florida or the United States of America, shall extend to five p.m. of the next day that is not a Saturday, Sunday, or legal holiday under the laws of the State of Florida or the United States of America. All references herein to times of day shall mean Eastern Standard Time or Eastern Daylight Time, whichever is in effect in Manatee County, Florida, at the relevant time. The term "day" as used herein shall in all cases mean a consecutive 24-hour day running from midnight to midnight (also known as a calendar day).

22. WAIVER: Unless otherwise specifically provided in this Agreement, the failure or neglect by any Party to enforce any right under this Agreement shall not be deemed to be a waiver of that Party's rights and a waiver shall not be effective unless it is in writing and signed by the Party who possesses the right to waive enforcement of same.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the respective dates written below.

SIGNATURES AND ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGES.

Signed, sealed, and delivered in the presence of two witnesses:

HAYDEN:
Timothy E. Hayden



First Witness Signature

Signature: 

LINDA A. TAYLOR

First Witness Printed Name

Date: 2/3/2021



Second Witness Signature

Delmas J Clark Jr

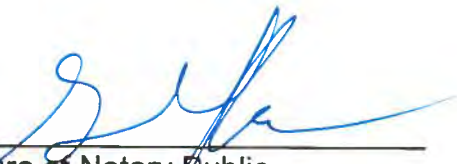
Second Witness Printed Name

STATE OF FL
COUNTY OF MANATEE

Before me, a Notary Public, the foregoing instrument was acknowledged by means of
 physical presence or
 online notarization
this 3 day of FEBRUARY, 2021, by Timothy E. Hayden, who
 is personally known to me or
 has produced _____ as identification.

[CHECK APPLICABLE BOXES TO SATISFY IDENTIFICATION REQUIREMENT OF SECTION 117.05, FLORIDA STATUTES]

GERALYN HINES
MY COMMISSION # GG145641
EXPIRES October 16, 2021



Signature of Notary Public
(Legibly print, type, or stamp commissioned name of Notary Public and affix official notary seal.)

My Commission Expires: _____

Signed, sealed, and delivered in the presence of two witnesses:

HAYDEN:

Cindy L. Petrat-Hayden



First Witness Signature

Signature: _____



Date: _____

2/3/21

LINDA A. TAYLOR

First Witness Printed Name



Second Witness Signature

Delmar J Clark Jr

Second Witness Printed Name

STATE OF FL
COUNTY OF MANASSAS

Before me, a Notary Public, the foregoing instrument was acknowledged by means of

- physical presence or
- online notarization

this 3 day of February, 2021, by Cindy L. Petrat-Hayden, who

- is personally known to me or
- has produced _____ as identification.

[CHECK APPLICABLE BOXES TO SATISFY IDENTIFICATION REQUIREMENT OF SECTION 117.05, FLORIDA STATUTES]



Signature of Notary Public

(Legibly print, type, or stamp commissioned name of Notary Public and affix official notary seal below.)





COUNTY:
**MANATEE COUNTY, a political
subdivision of the State of Florida**

By: its Board of County Commissioners

By: 
VANESSA BAUGH, Chairperson

Date: 3/23/21

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER


By: 
Deputy Clerk

Exhibit A

That certain parcel of land in Section 27, Township 35 South, Range 17 East, Manatee County, Florida, lying South of Lot 9, Block A, Re-plat of Blocks A & B, Bayshore Gardens, Section 4, as per plat thereof recorded in Plat Book 10, Page 10, Public Records of Manatee County, Florida, described as:

Commence at the SE corner of Lot 9, Block A, Re-plat of Blocks A & B, Bayshore Gardens, Section 4, as per plat thereof recorded in Plat Book 10, Page 10, Public Records of Manatee County, Florida; thence run West along said South line 125 feet to the outer face of seawall; thence South 100 feet; thence East 125 feet along a line parallel to the said South lot line to a point South of the Point of beginning; thence North 100 feet to the Point of Beginning.



Approved in Open Session 3/23/21
Manatee County
Board of County Commissioners

Board of County Commissioners March 23, 2021 - Regular Meeting

SUBJECT

EXECUTION OF MUTUAL RELEASE AND HOLD HARMLESS AGREEMENT BETWEEN TIMOTHY E. HAYDEN AND CINDY L. PETRAT-HAYDEN AND MANATEE COUNTY FOR PROPERTY LOCATED AT 6924 26TH STREET WEST, BRADENTON

Category

CONSENT AGENDA

Briefings

None

Contact and/or Presenter Information

Jim Renneberg, Design and CIP Review Manager, Public Works, Ext 7220

Action Requested

Execution of Mutual Release and Hold Harmless Agreement Between Timothy E. Hayden and Cindy L. Petrat-Hayden and Manatee County for Property Located at 6924 26th Street West, Bradenton

Enabling/Regulating Authority

Chapter 125, Florida Statutes
Manatee County Comprehensive Plan

Background Discussion

There is an approximately 65-year-old drainage pipe located between 6920 and 6924 26th Street West that is failing and in need of replacement. This pipe replacement is an existing funded CIP project to replace this failing pipe that serves much of 26th Street West south of Florida Boulevard. An existing drainage and utility easement exists on 6920 26th Street West, but not on the Haydens property (6924 26th Street West). After performing a survey of the area, it was discovered the easterly portion of the pipe is located on 6920 26th Street West (within the existing easement) and crosses onto and discharges to the canal on the Haydens property (not within an easement).

The Haydens' property is currently improved with a home, a dock, an underground propane tank, a fence, a paver driveway, trees, landscaping, sod, lighting, and irrigation. Additionally, the Haydens plan to build a pool, garage, or other accessory structure on their property in the future.

The County Attorney's Office attended a WebEx meeting with staff on June 12, 2020 to discuss a letter received on June 11, 2020 from counsel for the Haydens requesting abandonment and filling of a drainage pipe. The Haydens' counsel has alleged that the Haydens are entitled to compensation for the County's unauthorized use and occupation of their private property. After months of negotiation, the attached agreement has been reached between the Haydens and the County for the unauthorized use and occupation of their private property.

To remedy the failing pipe, a new pipe will be installed within the existing 10' easement on 6920 26th Street West. The existing pipe within the easement will be filled and abandoned while the existing pipe on the Haydens property will be abandoned and addressed in the future by the Haydens per the agreement. This agreement is necessary to allow the replacement of the failing stormwater pipe.

Attorney Review

Other (Requires explanation in field below)

Other (if applicable)

The County Attorney's Office has no objection from a legal standpoint to this matter being presented to the Board for consideration, but expresses no opinion as to the business judgment or policy decision of entering into this agreement with the Haydens

Reviewing Attorney

D'Agostino

Instructions to Board Records

Please email the approved agenda item to the following:

Chris Pickens at chris.pickens@mymanatee.org

Charles Meador at charles.meador@mymanatee.org

Jim Renneberg at jim.renneberg@mymanatee.org

Pamela D'Agostino at pamela.dagostino@mymanatee.org

Distributed also to: KCordero@grimesgalvano.com, 3/25/21 RT

Cost and Funds Source Account Number and Name

465-6096100- 6924 26th Street West Storm Pipe Outfall Replacement

Amount and Frequency of Recurring Costs

\$25,000.00 one-time payment

Execution of Mutual Release and Hold Harmless Agreement between Timothy E. Hayden and Cindy L. Petrat-Hayden and Manatee County for Property Located at 6924 26th Street West, Bradenton

Location Map

