

AGREEMENT

Between

BROWARD COUNTY

and

CITY OF NORTH LAUDERDALE

for

JOINT FUNDING OF BUFFER WALL CONSTRUCTION
ALONG NORTH SIDE OF BAILEY ROAD FROM
EAST OF ROCK ISLAND ROAD TO WEST OF SW 63RD AVENUE

This is an Agreement, made and entered into by and between BROWARD COUNTY, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "COUNTY," through its Board of County Commissioners,

AND

CITY OF NORTH LAUDERDALE, a municipal corporation located in Broward County, Florida, and organized and existing under the laws of the State of Florida, hereinafter referred to as "CITY," collectively referred to as the "Parties."

WHEREAS, prior to September 15, 2003, Bailey Road from NW 64th Avenue/SW 81st Avenue to State Road 7 was a COUNTY road in unincorporated Broward County abutting the Broadview Estates/Pompano Park neighborhood; and

WHEREAS, during that time, COUNTY proposed roadway improvements to Bailey Road from NW 64th Avenue/SW 81st Avenue to State Road 7; and

WHEREAS, at the time COUNTY was preparing construction plans for the proposed roadway improvements to Bailey Road, the Broadview Estates neighborhood expressed a desire to have a buffer wall installed along the north side of the Bailey Road right-of-way from east of Rock Island Road to west of SW 63rd Avenue; and

WHEREAS, during the preparation of the construction plans, the subject portion of Bailey Road was annexed into the CITY as part of the Broadview Estates/Pompano Park neighborhood annexation; and

WHEREAS, on September 15, 2003, COUNTY transferred the subject portion of Bailey Road to the CITY; and

WHEREAS, CITY seeks to install a buffer wall along the north side of the Bailey

Road right-of-way from east of Rock Island Road to west of SW 63rd Avenue; and

WHEREAS, CITY and COUNTY have determined that it is in the best interest of the Parties to make certain improvements for Bailey Road, specifically a buffer wall along the north side of Bailey Road from east of Rock Island Road to west of SW 63rd Avenue (hereinafter the "Project"); and

WHEREAS, CITY has agreed to the limitation that the buffer wall shall be constructed outside of the Bailey Road right-of-way and to maintain the buffer wall in good and safe condition; and

WHEREAS, CITY has agreed to undertake the design, construction, and construction inspection, and plans to solicit bids for the Project in accordance with CITY procurement procedures; and

WHEREAS, COUNTY and CITY have agreed to share in the cost of the Project improvements as described herein; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payment hereinafter set forth, COUNTY and CITY agree as follows:

ARTICLE 1 - DEFINITIONS AND IDENTIFICATIONS

1.1 Agreement – This Agreement includes Articles 1 through 9, the exhibits and documents that are expressly incorporated herein by reference.

1.2 Board – The Board of County Commissioners of Broward County, Florida.

1.3 Contract Administrator – The Director of the Broward County Highway Construction and Engineering Division, or designee. The primary responsibilities of the Contract Administrator are to coordinate and communicate with the CITY regarding the execution and completion of the Scope of Participation and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Participation.

1.4 County Administrator – The administrative head of COUNTY pursuant to Sections 3.02 and 3.03 of the Broward County Charter.

1.5 County Attorney – The chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.

1.6 Project – The Project consists of a wall with a minimum effective height of eight (8) feet along the north side of Bailey Road from east of Rock Island Road to west

of SW 63rd Avenue (see location map, attached hereto as Exhibit "A").

ARTICLE 2 - SCOPE OF PARTICIPATION

2.1 COUNTY shall provide CITY with survey information and conceptual plans showing the horizontal and vertical locations of the Project.

2.2 CITY shall design, construct, and provide for the construction inspection, or contract for the design, construction, and construction inspection of the Project. In the event that the Project shall be constructed by other than CITY staff, the CITY shall be the governmental agency responsible for the securing of contracts for the design, construction, and construction inspection of the Project, pursuant to CITY's competitive bidding process and any and all applicable state and federal laws.

2.3 COUNTY and CITY agree that CITY is authorized to perform or contract for the services necessary to complete the Project.

2.4 CITY shall be responsible for securing any and all property rights from the adjoining property owners for the completion of the Project, which shall be outside the Bailey Road right-of-way corridor specified on the Broward County Trafficways Plan.

2.5 Prior to commencement of any construction, CITY shall provide to COUNTY's Contract Administrator all specifications and design and construction plans for approval.

2.6 CITY shall provide COUNTY, subject to Contract Administrator's satisfaction, proof of ownership of the land, or proof of the acquisition of a perpetual easement, on which the Project is to be built.

2.7 CITY agrees that it shall assume full and complete responsibility to maintain, in perpetuity, the resulting buffer wall in good and safe condition. CITY may, at its option and through a separate agreement, contract with a third party for the maintenance of the buffer wall. This covenant by CITY to provide and pay for perpetual maintenance and care of the buffer wall shall survive the term of this Agreement.

ARTICLE 3 - COSTS

3.1 The cost of the Project is estimated to be Six Hundred Thousand Dollars (\$600,000.00). COUNTY agrees to reimburse CITY for fifty percent (50%) of the cost for design, construction, and construction inspection of the Project, up to a maximum amount of Three Hundred Thousand Dollars (\$300,000.00). Any and all additional costs and expenses of any type or nature over the above maximum amount shall be the sole responsibility of CITY.

3.1.1 It is understood that the method of compensation is that of Lump Sum which means that CITY shall provide for the completion of the Project for total compensation by the COUNTY in the maximum amount stated above.

3.1.2 CITY acknowledges and agrees that the Lump Sum Compensation for the Project in the amount stated above includes any and all reimbursable expenses. COUNTY shall not pay CITY any additional sum for reimbursable expenses.

3.1.3 COUNTY shall not make any payments to CITY in advance of the rendition of services.

3.2 In the event that CITY elects to enter into a contract with a contractor for the construction of the Project, the CITY shall provide written notification to COUNTY of its selected contractor prior to award of the contract, which notice shall include the contract amount for the Project and the date by which CITY intends to award.

3.3 After the start of construction of the Project, CITY may submit monthly invoices to the COUNTY for CITY's cost for the design, construction, and construction inspection of the Project. These billings shall identify the nature of the work performed and the estimated percentage of work accomplished. The total amount paid shall not exceed the total percentage of work performed. COUNTY shall, within Thirty (30) days of receipt of each invoice, remit to CITY the COUNTY's proportionate share up to the maximum amount identified herein.

3.4 Any and all additional costs, overruns, or expenses of any type or nature over and above the amounts provided for herein or estimated by CITY for the design, construction, construction inspection, and maintenance of the Project by CITY shall be the sole responsibility of CITY.

ARTICLE 4 - TERM AND TERMINATION

4.1 The term of this Agreement shall begin on the date it is fully executed by the Parties and shall terminate upon completion of the Project and final payment is made by COUNTY; provided, however, if the term of this Agreement extends beyond a single fiscal year of COUNTY, the continuation of this Agreement beyond the end of any fiscal year shall be subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes.

4.2 COUNTY's participation in this Project is contingent upon the CITY awarding a contract for design, construction, and construction inspection of the Project within twelve (12) months of the execution of this Agreement. In the event the contract for the design, construction, and construction inspection of the Project has not been awarded within the above time period, then COUNTY shall be under no obligation to provide funding as set forth herein, and COUNTY shall have the option, at its sole discretion, of terminating this Agreement.

4.3 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. Termination for cause may include, but is not

limited to, CITY's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work or services; or failure to continuously perform the work or services in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

4.4 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement.

ARTICLE 5 - CHANGES IN SCOPE OF PARTICIPATION

Any change to the Scope of Project must be accomplished by a written amendment, executed by the Parties in accordance with Section 9.13 below.

ARTICLE 6 - NOTICES

Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

FOR BROWARD COUNTY:

Director

Broward County Highway Construction & Engineering Division

One North University Drive, Suite 300B

Plantation, Florida 33324

FOR CITY:

City of North Lauderdale

City Manager

701 Southwest 71 Avenue

North Lauderdale, Florida 33068

With copy to: City Engineer

ARTICLE 7 - INDEMNIFICATION

CITY is an entity subject to Section 768.28, Florida Statutes, as may be amended from time to time, and agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement or any other contract.

ARTICLE 8 - INSURANCE

CITY is an entity subject to Section 768.28, Florida Statutes, as may be amended from time to time, and CITY shall furnish Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of this Agreement. Additionally, if CITY elects to purchase excess liability coverage, CITY agrees that COUNTY will be furnished with a Certificate of Insurance listing "Broward County" as certificate holder on each policy and as an additional insured on the Comprehensive General Liability and Excess Insurance policies.

ARTICLE 9 - MISCELLANEOUS

9.1 DOCUMENTS. Any and all reports, photographs, surveys, plans, and other data and documents provided or created in connection with this Agreement shall be made available to COUNTY at no cost.

9.2 AUDIT RIGHT AND RETENTION OF RECORDS. COUNTY shall have the right to audit the books, records, and accounts of CITY and its subcontractors that are related to this Project. CITY and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CITY and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CITY or its subcontractor, as applicable, shall make same available at no cost to COUNTY in written form. CITY and its subcontractors shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry. CITY shall ensure that the requirements of this Section 9.2 are included in all agreements with its subcontractor(s).

9.3 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT. No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. CITY shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26.

CITY shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of Chapter 16½, Broward County Code of Ordinances. CITY shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CITY shall take affirmative steps to prevent discrimination in employment against disabled persons.

9.4 INDEPENDENT CONTRACTOR. CITY is an independent contractor under this Agreement. Services provided by CITY pursuant to this Agreement shall be subject to the supervision of CITY. In providing such services, neither CITY nor its agents shall act as officers, employees, or agents of COUNTY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to CITY or CITY's agents any authority of any kind to bind COUNTY in any respect whatsoever.

9.5 THIRD PARTY BENEFICIARIES. Neither CITY nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

9.6 ASSIGNMENT AND PERFORMANCE. Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. In addition, CITY shall not subcontract any portion of the work required by this Agreement, except as authorized herein. Notwithstanding the Termination provision of this Agreement, COUNTY may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by CITY of this Agreement or any right or interest herein without COUNTY's written consent. CITY represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services. CITY shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CITY's performance and all interim and final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

9.7 MATERIALITY AND WAIVER OF BREACH. Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof. COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any

breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9.8 COMPLIANCE WITH LAWS. CITY shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

9.9 SEVERANCE. In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or CITY elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days of final court action, including all available appeals.

9.10 JOINT PREPARATION. The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent 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. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

9.11 PRIORITY OF PROVISIONS. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

9.12 JURISDICTION, VENUE, WAIVER OF JURY TRIAL. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties acknowledge that jurisdiction of any controversies or legal disputes arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, CITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, ARISING FROM, OR IN CONNECTION WITH THIS AGREEMENT.**

9.13 AMENDMENTS. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the

Board and CITY or others delegated authority to or otherwise authorized to execute same on their behalf.

9.14 PRIOR AGREEMENTS. This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

9.15 INCORPORATION BY REFERENCE. The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. The attached Exhibit "A" is incorporated into and made a part of this Agreement.

9.16 MULTIPLE ORIGINALS. Multiple copies of this Agreement may be executed by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action on the ____ day of _____, 20____, and CITY OF NORTH LAUDERDALE, signing by and through its Mayor, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
Its Board of County Commissioners

Broward County Administrator, as
Ex-Officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor

____ day of _____, 20__

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By Jacqueline A. Binns (dc)
Signature 6/10/14 (Date)

By Al A. DiCalvo 6/12/14
Al A. DiCalvo (Date)

Assistant County Attorney

Risk Management Division

Print Name Jacqueline A. Binns
and Title above
Risk Insurance and
Contracts Manager

Michael J. Kerr 6/13/14
Michael J. Kerr
Chief Trial Counsel

AAD:hb
8/7/12; 7/8/13; 3/21/14
NorthLauderdale-BufferWallJPA(BaileyRdProject)_v3Final-032114.a01

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF NORTH
LAUDERDALE FOR JOINT FUNDING OF BUFFER WALL CONSTRUCTION ALONG
NORTH SIDE OF BAILEY ROAD FROM EAST OF ROCK ISLAND ROAD TO WEST
OF SW 63RD AVENUE

CITY

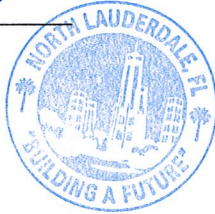
ATTEST:

Patricia Vancheri

City Clerk

Patricia Vancheri

(SEAL)



CITY OF NORTH LAUDERDALE

By

Jack Brady

Mayor-Commissioner

29 day of April, 2014.

Abkhally

City Manager

Ambreen Bhatti

29 day of April, 2014.

APPROVED AS TO FORM:

By

Sam Goren 4/29/14

City Attorney

Sam Goren

Exhibit "A"

Agreement Between Broward County
& City of North Lauderdale
for Joint Funding of Buffer Wall Construction
along the north side of Bailey Road
from east Rock Island Road to west of SW 63rd Ave



Broward County
Highway Construction
& Engineering
Division

