

AGREEMENT

Between

BROWARD COUNTY

and

CITY OF CORAL SPRINGS

for

JOINT PARTICIPATION FOR RELOCATION, DISPOSAL, AND ADJUSTMENT
OF CITY UTILITIES RELATED TO THE WILES ROAD PROJECT FROM RIVERSIDE
DRIVE TO ROCK ISLAND ROAD

This is an Agreement, made and entered into by and between BROWARD COUNTY, a political subdivision of the State of Florida ("COUNTY"), and CITY OF CORAL SPRINGS, a municipal corporation organized and existing under the laws of the State of Florida ("CITY"), (collectively referred to as the "Parties").

WITNESSETH

WHEREAS, COUNTY is undertaking the Wiles Road Project from Riverside Drive to Rock Island Road, which involves the reconstruction of an existing four-lane roadway to a six-lane divided roadway (hereinafter referred to as the "Project"); and

WHEREAS, as part of the Project, some of the improvements include designated bicycle lanes, sidewalks, drainage, signalization, irrigation, and landscaping; and

WHEREAS, there are several existing CITY water and sewer utilities in direct conflict with COUNTY right-of-way, and relocation and adjustment of such utilities is required as part of the overall Project construction; and

WHEREAS, CITY is required to relocate, dispose, and adjust its water and sewer utilities that are in direct conflict with COUNTY right-of-way (hereinafter referred to as "City Work"); and

WHEREAS, COUNTY plans to solicit bids for the Project in accordance with Broward County procurement procedures and CITY requests that COUNTY include the City Work in the bid solicitation for the Project; and

WHEREAS, CITY has agreed to pay for design, permitting, construction, and construction engineering and inspection costs of the City Work; NOW THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1 - DEFINITIONS AND IDENTIFICATIONS

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

1.1 Agreement – Articles 1 through 7, the exhibits and documents that are expressly incorporated by reference.

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

1.3 City Work – The relocation, disposal, and adjustment of CITY water and sewer utilities in direct conflict with COUNTY right-of-way as part of the overall Project construction.

1.4 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 CITY and to manage and supervise execution and completion of the Scope of Participation and the terms and conditions of this Agreement as set forth herein.

1.5 County Administrator – The administrative head of COUNTY appointed by the Board.

1.6 County Attorney – The chief legal counsel for COUNTY appointed by the Board.

1.7 Project – The reconstruction of Wiles Road from Riverside Drive to Rock Island Road, and related improvements, which include designated bicycle lanes, sidewalks, drainage, signalization, irrigation, and landscaping.

ARTICLE 2 - SCOPE OF PARTICIPATION AND COSTS

2.1 COUNTY and CITY shall participate in the Project as set forth in this Agreement.

2.2 CITY shall have its consulting engineer prepare plans and technical specifications for the City Work.

2.3 Upon COUNTY and CITY approval of the plans and specifications prepared by CITY's consulting engineer for City Work, COUNTY shall incorporate such plans and specifications as a deductive alternate in the schedule of bid items in COUNTY's bid and contract documents for the Project. The contract documents shall require the contractor to provide CITY with a one (1) year warranty for the City Work, protecting against defects in materials and workmanship, and shall require that the CITY be named as an additional

insured on the insurance policy. CITY agrees to provide for any necessary revisions to the plans and specifications related to the City Work. .

2.4 Upon opening of the bids for the construction of the Project and prior to award to a contractor, COUNTY shall furnish CITY with a copy of the overall low bid it received, including the deductive alternate bid prices for City Work. CITY shall review the bid items and notify COUNTY within ten (10) business days of receipt of bid items from COUNTY whether to include the items in the award. If CITY elects not to proceed, COUNTY may terminate this Agreement, at which time CITY shall have ninety (90) calendar days to remove all CITY utilities that are in direct conflict with COUNTY right-of-way.

2.5 Following COUNTY's award of the construction contract for the Project, COUNTY shall submit periodic invoices to CITY containing the contractors' charges for City Work actually performed ("Construction Costs for City Work"). CITY shall remit payment to COUNTY within thirty (30) calendar days of the date each invoice is transmitted to CITY, and CITY shall be responsible for any claims asserted by contractor arising from CITY's delay in remitting payment to the COUNTY. In the event construction costs for the City Work are increased by change orders, approved by COUNTY and CITY, CITY shall reimburse COUNTY for all such costs through the periodic invoices.

2.6 In addition to the above, CITY shall pay for all permitting and testing fees and costs required for the City Work.

2.7 COUNTY and CITY agree that COUNTY's consulting engineer shall perform Construction Engineering and Inspection (CEI) services during construction. CITY shall reimburse COUNTY for CEI services related to the City Work calculated at twelve percent (12%) of the total Construction Costs for City Work. COUNTY shall submit periodic invoices to CITY containing the COUNTY's CEI charges based on percentage of completion of the City Work. CITY shall remit payment to COUNTY within thirty (30) calendar days of the date each invoice is transmitted to CITY. COUNTY shall allow CITY's consulting engineer to make periodic inspections of the City Work at Project site.

2.8 For purposes of this Agreement, the Project and associated City Work shall be considered completed upon final inspection and acceptance by the Contract Administrator. CITY shall receive copies of all reports and documentation related to the City Work. Upon completion of the Project or City Work, CITY shall receive a set of signed and sealed certified as-built drawings and warranties for the City Work.

2.9 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.

ARTICLE 3 - TERM AND TERMINATION

3.1 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 payment of the costs under Article 2, or as provided for below.

3.2 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 receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in the written notice provided by COUNTY, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health or safety. If COUNTY erroneously, improperly, or unjustifiably terminates for cause, such termination shall, at COUNTY's sole election, be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

3.3 This Agreement may be terminated for cause for reasons including, but not limited to, failure of the Parties to suitably perform the services required herein, or failure of the Parties to continuously perform the services required by the terms and conditions of this Agreement in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

3.4 CITY acknowledges that it has received good, valuable, and sufficient consideration from COUNTY, the receipt and adequacy of which are hereby acknowledged by CITY, for COUNTY's right to terminate this Agreement for convenience.

3.5 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement, except that notice of termination by County Administrator, which County Administrator deems necessary to protect the public health or safety may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

ARTICLE 4 - NOTICES

In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this article.

FOR COUNTY:
Broward County Highway Construction and Engineering Division
Attn: Richard Tornese, P.E.
One North University Drive, Suite B300
Plantation, FL 33324
Email address: rtornese@broward.org

FOR CITY:
City of Coral Springs Public Works Dept.
Attn: Rich Michaud
9551 West Sample Road
Coral Springs, FL 33065
Email address: rmichaud@coralsprings.org

ARTICLE 5 - INDEMNIFICATION

5.1 Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. COUNTY and CITY are entities subject to Section 768.28, Florida Statutes, as may be amended from time to time, and agree to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

5.2 The provisions of this article shall survive the expiration, termination upon completion of the Project, or earlier termination of this Agreement.

ARTICLE 6 - INSURANCE

COUNTY and CITY are entities subject to Section 768.28, Florida Statutes, as may be amended from time to time, and each shall furnish the other with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

ARTICLE 7 - MISCELLANEOUS

7.1 Documents. Any and all reports, photographs, surveys, plans, and other data and documents provided or created in connection with this Agreement are and shall remain the property of COUNTY.

7.2 Independent Contractor. CITY is an independent contractor under this Agreement. In performing under this Agreement, neither CITY nor its agents shall act as officers, employees, or agents of COUNTY. CITY shall not have the right to bind COUNTY to any obligation not expressly undertaken by COUNTY under this Agreement.

7.3 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.

7.4 Assignment. Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered by CITY without the prior written consent of COUNTY. If CITY violates this provision, COUNTY shall have the right to immediately terminate this Agreement.

7.5 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.

7.6 Compliance With Laws. COUNTY and 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.

7.7 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

7.8 Joint Preparation. This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.

7.9 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

7.10 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 7 of this Agreement, the provisions contained in Articles 1 through 7 shall prevail and be given effect.

7.11 Law, 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 agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **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 THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

7.12 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 or otherwise authorized to execute same on their behalf.

7.13 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

7.14 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference.

7.15 Representation of Authority. Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

7.16 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

7.17 Nondiscrimination. 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.

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 CORAL SPRINGS, signing by and through its _____, 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__

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

Insurance requirements
approved by Broward County
Risk Management Division

By Tom Kelly 5/11/17
Signature (Date)

By Maya A. Moore 5/16/17
Maya A. Moore (Date)
Assistant County Attorney

Tim Erady Deputy Speaker
Print Name and Title above

Michael J. Kerr 5/17/17
Michael J. Kerr (Date)
Deputy County Attorney

MAM
CoralSpringsJPA(WilesRd-RiversideDrRockIslandRdProject-UtilityRelo)_v1.03.01.17.final
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AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF CORAL SPRINGS FOR
JOINT PARTICIPATION FOR RELOCATION, DISPOSAL, AND ADJUSTMENT OF CITY
UTILITIES RELATED TO THE WILES ROAD PROJECT FROM RIVERSIDE DRIVE TO
ROCK ISLAND ROAD

CITY

ATTEST:

Debra Thomas

City Clerk

Debra Thomas, CMC
(Print or Type Name)

(SEAL)

CITY OF CORAL SPRINGS

By *[Signature]*

Mayor-Commissioner

Walter G. Campbell, Jr.
(Print or Type Name)

12th day of *April*, 20*17*.

[Signature]

City Manager

Erdal Donmez
(Print or Type Name)

APPROVED AS TO FORM:

By *[Signature]*
Deputy City Attorney