

AGREEMENT

Between

BROWARD COUNTY

and

CITY OF MIRAMAR

for

JOINT PARTICIPATION FOR IMPROVEMENTS TO  
THE CURVE ALONG 6700 MIRAMAR PARKWAY

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 MIRAMAR, a municipal corporation organized and existing under the laws of the State of Florida ("CITY"), (collectively the "Parties").

RECITALS:

WHEREAS, CITY is in receipt of Broward Metropolitan Planning Organization ("MPO")'s 2015 cycle application for Transportation Alternatives Program ("TAP") funding for the Miramar Parkway Streetscape project from SW 68 Avenue to SW 64 Avenue ("Project"); and

WHEREAS, CITY has hired Kimley-Horn & Associates ("KHA") for the design services for the Project; and

WHEREAS, during the design phase, KHA noticed that the traffic safety along the curve at 6700 Miramar Parkway could be improved by widening the west bound lanes and reducing the median width along with other improvements; and

WHEREAS, Miramar Parkway between SW 68 Avenue and SW 64 Avenue is a COUNTY owned roadway, and COUNTY seeks to include additional improvements consisting of median improvements, new bicycle lanes, sidewalk improvements, and roadway re-surfacing ("County Work"); and

WHEREAS, COUNTY and CITY agree that it is of mutual benefit to include the County Work under the Project, and CITY agrees to manage and coordinate the Project; and

WHEREAS, COUNTY agrees to reimburse CITY for the costs related to the design, construction, and construction administration and inspection for the County 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** – This Agreement includes Articles 1 through 7, 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 **County Work** – The improvements along the curve along 6700 Miramar Parkway, consisting of median improvements, new bicycle lanes, sidewalk improvements, and roadway re-surfacing, more specifically described in Exhibit "A," attached hereto and incorporated herein.

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 regarding the 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 Project consists of improvements to the curve along 6700 Miramar Parkway, together with the County Work, as described in Article 2 and Exhibit "A."

#### 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 for the Project prepare design plans and technical specifications for the construction of the County Work.

2.3 Upon COUNTY and CITY approval of the design plans and technical specifications prepared by CITY's consulting engineer for County Work, CITY shall

incorporate such plans and specifications as part of the overall Project. The contract documents for the Project shall require the construction contractor to provide COUNTY with a one (1) year warranty for the County Work, protecting against defects in materials and workmanship, and shall require that the COUNTY be named as an additional insured on the insurance policy.

2.4 COUNTY shall waive all county permit and inspection fees, including permit security requirements, related to the Project.

2.5 CITY shall provide construction administration and inspection during construction of the County Work.

2.6 COUNTY shall reimburse CITY for the costs related to the design, construction, and construction administration and inspection of the County Work up to a maximum amount of One Hundred Ninety-seven Thousand Seven Hundred and Thirty-six Dollars (\$197,736) ("Reimbursable Amount") (see Exhibit B-Engineer's Cost Estimate), within thirty (30) days of receipt of an invoice substantiating the Reimbursable Amount. CITY may, at its discretion, submit invoices for a portion of the Reimbursable Amount to COUNTY. Within thirty (30) days of receipt of such an invoice, COUNTY shall pay CITY the amount identified therein. Any and all additional costs and expenses of any type or nature over the above maximum amount shall be the sole responsibility of CITY.

2.7 CITY is undertaking the County Work for the benefit of COUNTY. Upon completion of the Project or County Work, at the discretion of the City Engineer, COUNTY shall take possession and ownership of the County Work and be responsible for its continued maintenance. For purposes of this Agreement, the Project and associated County Work shall be considered completed upon final inspection and acceptance by the City Engineer.

2.8 Upon completion of the Project, COUNTY shall receive copies of all reports and documentation related to the County Work, including a set of signed and sealed certified as-built drawings, including electronic PDF and AUTOCAD files, and warranties for the County 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 requirements of this Article 2.

### 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. 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.

3.2 COUNTY's participation in this Project is contingent upon CITY awarding a contract for construction and construction coordination of the Project within twenty-four (24) months of the execution of this Agreement. In the event the contract for the construction and construction coordination 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.

3.3 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 receipt of written notice from the aggrieved party identifying the breach. Termination for cause may include, but 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.

3.4 In the event this Agreement is terminated for any reason, any amounts due CITY shall be withheld by COUNTY until all documents are provided to COUNTY pursuant to Section 7.1 of Article 7.

#### 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:

Director, Broward County Highway Construction and Engineering Division  
1 North University Drive  
Box B300  
Plantation, FL 33324  
Email address: rtornese@broward.org

FOR CITY:

City Engineer, City of Miramar  
2200 Civic Center Place  
Miramar, FL 33025  
Email address: bjvempala@miramarfl.gov

With a copy to:

City Attorney  
Weiss Serota Helfman Cole & Bierman, P.L.

200 East Broward Boulevard, Suite 1900  
Fort Lauderdale, FL 33301

#### 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 their 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 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.

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

7.4 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.

7.5 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.

7.6 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.

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

7.8 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.

7.9 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.

7.10 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.**

7.11 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.

7.12 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.

7.13 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The attached Exhibit "A" is incorporated into and made part of this Agreement.

7.14 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.

7.15 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.

(The remainder of this page is intentionally left blank.)

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 MIRAMAR, 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\_\_

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 Tom Keady 8/30/17  
Signature (Date)

By MAM 8/31/17  
Maya A. Moore (Date)  
Assistant County Attorney

Tom Keady, Reports Specialist  
Print Name and Title above

Michael Kerr 8/31/17  
Michael Kerr (Date)  
Deputy County Attorney

AAD  
4/16/15; 5/6/15; 6/29/15; 7/15/15  
MiramarJPA(IntersecImprov-DykesRd&SW29St)\_v4Final-071515



AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF MIRAMAR FOR JOINT PARTICIPATION FOR IMPROVEMENTS TO THE CURVE ALONG 6700 MIRAMAR PARKWAY

CITY OF MIRAMAR, FLORIDA,

By:   
Kathleen Woods-Richardson, City Manager

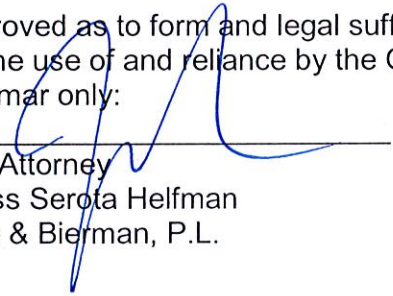
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Date: August 23, 2017

ATTEST:

  
Denise A. Gibbs, City Clerk

Approved as to form and legal sufficiency  
for the use of and reliance by the City of  
Miramar only:

  
City Attorney  
Weiss Serota Helfman  
Cole & Bierman, P.L.

AS

EXHIBIT A

The County Work consists of the modification to the median, addition of four feet wide bicycle lanes for both east-bound and west-bound directions, installation of new sidewalk, concrete curb & gutter "type F", milling and re-surfacing the curve section of Miramar Parkway along 6700 Miramar Parkway with all required signs and markings, and installation of the double-faced guardrail.

## Exhibit "B"



### Opinion of Probable Construction Cost Miramar Parkway Streetscape (SW 64th Ave to SW 68th Ave-CURVE ONLY)

<u>FDOT Pay Item NO.</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Value</u>
0101-1	Mobilization (10% of Construction Cost)	1	LS	\$12,000.00	\$12,000.00
0102-1	Maintenance of Traffic	1	LS	\$20,000.00	\$20,000.00
0110-1-1	Clearing and Grubbing	1	LS	\$15,000.00	\$15,000.00
0160-4	Type B Stabilization (12" subgrade)	100	SY	\$7.00	\$700.00
0285-7-09	Optional Base, Base Group 9 - 12" Thick	100	SY	\$22.00	\$2,200.00
0327-70-6	Milling Existing Asphalt, 2.5" avg. depth	1,100	SY	\$6.00	\$6,600.00
0334-1	1.5" Superpave Asphaltic Concrete 12.5	1,200	SY	\$12.00	\$14,400.00
0337-7	1" Asphaltic Concrete Friction Course 9.5	1,200	SY	\$10.00	\$12,000.00
	Remove and Install Grate/Top	2	EA	\$2,500.00	\$5,000.00
0520-1-10	Concrete Curb and Gutter Type F	580	LF	\$25.00	\$14,500.00
0522-2	Concrete Sidewalk, 6" thick	200	SY	\$42.00	\$8,400.00
0706-3	Retro-reflective pavement markers	20	EA	\$5.00	\$100.00
0711-11-111	Thermoplastic, Standard, White, Solid 6"	900	LF	\$2.00	\$1,800.00
	Pavement Marking, Bike Lane Marking	1	EA	\$250.00	\$250.00
0536-1-3	Double-Faced Guardrail (including the removal of existing)	340	LF	\$45.00	\$15,300.00
	Remove and re-Install the Radar Speed Signs	2	EA	\$2,000.00	\$4,000.00
	Irrigation	1	LS	\$5,000.00	\$5,000.00
	Site Restoration (including driveway aprons)	1	LS	\$10,000.00	\$10,000.00
	<b>Total Construction Cost</b>				<b>\$148,000.00</b>
	Construction Engineering & Inspection Services (12%)				\$17,760.00
	Design Fees				\$14,000.00
	<b>Total Cost</b>				<b>\$179,760.00</b>
	<b>10% Contingency</b>				<b>\$17,976.00</b>
	<b>Project Total</b>				<b>\$197,736.00</b>

**Notes**

1. The estimate includes the cost associated with insurance, field engineering, surveying, layout, as-builts, payment & performance bonds, and any other costs associated with the construction of the project not specifically identified in the line items.
2. The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.