

**Agreement between Broward County and City of Fort Lauderdale
for the Andrews Avenue Drawbridge Rehabilitation Project
with City-Initiated Enhancements for Broward County**

This agreement ("Agreement") between Broward County ("County"), a political subdivision of the State of Florida, and City of Fort Lauderdale ("City"), a municipal corporation organized and existing under the laws of the State of Florida (collectively, the "Parties"), is entered into and effective as of the date this Agreement is fully executed by the Parties ("Effective Date").

RECITALS

A. County issued an invitation for bids to obtain a contractor to perform bridge construction services for the Andrews Avenue Drawbridge Rehabilitation Project. The project involves the rehabilitation of the electrical, hydraulic, mechanical, and structural systems of Broward County Bridge No. 860319 ("Bridge"), Solicitation No. PNC2114822C1 ("Contract") together with enhancements requested by City (the "Project").

B. Kiewit Infrastructure South Co. ("Contractor") was selected as the lowest responsive and responsible bidder and awarded the Contract for the Project.

C. City has requested and County has agreed that the specific enhancements described in Exhibit A (the "Enhancements") will be included as part of the Project.

D. City will provide a portion of the funding, as described below, for inclusion of the Enhancements in the Project.

E. Municipality has authorized the appropriate municipal officers to execute this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 - DEFINITIONS AND IDENTIFICATIONS

1.1 Agreement. This document, Articles 1 through 8, inclusive of all referenced exhibits.

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

1.3 City Manager. The administrative head of the City appointed by the City Commission.

1.4 Contract Administrator. The Director of the Broward County Highway and Bridge Maintenance Division, or designee, who is the representative of County concerning the Project.

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 Illumination System. The Project's underdeck luminaires, except for conductors, conduits, or junction boxes.

ARTICLE 2 - SCOPE OF PARTICIPATION

2.1 County and City will participate in the Project in the manner set forth in this Agreement.

2.2 County shall:

2.2.1 Include the Enhancements as part of the Project.

2.2.2 Ensure that Contractor incorporates the Enhancements into the Project, and completes the Project in accordance with the Contract.

2.2.3 Accept and expend funding for the Enhancements in accordance with the cost allocation outlined in Exhibit B.

2.2.4 Provide and maintain electrical power to the Illumination System.

2.2.5 Maintain Bridge conduits, junction boxes, and conductors that energize the Illumination System from the power source to each luminaire.

2.2.6 Have no further obligation except as otherwise specifically set forth herein.

2.3 City shall:

2.3.1 Provide County with funding for Enhancements (as outlined in Exhibit B) in accordance with Article 3 of this Agreement.

2.3.2 Once installed, and with the exception of providing and maintaining electrical power and the components described in Sections 2.2.4 and 2.2.5, properly maintain the four (4) wall mounted, underdeck luminaires installed as part of the Project in good repair with all necessary maintenance, repair, and replacement of any type or nature, including, but not limited to, normal wear and tear, acts of God, vandalism and/or accidents.

2.3.3 Perform its maintenance obligations, as set forth in Section 2.3.2 of this Agreement, through either the use of its employees or by contracting with a third party. If City contracts with a third party to perform its maintenance obligations, City will remain fully responsible for these obligations and shall ensure that its contractors comply at all times with each and every term, condition, duty, and obligation set forth herein.

2.4 The Parties agree and understand that the Bridge will remain classified as a structure within a County road, that the Illumination System must not be moved or relocated without the express written consent of the Contract Administrator, and that this Agreement will not affect County's responsibility for installation and maintenance of traffic control signals and devices along the Bridge.

2.5 If City fails to maintain the Bridge underdeck luminaires, County, at Contract Administrator's sole option, and at least thirty (30) days after issuance of written notice to City of the breach, may cause such breach to be cured and bill City for the costs of such cure or terminate this Agreement. If County opts to cure the breach and bill City for same, City must then remit to County the amount so billed within thirty (30) days of City's receipt of the bill.

2.6 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 or the express terms of this Agreement.

ARTICLE 3 – COSTS

3.1 It is estimated that Optional Item A, Noise Mitigating Wheel Paths (as identified in Exhibit A) will cost One Hundred Forty Seven Thousand Seven Hundred Dollars (\$147,700) to design and construct. County shall be responsible for sixty percent (60%) of all costs associated with the furnishing and installation of Optional Item A, Noise Mitigating Wheel Paths (as identified in Exhibit A), whether the estimated cost to design and construct increases or decreases. City shall pay County the remaining forty percent (40%) of the actual cost associated with the furnishing and installation of Optional Item A, Noise Mitigating Wheel Paths, whether the estimated cost to design and construct increases or decreases. City must remit payment to County for that forty percent (40%) within thirty (30) days of receipt of an invoice from County.

3.2 It is estimated that Optional Item B, Underdeck Luminaries and Bracket Arms (as identified in Exhibit A) will cost Twenty Five Thousand Three Hundred Dollars (\$25,300) to design and construct. Upon City's receipt of County's invoice for reimbursement, City shall pay County one hundred percent (100%) of the actual cost associated with the furnishing and installation of Optional Item B, Wall Mounted, Underdeck Luminaires, whether the estimated cost to design and construct increases or decreases.

ARTICLE 4 - TERM AND TERMINATION

4.1 The term of this Agreement begins on the Effective Date and continues in perpetuity unless terminated as provided for in this Article 4.

4.2 This Agreement may be terminated for cause for reasons including, but not limited to the following: failure of City to perform its obligations in Article 2 above, regardless of whether any such breach was previously waived or cured.

4.3 If City does not cure its breach, within thirty (30) days after City's receipt of County's written notice setting forth the breach, this Agreement may be terminated for cause by County, through action of the Board. If City cures the breach within thirty (30) days after written notice of same, to the satisfaction of the Contract Administrator, this Agreement will remain in full force and effect.

4.4 This Agreement may be terminated for convenience by the Board or the City. Termination for convenience by the Board or the City will be effective on the termination date stated in a written notice provided by the terminating party, which termination date must not be less than thirty (30) days after the date of such written notice. Notwithstanding any of the above, this Agreement may also be terminated by the County Administrator or City Manager upon written notice in the event that the County Administrator or City Manager determines that termination is necessary to protect the public health, safety, or welfare.

4.5 If this Agreement is terminated for convenience, upon being notified of election to terminate, the Parties shall stop performing further services or incurring additional expenses under this Agreement.

4.6 If County erroneously, improperly, or unjustifiably terminates this Agreement for cause, such termination will, at County's sole election, be deemed a termination for convenience, which will be effective thirty (30) days after such written notice of termination for cause is sent by County.

4.7 Notice of termination will be provided in accordance with Article 5, "NOTICES."

ARTICLE 5 - 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 acknowledge of delivery, or by hand-delivery with a request for a written receipt of acknowledgement of delivery, together with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand deliver (provided the contemporaneous email is also sent). The addresses for notice will 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:
Anh Ton, P.E., Director,
Highway and Bridge Maintenance Division
1600 Blount Road
Pompano Beach, Florida 33069
Email: Aton@broward.org
Telephone: (954) 357-6040

For City:
Jugba Santi, Interagency Coordinator
City of Fort Lauderdale
290 NE 3rd Avenue
Fort Lauderdale, FL 33301
Email: jsanti@fortlauderdale.gov
Telephone: (954) 828-3768

ARTICLE 6 - INDEMNIFICATION

6.1 City and County 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 own agents or employees, who are acting within the scope of their employment and to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor will 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.

6.2 If City contracts with a third party to provide the services set forth herein, any contract with such third party must include the following provision:

6.2.1 Indemnification: City's contractor will indemnify and hold harmless County, its officers, agents, and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of City's contractor and other persons employed or utilized by City's contractor in the performance of this Agreement. These indemnifications will survive the term of this Agreement. If any action or proceeding is brought against County by reason of any such claim or demand, City's contractor must, upon written notice from County, resist and defend such action or proceeding by counsel satisfactory to County.

6.3 The provisions of this article will survive the termination of this Agreement.

ARTICLE 7 - INSURANCE

7.1 City shall provide Contract Administrator with written verification of liability

protection in accordance with state law prior to final execution of this Agreement. The City maintains a risk management program in accordance with Section 768.28, Florida Statutes, which includes a program of self-insured and insured coverage for all workers compensation, general and automobile liability exposures.

7.2 If City contracts with a third party to provide the services set forth herein, any contract with such third party shall include, at a minimum, the following provisions:

7.2.1 Insurance: City's contractor shall keep and maintain, at the contractor's sole expense, insurance of the types and minimum amounts as set forth on Exhibit C, and specifically protect County by naming "Broward County" as an additional insured under the Commercial General Liability Insurance policy as well as any Excess Liability Insurance policy.

7.2.2 City's contractor shall furnish the Contract Administrator with Certificates of Insurance or Endorsements evidencing the insurance coverages specified by this section prior to beginning the performance of work under this Agreement.

7.2.3 Coverage is not to cease and is to remain in full force and effect until all performance required of City's contractor is completed. If any of the insurance coverage will expire prior to the completion and final acceptance of the Project, proof of insurance renewal shall be provided to County prior to the policy's expiration.

ARTICLE 8 - MISCELLANEOUS

8.1 Documents. Copies of any and all reports, photographs, surveys, plans, and other data and documents provided or created in connection with this Agreement must be provided to County at no cost upon request.

8.2 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.

8.3 Independent Contractor. City is an independent contractor under this Agreement, and nothing in this Agreement constitutes or creates a partnership, joint venture, or any other relation between the Parties. In providing services under this Agreement, neither City nor its agents shall act as officers, employees, or agents of County. City does not have the right to bind County to any obligations not expressly undertaken by County under this Agreement.

8.4 Third Party Beneficiaries. Neither City nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party will be entitled to assert a right or claim against either of them based upon this Agreement.

8.5 Assignment and Performance. Neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by City or County without the prior written consent of the other party. If City or County violates this provision, City or County will have the right to immediately terminate this Agreement. City represents that each person and entity that will provide services under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. City agrees that all services under this Agreement will be performed in a skillful and respectful manner, and that the quality of all such services will equal or exceed prevailing industry standards for the provision of such services.

8.6 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 that each is, therefore, a material term of this Agreement. City or County's failure to enforce any provision of this Agreement will not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement will not be deemed a waiver of any subsequent breach and will not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of that party.

8.7 Compliance with Laws. City and its contractor(s) must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations under this Agreement.

8.8 Joint Preparation. This Agreement has been jointly prepared by the Parties, and must not be construed more strictly against either party.

8.9 Interpretation. The titles and headings contained in this Agreement are for reference purposes only and do not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement include the other gender, and the singular includes 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.

8.10 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 8 of this Agreement, the provision contained in Articles 1 through 8 will prevail and be given effect.

8.11 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement will be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, will 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 THIS AGREEMENT.**

8.12 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein will be effective unless contained in a written document prepared with the same 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.

8.13 Entire Agreement. This Agreement embodies the entire agreement between the Parties. It may not be modified or terminated except as provided in this Agreement. If any provision is invalid, it will be considered deleted from this Agreement, and such deletion will not invalidate the remaining provisions.

8.14 Incorporation by Reference. The attached Exhibits A, B, and C are incorporated into and made a part of this Agreement.

8.15 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.

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

IN WITNESS WHEREOF, the parties 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 Fort Lauderdale, 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
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By Counall _____ 01/25/19
Signature (Date)

Colleen Counall Risk Analyst
Print Name and Title above


By MAA _____ 1/25/19
Maya A. Moore (Date)
Assistant County Attorney

MJK _____ 1/28/19
Michael J. Kerr (Date)
Deputy County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF FORT LAUDERDALE
FOR CITY INITIATED ENHANCEMENTS FOR BROWARD COUNTY SOLICITATION
No. PNC2114822C1

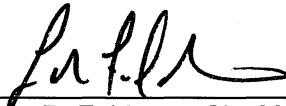
CITY

ATTEST



Jeffrey A. Modarelli, City Clerk

CITY OF FORT LAUDERDALE


By 

Lee R. Feldman, City Manager

24th day of October, 2018

(CORPORATE SEAL)

APPROVED AS TO FORM:
Alain E. Boileau, City Attorney



Shari Wallen, Assistant City Attorney

Exhibit A

Items requested by City of Fort Lauderdale to be included in Broward County Solicitation # PNC2114822C1 "Andrews Avenue Drawbridge Rehabilitation Project"

Item A – "Noise Mitigating Wheel Paths."

This work entails furnishing and installing wheel paths on the grated bridge deck that reduce the noise generated by vehicles traversing the bridge. It includes the following:

- Furnishing and installing "Stay-in-Place" forms.
- Furnishing and installing lightweight, high early strength class IV concrete.
- Furnishing and installing Movable Bridge Balance Blocks.
- Calculating and adjusting Movable Bridge Counterweight to balance bridge weights.

Item B – "Underdeck Luminaires and Bracket Arms."

This work requires the furnishing and installation of four (4) underdeck luminaires and supporting bracket arms. The work also includes all necessary conduits, conductors, circuit breakers, photocells, grounding, and incidentals necessary to complete installation as per Contract plans and specifications.

The materials used must be as follows:

- Luminaire: Sentry Electric SBCA6-NG-(3)32LEDV18-1.05A-835-STLA-PLZH-FG.
- Bracket Arm: Sentry Electric SAL-LYN28-FSCR-PLZC-FG.

Exhibit B - Estimated Cost and Allocation

Bid Item	Item Description	Estimated Cost*	Cost Allocation	
			Broward County	City of Fort Lauderdale
Item A	Noise Mitigating Wheel Paths.	\$ 147,700.00	60%	40%
Item B	Underdeck Luminaires and Bracket Arms.	\$ 25,300.00	0%	100%

*Cost overruns will be allocated in accordance with the above cost allocation.

EXHIBIT C
INSURANCE REQUIREMENTS

Project: 2015-0502 Interlocal Agreement between Broward County and City of Fort Lauderdale - Re: Andrews Avenue Bridge

TYPE OF INSURANCE	ADDL INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
GENERAL LIABILITY - Broad form <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input type="checkbox"/> XCU Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury Per Occurrence or Claims-Made: <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made Gen'l Aggregate Limit Applies per: <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loc. <input type="checkbox"/> Other _____	☑	☑	Bodily Injury		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$1,000,000	\$2,000,000
			Personal Injury		
			Products & Completed Operations		
AUTO LIABILITY <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>	☑	☑	Bodily Injury (each person)		
			Bodily Injury (each accident)		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$500,000	
<input type="checkbox"/> EXCESS LIABILITY / UMBRELLA Per Occurrence or Claims-Made: <input type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>	☑	☑			
<input checked="" type="checkbox"/> WORKER'S COMPENSATION <i>Note: U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water.</i>	N/A	☑	Each Accident	STATUTORY LIMITS	
<input checked="" type="checkbox"/> EMPLOYER'S LIABILITY			Each Accident	\$500,000	
<input type="checkbox"/> PROFESSIONAL LIABILITY (ERRORS & OMISSIONS) All engineering, surveying and design professionals.	N/A	☑	If claims-made form:		
			Extended Reporting Period of:		
			*Maximum Deductible:		
<input type="checkbox"/> Installation floater is required if Builder's Risk or Property are not carried. <i>Note: Coverage must be "All Risk", Completed Value.</i>			*Maximum Deductible (Wind and/or Flood):	Not to exceed 5% of completed value	Completed Value
			*Maximum Deductible:	\$10 k	
Description of Operations: "Broward County" shall be listed as Certificate Holder and endorsed as an additional insured for liability, except as to Professional Liability. County shall be provided 30 days written notice of cancellation, 10 days' notice of cancellation for non-payment. Contractors insurance shall provide primary coverage and shall not require contribution from the County, self-insurance or otherwise. Any self-insured retention (SIR) higher than the amount permitted in this Agreement must be declared to and approved by County and may require proof of financial ability to meet losses. Contractor is responsible for all coverage deductibles unless otherwise specified in the agreement.					
CERTIFICATE HOLDER: Broward County 115 South Andrews Avenue Fort Lauderdale, Florida 33301			 Risk Management Division		