

**AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF POMPANO BEACH
FOR IMPROVEMENTS TO THE INTERSECTION OF DR MARTIN LUTHER KING,
JR. BOULEVARD AND NW 27 AVENUE**

This agreement (“Agreement”) between Broward County (“County”), a political subdivision of the State of Florida, and City of Pompano Beach (“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. As part of a capital improvement project, City has designed and desires to construct a new traffic signal system (“Improvements”), as more particularly described in Exhibit A, at the intersection of Dr. Martin Luther King, Jr. Boulevard and NW 27 Avenue (“Intersection”).

B. City owns and controls the Intersection’s right-of-way depicted on Exhibit B.

C. The Parties want County to fund City’s design and construction the Improvements in accordance with Article 2 of this Agreement, in furtherance of their mutual best interests.

D. City desires to enter into its own contract for the construction of the Improvements with DP Development of the Treasure Coast, LLC, currently under open-end contract number PNC2117271B1 with the County.

E. City, through formal action of its governing body taken on the ___ day of _____, 20__, has accepted responsibility for the design and construction of the Improvements at the Intersection.

F. City has authorized the appropriate City officials 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

1.1 **Board**: The Board of County Commissioners of Broward County, Florida.

1.2 **Contract Administrator**: The Director of the County’s Traffic Engineering Division, or designee.

1.3 **County Administrator**: The administrative head of County appointed by the Board.

1.4 **County Attorney**: The chief legal counsel for County appointed by the Board.

1.5 **Final Completion**: That date, as determined by Contract Administrator, in his/her sole discretion, on which the work has received from County a passing field inspection verifying that

the Improvements have been completed in compliance with the Manual on Uniform Traffic Control Devices, that all conditions of permits and regulatory agencies have been satisfied, and that the Improvements can be used in all respects for their intended purpose.

ARTICLE 2. SCOPE OF PARTICIPATION AND COSTS

2.1 The estimated cost for the design and construction of the Improvements is Six Hundred Three Thousand Five Hundred Seventy Dollars (\$603,570). As of February 26, 2019, City has incurred One Hundred Twenty-two Thousand Eight Hundred Ninety Dollars (\$122,890) for design costs. County and City will participate in the design and construction of the Improvements in the manner set forth below.

2.2 County shall:

2.2.1 Pay City its actual costs up to a maximum amount not-to-exceed of Six Hundred Three Thousand Five Hundred Seventy Dollars (\$603,570) (“County’s Commitment”) for the design and construction of the Improvements, within forty-five (45) days after receipt of City’s final invoice, so long as City’s final invoice includes all supporting documentation of dollars expended for the design and construction of the Improvements. Included within County’s Commitment are actual costs for design, construction, construction engineering and inspection, post design services, field surveying, preparation of as-built plans services, and materials sampling and testing.

2.2.2 Once construction of the Improvements has been accepted by County, County will provide ongoing maintenance of the Improvements.

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

2.3 City shall:

2.3.1 Pay any actual costs of the Improvements in excess of County’s Commitment specified in paragraph 2.2.1 above.

2.3.2 Submit a full set of plans for the design and construction of the Improvements to the Broward County Traffic Engineering Division (“TED”) at least thirty (30) days before scheduled commencement of the work and obtain written approval from the Contract Administrator before beginning construction of the Improvements.

2.3.3 Ensure that the Improvements are designed and constructed in accordance with the Manual on Uniform Traffic Control Devices, all applicable design and engineering standards, and in compliance with all federal, state, and local codes, laws, and regulations.

2.3.4 Obtain Final Completion within twelve (12) months of the Effective Date of this Agreement.

2.3.5 Upon Final Completion, submit as-built drawings for the construction of the Improvements to TED.

2.3.6 Upon Final Completion, submit a final invoice to County of all actual costs, including all supporting documentation of dollars expended for the design and construction of the Improvements. City shall not include in its final invoice, any amounts in excess of County's Commitment for the design and construction of the Improvements.

2.3.7 Require its construction contractor to provide a one (1) year warranty for the Improvements, protecting against defects in materials and work.

2.3.8 Accept ownership of the Improvements.

2.4 The Parties agree and understand that the Improvements must not be moved or relocated without the express prior written consent of the Contract Administrator.

ARTICLE 3. TERM AND TERMINATION

3.1 The term of this Agreement begins on the Effective Date and continues until terminated in accordance with the provisions of this Article.

3.2 This Agreement may be terminated for cause by County if City fails to perform any of its obligations under Article 2 above and has not corrected the breach within ten (10) days after receipt of written notice identifying the breach.

3.3 This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health or safety.

3.4 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement, except that notice of termination by the County Administrator, which the 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

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 acknowledgement of delivery, together with a contemporaneous copy via e-mail, to the addresses listed below and will 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:

Andrew Sebo, Director
Broward County Traffic Engineering Division
2300 W Commercial Boulevard
Fort Lauderdale, Florida 33309
Email address: asebo@broward.org

FOR CITY:

Greg Harrison, City Manager
City of Pompano Beach
100 W. Atlantic Boulevard
Pompano Beach, FL 33060
Email address: Greg.Harrison@copbfl.com

ARTICLE 5. INDEMNIFICATION

5.1 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 respective 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 in this Agreement shall be construed as consent by County or City to be sued by third parties in any matter arising out of this Agreement or any other contract.

5.2 If City contracts with a third party to construct the Improvements, any contract with such third party shall include the following provisions:

5.2.1 Third party shall indemnify, hold harmless County and all of County's officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses (collectively, a "Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of third party, its current or former employees, officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement. If any Claim is brought against an Indemnified Party, third party shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County Attorney's option, pay for an attorney selected by the County Attorney to defend Indemnified Party.

5.3 The obligations of this Article shall survive the expiration, termination upon completion of the Improvements, or earlier termination of this Agreement.

ARTICLE 6. INSURANCE

6.1 City shall provide Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of this Agreement. 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.

6.2 If City contracts with a third party to perform the work set forth herein, any contract with such third party shall include, at a minimum, the following provisions:

6.2.1 Insurance: City's contractor shall keep and maintain, at the contractor's sole expense, insurance of the types and minimum amounts described in Exhibit C for the cost of funding the Improvements 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.

6.2.2 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.

6.2.3 Coverage is not to cease and is to remain in 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 Improvements, proof of insurance renewal shall be provided to County prior to the policy's expiration.

ARTICLE 7. MISCELLANEOUS

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

7.2 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.

7.3 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, unless expressly, and only to the extent, stated otherwise in this Agreement. 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.

7.4 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.

7.5 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. 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.

7.6 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.

7.7 Compliance with Laws. City and County will comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations under this Agreement.

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

7.9 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.

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 provision contained in Articles 1 through 7 will prevail and be given effect.

7.11 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.**

7.12 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 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.

7.13 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.

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

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 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.

[THIS SECTION IS INTENTIONALLY LEFT BLANK]

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 Pompano Beach, 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 _____
Signature (Date)

By _____
Maya A. Moore (Date)
Assistant County Attorney

Print Name and Title above

Michael J. Kerr (Date)
Deputy County Attorney

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CITY

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number