

**Joint Participation Agreement between Broward County and City of
Fort Lauderdale for the Cypress Creek Mobility Project
with Enhancements for Broward County**

This joint participation 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. The Broward Metropolitan Planning Organization ("MPO") identified the Cypress Creek Mobility Hub as a priority project to improve access to the Cypress Creek TriRail Station which includes improvements (the "Project") on Cypress Creek Road, a County owned roadway ("Facility") and has provided funding for its implementation.

B. The original limits of the portion of the project on Cypress Creek Road were between Powerline Road and Interstate 95 ("I-95").

C. The County, City, MPO, and the Florida Department of Transportation ("FDOT") agreed that it was in the best interest of the overall project to extend the limits east to NE 9th Avenue.

D. The County, City, MPO, and FDOT agreed that the specific enhancement of providing shared use paths on the north and south sides of Cypress Creek Road from Powerline Road to NE 9th Avenue in place of standard sidewalks and on-street bike lanes is preferred for the complete project limits.

E. FDOT is serving as the project manager of the Project through design and construction.

F. FDOT has determined that the request to complete the design of 10-foot-wide paths east of I-95 is possible and have provided a cost estimate to make the change in the scope of the design in the amount of \$98,257.00.

G. Broward County has requested that the City provide a one-time, lump sum payment of \$10,000.00 toward the increased scope, as described below.

H. City 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 Construction and Engineering 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.

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 Ensure that FDOT incorporates the design of a 10-foot-wide shared use path in lieu of a standard sidewalk as identified in Exhibit A ("Enhancements") into the Project and completes the Project in accordance with its contract with the County.
- 2.2.2 Accept and remit the funds outlined in Exhibit B to FDOT for the Enhancements.
- 2.2.3 Comply with any and all requirements of the Funding Agreement agreed upon by the County and FDOT to complete the design of the Project.
- 2.2.4 Maintain the 10-foot-wide shared use path improvements constructed on the Facility.
- 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.
- 2.4 The Parties agree and understand that the Facility will remain classified as a County road, and that this Agreement will not affect County's responsibility for installation and maintenance of traffic control signals and devices along the Facility.
- 2.5 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 the cost for the change to the scope to design a 10-foot-wide shared use path from a standard sidewalk (as identified in Exhibit A) will cost Ninety-eight Thousand, Two Hundred Fifty-Seven Dollars (\$98,257.00) to design. It is understood that FDOT and the MPO will fund the construction of the design as amended. The City shall contribute a one-time lump sum payment of \$10,000.00 to County. The County shall be responsible for remaining costs associated with the design (as identified in Exhibit A), whether the estimated cost to design and construct increases or decreases. City must remit payment to County within thirty (30) days after receipt of an invoice from County. Once design of the Enhancements begins, the City's contribution is non-refundable.

ARTICLE 4 - TERM AND TERMINATION

4.1 The term of this Agreement begins on the Effective Date and ends upon the start of the design of the Enhancements in accordance with Article 3.1, 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 Articles 2 or 3 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 Commission. Termination for convenience by the Board or the City Commission 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 delivery (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:

Director of Highway Construction and Engineering Division
Broward County Highway Construction & Engineering Division
1 N University Dr, Box B300,
Plantation, FL 33324-2038
Ph: 954-577-4627
Email: rlalanne@broward.org

For City:

Karen Warfel, Transportation Planning Manager
City of Fort Lauderdale Transportation & Mobility Department
290 NE 3rd Avenue
Fort Lauderdale, FL 33301
Ph:(954) 828-3768
Email: kwarfel@fortlauderdale.gov

[With Copy to:](#)

Christopher J. Lagerbloom, ICMA-CM
City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301
Email: clagerbloom@fortlauderdale.gov

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

ARTICLE 7 - MISCELLANEOUS

7.1 **Documents.** Copies of any and all reports, photographs, 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. 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. If City or County violates this provision, City or County will have the right to immediately terminate this Agreement.

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. The Parties 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.

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 8 of this Agreement, the provision contained in Articles 1 through 8 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 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 and B 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 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, authorized to execute same by Board action on the ____ day of _____, 2021, and City of Fort 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

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 _____
Gavin Rynard (Date)
Assistant County Attorney

By _____
Angela J. Wallace (Date)
Transportation Surtax General Counsel

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CITY

AS TO CITY:

CITY OF FORT LAUDERDALE

By: _____
Dean J. Trantalis, Mayor

____ day of _____, 2021

By: _____
Christopher J. Lagerbloom, ICMA-CM
City Manager

____ day of _____, 2021

ATTEST:

By: _____
Jeffrey A. Modarelli,
City Clerk

Approved as to form:
Alain Boileau, City Attorney

By: _____
Print Name: Kimberly Cunningham Mosley
Title: Assistant City Attorney

Exhibit A
Scope of Work

Exhibit B - Estimated Cost and Allocation

	Item Description	Estimated Cost*
Item A	County Contribution	\$ 89,257.00
Item B	City of Fort Lauderdale Contribution	\$ 10,000.00
	TOTAL	\$98,257.00

*Cost overruns will be the responsibility of the County

EXHIBIT "A"
SCOPE OF SERVICES
FM# 435808-1-32-02

This scope of services is for engineering design services to analyze and implement a modified typical section on Cypress Creek Road from Powerline Road to NE 9th Ave. The typical section modification will eliminate the on-street bike lanes and instead provide a shared use path in both directions along Cypress Creek Road. The analysis includes development of alternatives to avoid impacts to existing features; evaluation of existing cross slope and shift break points to match the proposed lane lines; and evaluation of alternatives which include modifying median curb, outside curb, or partial cross slope correction.

CATEGORY 3. PROJECT GENERAL TASKS

- 3.4: Provide Contract Maintenance and upload agreement in the Enterprise Document Management System ("EDMS").
- 3.6: Prime Consultant project manager meetings – Four additional project Manager meetings with the City of Fort Lauderdale and Broward County. One additional typical section review meeting with the Department.

CATEGORY 4. ROADWAY ANALYSIS-

- 4.1: Typical Section Package – Analysis of 4 additional alternative typical section alternatives include impacts to existing features. Development of exhibits to illustrate concepts.
- 4.4: Cross Slope Correction – The modification in lane widths create the need to evaluate existing cross slopes and shift break points to match the proposed lane lines. Include analysis of existing cross slope, cross slope correction and evaluation of alternatives which include modifying median, curb, outside curb, or partial cross slope correction.
- 4.14: Design Variations and Exceptions – Development of two additional design variations for shared use path horizontal clearance and shared use path width.
- 4.17: Cost Estimate - Development of cost comparison between the proposed typical section and the original concept typical section.
- 4.22: Technical Meetings - Four additional project Manager meetings with the City of Fort Lauderdale and Broward County. One additional typical section review meeting with FDOT.
- 4.23: Quality Assurance/Quality Control
- 4.25: Supervision
- 4.26: Coordination