

AGREEMENT
between
BROWARD COUNTY
and
CITY OF PEMBROKE PINES
for
CONSTRUCTION AND MAINTENANCE OF
FLAMINGO-HIATUS RD. GREENWAY

This is an Interlocal Agreement ("Agreement") by and between Broward County, a political subdivision of the State of Florida, ("County"), and City of Pembroke Pines, a municipal corporation located in Broward County, Florida ("City").

RECITALS

A. County has adopted an amendment to the Broward County Comprehensive Plan to incorporate the conceptual greenways system plan.

B. The greenways Conceptual Master Plan provides for over three hundred seventy (370) miles of regional greenways, land trails and water trails.

C. As part of the implementation of a County Greenways Master Plan, County is willing to construct greenways within the City, including benches, shelters and related improvements, consistent with the alignment provided and conceptually based on the plans to be approved by County and City ("Greenways").

D. The Greenways will be located on property that is the joint jurisdiction of the Florida Department of Transportation, the South Broward Drainage District and Broward County ("FDOT, District and County"), or as otherwise agreed by City and County in writing.

E. Upon completion of the Greenways, City is willing to maintain the Greenways.

F. It is of mutual benefit to the residents of County and City to construct and maintain the Greenways as provided for herein.

NOW, THEREFORE, County and City agree as follows:

ARTICLE 1. DEFINITIONS

Capitalized terms not otherwise defined in this Agreement shall have the following meanings:

1.1 **Board** means the Board of County Commissioners of County.

1.2 **Contract Administrator** means the Broward County Administrator, or such other person designated by same in writing or authorized to administer this Agreement.

1.3 **Grant Agreement** means that certain Recreational Trails Program Grant, standard grant agreement number T1935, by and between County and the Department of Environmental Protection of the State of Florida.

1.4 **Project** means the services described in Article 2.

ARTICLE 2. SCOPE OF SERVICES

2.1 **Grant Requirements.** This Project is conditioned upon, and the funding for this Project is being provided pursuant to, the Grant Agreement. Notwithstanding anything in this Agreement, County and City shall participate in the installation and maintenance of the Greenways in compliance with the Grant Agreement.

2.2 County shall:

2.2.1 Prepare, or cause to be prepared, plans for the installation of the Greenways and related improvements ("Plans") in accordance with Greenways Design, including the Proposed Flamingo Greenway Alignment and Proposed Amenities, attached hereto as Exhibit B ("Proposed Flamingo Greenway Alignment"). The Greenways Design is subject to the approval of City.

2.2.2 Apply for and obtain any permit(s) from the applicable permitting agencies for installation of the Greenways. County's installation of the Greenways is contingent upon receipt of a permit from FDOT, District and County. If County is unable to obtain the permit from the FDOT and District, or any other required permit, County shall notify City pursuant to the Notice provisions set forth herein and this Agreement shall terminate.

2.2.3 Install or cause to be installed the Greenways and related improvements in accordance with the Plans and permit(s). The installation, design and location of any signage, benches and shelters shall be subject to the City's Code of Ordinances, as may be amended from time to time, as well as any other existing agreements between the City and third parties.

2.2.4 Following completion of the Greenways, convey the landscaping, benches, signage, shelters and other improvements to City via Bill of Sale, the form of which is attached hereto as Exhibit C.

2.3 City shall:

2.3.1 Maintain or cause to be maintained the Greenways. As part of such maintenance responsibility, City shall keep in good repair and shall replace defective or worn-out improvements. The Greenways shall be maintained in good condition and in accordance with any maintenance requirements of the County, FDOT and District.

2.3.2 City agrees that any repair and replacements of improvements shall conform to the design plans and specifications set forth herein.

2.3.3 City may replace plant material with plants on the County's approved plant list.

ARTICLE 3. COSTS

3.1 County shall be solely responsible for all costs associated with the installation of the Greenways and the improvements provided for in the Plans. The estimated Cost of Construction ("COC") of the Greenways and improvements is Two Million and Nine Hundred Thousand and 00/100 Dollars (\$2,900,000).

3.2 Upon transfer of the improvements to the City, City shall be solely responsible for all costs associated with the maintenance and repair of the Greenways and their improvements.

ARTICLE 4. TERM AND TERMINATION

4.1 Term. The term of this Agreement shall begin on the date it is fully executed by both parties and shall terminate only as provided for by this Agreement.

4.2 Termination for Cause. This Agreement may be terminated for cause by County, through action of the Board, or City, upon thirty (30) days' written notice given by the terminating party to the other party setting forth the breach. If City or County corrects the breach within thirty (30) days after written notice of same to the satisfaction of the terminating party, the Agreement shall remain in full force and effect. If such breach is not corrected within thirty (30) days of receipt of notice of breach, the terminating party may terminate the Agreement. Termination of this Agreement for cause shall include, but not limited to, failure of the City to maintain the Greenways pursuant to the terms of this Agreement, failure of a party to suitably perform the services required by Article 2 herein, or failure of a part to continuously perform the services required by the terms and conditions of this Agreement in a manner calculated to meet or accomplish the objectives set forth herein, notwithstanding whether any such breach was previously waived or cured.

4.3 Termination Fee. In the event the City elects to terminate this Agreement within twenty-five (25) years from the date the Greenways have been transferred to City pursuant to Section 2.2.4, or if County elects to terminate this Agreement for cause within the foregoing twenty-five (25) year term City shall pay County an amount which shall be calculated utilizing the following formula:

$$\text{Termination Amount} = \text{COC} - \left(\frac{\text{COC}}{25} * \text{YM} \right)$$

COC means the estimated Cost of Construction, as set forth in section 3.1

YM means the number of years maintained by City

ARTICLE 5. IMMUNITY AND INDEMNIFICATION

5.1 Governmental Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing in this Agreement is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent by either party to be sued by third parties in any matter arising out of this Agreement or any other contract. Each party is a state agency or political subdivision as defined in Section 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

5.2 In the event that County contracts with a third party to provide the services set forth herein, any contract with such third party shall include the following provisions:

5.2.1 Indemnification: County's Contractor shall indemnify and hold harmless City, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of County's Contractor and persons employed or utilized by County's Contractor in the performance of this Agreement. Except as specifically provided herein, this Agreement does not require County's Contractor to indemnify City, its employees, officers, directors, or agents from any liability, damage, loss, claim, action, or proceeding. These indemnifications shall survive the term of this Agreement. In the event that any action or proceeding is brought against City by reason of any such claim or demand, County's Contractor shall, upon written notice from City, resist and defend such action or proceeding by counsel satisfactory to City.

5.2.2 The indemnification provided above shall obligate County's Contractor to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at City's option, any and all claims of liability and all suits and actions of every name and description covered by Section 5.2.1 above which may be brought against City whether performed by County's Contractor, or persons employed or utilized by County's Contractor.

5.3 In the event that City contracts with a third party to provide the services set forth herein and addressed above, any contract with such third party shall include the following provisions:

5.3.1 Indemnification: City's Contractor shall indemnify and hold harmless County, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of City's Contractor and persons employed or utilized by City's Contractor in the performance of this Agreement. Except as specifically provided herein, this Agreement does not require City's Contractor to indemnify County, its employees, officers, directors, or agents from any liability, damage, loss, claim, action, or proceeding. These indemnifications shall 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 shall, upon written notice from County, resist and defend such action or proceeding by counsel satisfactory to County.

5.3.2 The indemnification provided above shall obligate City's Contractor to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at County's option, any and all claims of liability and all suits and actions of every name and description covered by Section 5.3.1 above which may be brought against County whether performed by City's Contractor, or persons employed or utilized by City's Contractor.

ARTICLE 6. INSURANCE

6.1 City is a governmental entity and is fully responsible for the acts and omissions of its agents or employees, subject to any applicable limitations of Section 768.28, Florida Statutes.

6.2 Upon request by County, City must provide County with written verification of liability protection that meets or exceeds any requirements of Florida law. If City holds any excess liability

coverage, City must ensure that Broward County is named as an additional insured and certificate holder under such excess liability policy and provide evidence of same to County.

6.3 If City maintains broader coverage or higher limits than the minimum coverage required under Florida law, County shall be entitled to such broader coverage and higher limits on a primary and non-contributory basis. County's insurance requirements shall apply to City's self-insurance.

6.4 In the event City contracts with a subcontractor to provide any of the services set forth herein, City shall require that each subcontractor procure and maintain insurance coverage that adequately covers each subcontractor's exposure based on the services provided by that subcontractor. City must ensure that all such subcontractors name "Broward County" as an additional insured and certificate holder under the applicable insurance policies. City shall not permit any subcontractor to provide services until the insurance requirements of the subcontractor under this section are met. If requested by County, City shall furnish evidence of insurance of all such subcontractors.

6.5 County reserves the right to review any and all insurance policies, and to reasonably adjust the limits and/or types of coverage required herein, from time to time throughout the term of this Agreement.

6.6 Coverage is not to cease and is to remain in full force and effect until all performance required is completed.

ARTICLE 7. NOTICES

Any and all notices given or required under this Agreement shall be in writing and may be delivered in person or by United States mail, postage prepaid, first class and certified, return receipt requested, addressed as follows:

COUNTY:	Adriana Toro, Acting Director Highway and Bridge Maintenance Division 1600 Blount Rd Pompano Beach, FL 33069
CITY:	Charles F. Dodge, City Manager City of Pembroke Pines 601 Civic Center Way Pembroke Pines, FL 33025 Telephone No. (954) 450-1040 Facsimile No. (954)437-1149
COPY TO:	Samuel S. Goren, City Attorney Gore, Cherof, Doody & Ezrol, P.A. 3099 East Commercial Boulevard, Suite 200 Fort Lauderdale, FL 33308 Telephone No. (954) 771-4500 Facsimile No. (954)770-4923

ARTICLE 8. MISCELLANEOUS

8.1 Audit Right and Retention of Records. County shall have the right to audit the books, records, and accounts of City that are related to this Agreement. City shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the services to be provided by City pursuant to this Agreement. City shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination for this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to City's records, City shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by City. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry.

8.2 Equal Employment Opportunity Compliance. 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. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement. County and City shall not unlawfully discriminate against any person in its operations and activities in fulfilling its obligations under this Agreement. County and City shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA), including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, County and City shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

8.3 Compliance with Laws. Parties must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

8.4 Third Party Beneficiaries. City and County do not intend 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 shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

8.5 Assignment and Performance. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party; however, County and City may subcontract any portion of the work required by this Agreement under the terms of this Agreement. County and City represent that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to the parties' satisfaction. County and City shall perform their duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of performance and all interim and final product(s) provided shall be comparable to the best local and national standards.

8.6 Materiality and Waiver of Breach. The parties agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Failure of any party 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 provision or modification of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be modification of terms of this Agreement.

8.7 Compliance with Laws. The parties shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

8.8 Severance. In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless County or City elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

8.9 Joint Preparation. The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

8.10 Priority of Provisions. If there is a conflict or inconsistency between any term, statement requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision contained in Article 1 through 8 of this Agreement shall prevail and be given effect.

8.11 Recording. This Agreement shall be recorded in the public records of Broward County, Florida, and shall be binding upon the successors and assigns of County and City.

8.12 Applicable Law and Venue. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Venue for litigation concerning this Agreement shall be in Broward County, Florida.

8.13 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 parties hereto.

8.14 Prior Agreements. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understanding applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 8.12 above.

8.15 Incorporation by Reference. The truth and accuracy of each recital clause set forth above is acknowledged by the parties. The attached exhibits are incorporated into and made a part of this Agreement.

8.16 Electronic Execution and Multiple Originals. This Agreement may be executed electronically in two or more counterparts, each of which when so executed shall be deemed to be an original, but such counterparts shall together constitute but one and the same instrument.

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AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF PEMBROKE PINES FOR CONSTRUCTION AND
MAINTENANCE OF FLAMINGO-HIATUS RD. GREENWAY

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the
respective dates under each signature; BROWARD COUNTY through its BOARD OF COUNTY
COMMISSIONERS, signing by and through its Mayor and Vice Mayor, authorized to execute same by Board
action on the _____ day of _____, 2021, and the CITY, signing by and through its
_____, duly authorized to execute same.

ATTEST:

County Administrator and Ex-
Officio Clerk of the Board of
County Commissioners of
Broward County, Florida

COUNTY
BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS
By _____

Mayor

_____ day of _____, 2021

Approved as to form by
Office of County Attorney
Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By William J. Bucciero Digitally signed by William J.
Bucciero
Date: 2022.03.30 15:57:58 -04'00'
Assistant County Attorney

_____ day of _____, 2021

By MICHAEL KERR Digitally signed by MICHAEL KERR
Date: 2022.03.31 09:06:24 -04'00'
Deputy County Attorney

_____ day of _____, 2021

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF PEMBROKE PINES FOR
CONSTRUCTION AND MAINTENANCE OF FLAMINGO-HIATUS RD. GREENWAY

CITY

WITNESSES:

CITY OF PEMBROKE PINES

By

Mayor- Commissioner

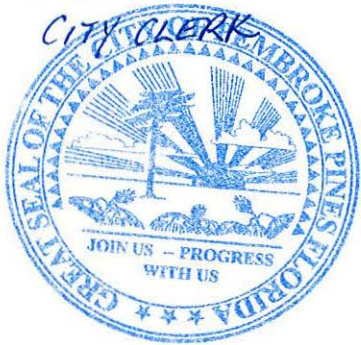
By

City Manager

ATTEST:

MARLENE D. GRAHAM





23 day of March, 2022

APPROVED AS TO FORM:

By

City Attorney

23 day of March, 2022

EXHIBIT A

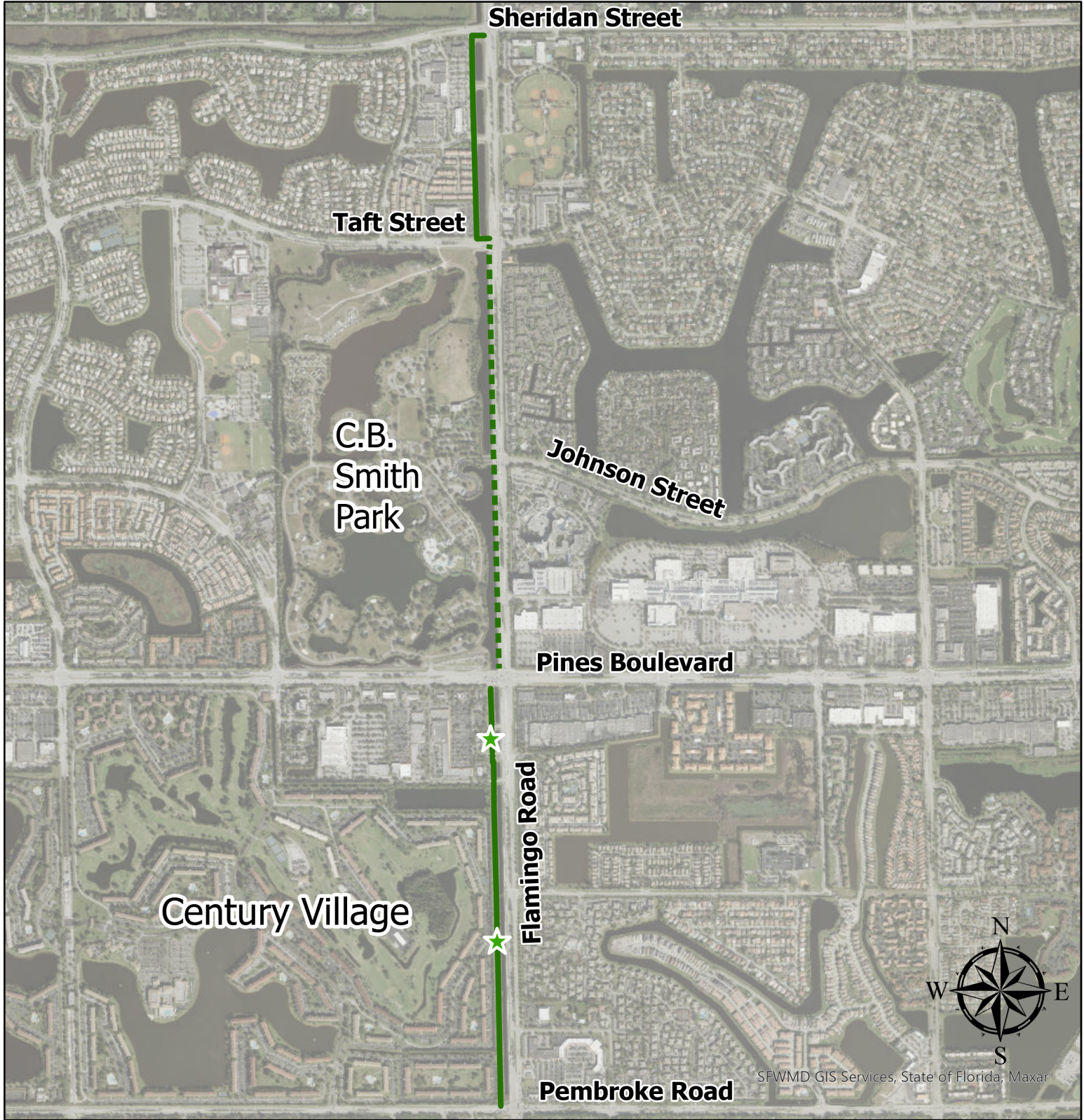
SCOPE OF SERVICES

The 2.5-mile Flamingo Greenway segment from Pembroke Road to Sheridan Street will be a shared-use path separated from motor vehicle traffic that will provide a low-stress environment for walking, bicycling, jogging, inline-skating, and dog walking. It will improve the community by providing alternative means of transportation, encouraging physical fitness and outdoor recreation, and preserving and creating cultural/historical value.

The Flamingo Greenway segment is part of the Greenways System Masterplan adopted by the Broward County Board of County Commissioners to connect the Atlantic Ocean, conservation lands, parks, recreational facilities, cultural and historical sites, schools, and commerce areas. The Greenways System Masterplan includes more than 350 miles of greenways. The Masterplan identified the Flamingo Road Greenway as a Priority Greenway Corridor. When fully constructed, it will provide a 9.3-mile connection from the existing New River Greenway south to the Broward/Miami-Dade County line.

Phase 1 of this project is a 2.5-mile greenway segment in Pembroke Pines on the west side of Flamingo Road between Pembroke Road and Sheridan Street. The greenway segment will include an 8-12-foot-wide path, splitter islands, landscaping, signage, and amenities approximately every 0.5 miles including trash receptacles, bike racks and covered benches. Landscaping will be limited to trees that are within applicable Broward County and City laws and governing standards and approved by the City and the County. One segment from Pines Boulevard to Taft Street, which coincides with the limits of C.B. Smith Park, will utilize existing sidewalk due to spatial constraints.

EXHIBIT B
PROPOSED FLAMINGO GREENWAY ALIGNMENT



- Legend
- Existing Sidewalk to Remain
 - Proposed Flamingo Greenway Path
 - Amenities (Trash Receptacle, Bike Rack, Covered Bench)

0 0.1 0.2 0.4 0.6 Miles

EXHIBIT C
BILL OF SALE

KNOW ALL BY THESE PRESENTS:

THAT Broward County ("County"), for and in consideration of the sum of One Dollar (\$1.00) in lawful money (and other good and valuable considerations) to it paid by The City of Pembroke Pines ("City"), the receipt and sufficiency of which is hereby acknowledged by it, hereby quitclaims and delivers unto the City, its successors and assigns, those certain goods and chattels located on the property more particularly described on the attached Exhibit A-1.

TO HAVE AND TO HOLD the same unto the City, its successors and assigns forever.

County does not hereby make any warranty with respect to its ownership of the goods hereby conveyed.

IN WITNESS WHEREOF, this instrument is made and executed by BROWARD COUNTY 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__.

ATTEST:

County Administrator and

COUNTY
BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS
By _____
Mayor

Ex-Officio Clerk of the Board of
County Commissioners of
Broward County, Florida

_____ day of _____, 20__

Approved as to form by
Office of County Attorney
Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By _____
Assistant County Attorney
_____ day of _____, 20__

By _____
Deputy County Attorney
_____ day of _____, 2021