

Agreement between Broward County and the City of Tamarac for Improvements to the Boulevards Community Drainage and Recharge Pipes

This agreement ("Agreement") between Broward County ("County"), a political subdivision of the State of Florida, and the City of Tamarac ("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 drainage system located along NW 54th Street and NW 28th Avenue and crossing Prospect Road, in the community known as Tamarac Lakes North (the "Boulevards Community"), provides a local drainage function for the Boulevards Community and a County surface water recharge for the surrounding aquifer and public water supply wellfield.

B. The above-referenced drainage system was previously serviced by corrugated metal pipes (the "Boulevards Community CMPs") that were over fifty (50) years old and failing due to age, pipe depth, and soil conditions.

C. In or about February 2018, City determined that repair and replacement of the Boulevards Community CMPs were necessary to prevent future pipe failures and repair existing failures in an expedited timeframe.

D. City contracted with HSQ Group, Inc., Amtec Surveying, Inc., Johnson-Davis Inc., and Murphy Pipeline Contractors, Inc. (collectively, the "Contractors and Consultants") to provide construction services and associated work in connection with the repair and replacement of the failing Boulevards Community CMPs (the "Project").

E. The Project is now complete, and County has agreed to provide City with partial funding for a portion of the Project, as described below.

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

ARTICLE 1. DEFINITIONS AND IDENTIFICATIONS

1.1 Agreement. This document, Articles 1 through 9, inclusive of all referenced exhibits and Recitals.

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

1.3 Contract Administrator. The Director of Broward County Water and Wastewater Services ("BCWWS"), or designee, who is the representative of County concerning the Project.

- 1.4 County Administrator. The administrative head of County appointed by the Board.
- 1.5 County Attorney. The chief legal counsel for County appointed by the Board.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.1 Representations. City makes the following representations and warranties concerning the Project:

2.1.1 City has prepared, or caused to be prepared, design and construction plans and specifications for the Project, and provided, or caused to be provided, construction inspection services for the Project.

2.1.2 The Project was designed in conformance with all applicable building codes, ordinances, regulations, laws, professional standards, and any other City engineering standards pertinent to the Project.

2.1.2 City secured the contract(s) necessary for the completion of the Project pursuant to its competitive bidding process and any and all applicable state and federal laws.

2.1.3 The total actual cost of the Project was One Million Eight Hundred Sixty-three Thousand One Hundred Ninety-six and 80/100 Dollars (\$1,863,196.80)

2.1.4 The Project was constructed in accordance with the City-approved design and construction plans and specifications.

2.1.5 City has obtained and closed out all permits for the Project required by the applicable permitting agency(ies) and has paid all fees associated with such permits.

2.1.6 City determined that no new rights-of-way or easements in favor of City or County were required to complete the Project.

2.1.7 City has paid the Contractors and Consultants in full for all services provided by the Contractors and Consultants as part of the Project and has satisfied all other indebtedness connected with the Project, if any.

2.2 Each of City's representations and warranties in section 2.1 above are material to this Agreement and are true and correct in every material respect. City's representations and warranties, and any document furnished by City in accordance with this Agreement, do not, or will not, contain any untrue statement of material fact or omit to state a material fact required to be stated or necessary to make any statement therein not misleading.

ARTICLE 3. SCOPE OF PARTICIPATION

3.1 Permitting and Rights-of-Way/Easements.

3.1.1 City is solely responsible for all permitting fees relating to the Project. City is not entitled to reimbursement from County for any permitting fees associated with the Project. If the applicable permitting agency(ies) require any additional permits for the Project subsequent to the Effective Date, City is responsible for obtaining and closing out such permits and paying the associated fees.

3.1.2 If it is later determined that the Project as constructed requires any new rights-of-way or easements, City is responsible for securing such rights-of-way or easements.

3.2 Maintenance. City is responsible for maintaining the Boulevards Community CMPs, as restored by the Project, in suitable condition to perform their intended functions.

3.3 Corrective Work. City is responsible for any corrective work, and all associated costs, related to or arising from defective, deficient, or nonconforming work furnished by City, City's Contractors and Consultants, or any subcontractors or suppliers thereof relating to the Project.

3.4 Project Documents and Inspection. City shall provide or otherwise make available to County the following in the manner specified:

3.4.1 Within thirty (30) days of the Effective date, City shall provide County with: (1) a complete set of records and as-built drawings for the Project in a form acceptable to the Contract Administrator; (2) the design and construction plans and specifications for the Project; (3) a complete program and financial accounting activity report for the Project; and (4) a final release for each of the Contractors and Consultants, and any subcontractors, sub-subcontractors, and suppliers thereof.

3.5 Conditions Precedent to Payment. County shall provide City with County's share of the funding for the Project, in the manner and amount described in Article 4, only after all of the following conditions have been met:

3.5.1 City satisfies all of its obligations under section 3.4 above, as applicable.

3.5.2 City provides County with billing and supporting information in conformance with section 4.2 below.

3.6 County has no further obligation except as otherwise specifically set forth in this Agreement. County claims no ownership of the Boulevards Community CMPs. Other than the payment described in Article 4, County will have no responsibility for the Boulevards Community CMPs and will not be required to provide any additional resources, labor, or

financial assistance related to the maintenance, repair, upgrade, or replacement of the Boulevards Community CMPs.

ARTICLE 4. COSTS

4.1 The total actual cost of the Project was One Million Eight Hundred Sixty-three Thousand One Hundred Ninety-six and 80/100 Dollars (\$1,863,196.80), as outlined in Exhibit A, Work Conducted by City, attached hereto and incorporated herein. County shall reimburse City in the form of one (1) lump sum payment of Five Hundred Thousand Dollars (\$500,000.00).

4.1.1 County's payment for the Project in the amount stated above includes any and all reimbursable expenses, and the County shall not pay City any additional sum for reimbursable expenses. County shall not be responsible for costs attributable to work furnished, or time spent, by City staff relating to the Project and that County's payment for the Project does not include such costs.

4.2 City shall submit to County one final invoice for Five Hundred Thousand Dollars (\$500,000.00), as stated in section 4.1 above. The final invoice must show a detailed summary of the total actual cost of the Project and must contain all supporting cost documentation and evidence of payment in full to the Contractors and Consultants, and any other contractor(s), consultant(s), or supplier(s) who performed services related to the Project with whom City is in privity. Payment is strictly conditioned upon City's compliance with section 3.5 above.

ARTICLE 5. TERM AND TERMINATION

5.1 The term of this Agreement begins on the Effective Date and shall automatically terminate upon the City's acceptance of payment as outlined in Article 4, except for Articles 3, 4, 6, 7, 8 and sections 9.3 and 9.13, which shall survive the termination of this Agreement.

5.2 This Agreement may be terminated for cause by the non-breaching party if the breaching party does not correct the breach within thirty (30) days after receipt of written notice from the non-breaching party identifying the breach; provided however, that, if City breaches the Agreement in a manner which cannot be cured by subsequent action (e.g., misrepresenting to County a material fact concerning the Project), then County must only provide City reasonable notice of its intent to terminate the Agreement. County may terminate this Agreement for cause for reasons including, but not limited to: the inaccuracy of any of City's representations and warranties contained in section 2.1 above, irrespective of whether City intentionally or inadvertently misrepresented the information contained therein; City's failure to perform its obligations under Article 3, as applicable, regardless of whether any such failure was previously waived or cured; or City's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices.

5.3 This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board will be effective on the termination date stated in a written notice provided by County.

5.4 If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) calendar days after such notice of termination for cause is provided.

5.5 Notwithstanding any of the above, this Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate in the event that the County Administrator determines that termination is necessary to protect the public health, safety, or welfare.

5.6 Notice of termination will be provided in accordance with Article 6 below, except that notice of termination by the County Administrator that the County Administrator deems necessary to protect the public health or safety may be verbal notice, which shall be promptly confirmed in writing in accordance with Article 6.

ARTICLE 6. 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 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 6.

For County:
Director, Water Management Division
Water and Wastewater Services
2555 West Copans Road
Pompano Beach, Florida 33069
Email: agarcia@broward.org

For City:
Michael Cernech, City Manager
City of Tamarac
7525 NW 88th Avenue Tamarac, FL 33321
Email: Michael.Cernech@tamarac.org

With a copy to:
Jack Strain, Director of Public Services
City of Tamarac
Public Services South Building

10101 State Street
Tamarac, FL 33321
Email: Jack.Strain@tamarac.org

ARTICLE 7. INDEMNIFICATION

7.1 County and City are entities subject to Section 768.28, Florida Statutes, as may be amended from time to time. City agrees to be fully responsible for the acts and omissions of its Contractors and Consultants as well as its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by either 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.

7.2 City shall at all times hereafter indemnify and hold harmless the County, its officers, agents, servants, and employees (collectively or individually, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional or negligent act of, or omission of, City, its employees, agents, servants, or officers, including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against any Indemnified Party by reason of any such claim, cause of action or demand, City shall, upon written notice from County, resist and defend such lawsuit or proceeding by counsel that is satisfactory to County and consistent with City's insurance policy. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent the County Administrator and the County Attorney, in their reasonable discretion, determine it is required, any sums due City under this Agreement may be retained by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by County.

7.3 If City contracts with a third party to provide maintenance or repair of the Boulevards Community CMPs, any contract with such third party must include the following provision:

7.3.1 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 contract. These indemnifications will survive the term of this contract. 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.

7.4 The provisions of this Article will survive the termination of this Agreement.

ARTICLE 8. INSURANCE

8.1 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.

8.2 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.

8.2.1 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. County's insurance requirements shall apply to City self-insurance.

8.2.2 In the event City contracts with a subcontractor to provide any future services with regards to this Project, 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 limited to their performance and obligations pursuant to their agreement with the City. 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.

8.2.3 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.

8.2.4 Coverage is not to cease and is to remain in full force and effect until all performance required of City's Contractors and Consultants is completed.

ARTICLE 9. MISCELLANEOUS

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

9.2 Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of City that are related to the Project. City shall keep such books, records, and accounts as may be necessary in order to record complete and

correct entries related to the Project. All books, records, and accounts of City shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, City shall make same available at no cost to County in written form.

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 the Project for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of 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. 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. City shall ensure that the requirements of this section 9.2 are included in all agreements with its subcontractor(s).

9.3 Payable Interest.

9.3.1 Payment of Interest. County shall not be liable to pay any interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof City waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

9.3.2 Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, .025% (one quarter of one percent) simple interest (uncompounded).

9.4 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.

9.5 Independent Entity. City is an independent entity 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.

9.6 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.

9.7 Assignment and Performance. Neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by City without the prior written consent of County. If City violates this provision, County will have the right to immediately terminate this Agreement. City represents that each person and entity that has provided or 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 related to the Project have been performed in a skillful and respectful manner, and that the quality of all such services equal or exceed prevailing industry standards for the provision of such services.

9.8 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and each is, therefore, a material term of this Agreement. 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 the relevant Party.

9.9 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.

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

9.11 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.

9.12 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 9 of this Agreement, the provision contained in Articles 1 through 9 will prevail and be given effect.

9.13 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. The 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, THE COUNTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

9.14 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.

9.15 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.

9.16 Prior Agreements. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

9.17 Incorporation by Reference. The Parties acknowledge the truth and accuracy of each recital clause set forth above and exhibit attached hereto. Each recital and exhibit attached is incorporated into and made part of this Agreement.

9.18 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.

9.19 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 _____, 2021, and the City of Tamarac, 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 _____, 2021

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

By _____
Signature (Date)

Matthew
By **Haber** Digitally signed by
Matthew Haber
Date: 2021.05.19
13:17:42 -04'00'
Matthew Haber (Date)
Assistant County Attorney

Print Name and Title above

By **MICHAEL KERR** Digitally signed by MICHAEL KERR
Date: 2021.05.19 13:23:57 -04'00'
Michael J. Kerr (Date)
Deputy County Attorney

Exhibit A – Work Conducted by City

Design and Construction Observation Cost for Relocation of Pipe Segment from West of NW 24 th Avenue to NW 24 th Avenue	\$24,097.65
Sonar Inspection of Existing CMP	\$11,590.75
Construction Cost for Relocation of Pipe Segment From West of NW 24 th Avenue to NW 24 th Avenue	\$320,061.00
Pipe Bursting and Slip Lining of Remainder of CMP	\$1,507,447.40
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TOTAL PROJECT COST	\$1,863,196.80