



FOURTH AMENDMENT TO AGREEMENT BETWEEN BROWARD COUNTY, ALVERINE BRIHM, AND WALBRI, LLC, FOR GRANT FUNDING AND ADMINISTRATION FOR FAÇADE IMPROVEMENT OF COMMERCIAL PROPERTY LOCATED IN THE BROWARD MUNICIPAL SERVICES DISTRICT

This Fourth Amendment ("Fourth Amendment") is entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and Alverine Brihm, as an individual, and WalBri, LLC, a Florida limited liability company (Brihm and WalBri, LLC are referred to collectively as the "Grantees") (collectively, the "Parties").

RECITALS

A. The Parties entered into the original agreement, dated September 13, 2018 (the "Original Agreement"), to memorialize the terms of the grant funding.

B. The Original Agreement was amended by a First Amendment, dated March 16, 2020, which increased the Grant Amount and the Grantee Contribution Amount; a Second Amendment, dated March 10, 2021, which advanced a portion of the Grant Amount to Grantees; and a Third Amendment, dated June 4, 2021, which increased the Project Cost, Grant Amount, and the Grantee Contribution Amount. The Original Agreement, as amended by the First Amendment, Second Amendment, and Third Amendment, is referred to herein as the "Agreement."

C. In addition to Work remaining under the original scope of work, certain Work performed under the Project requires correction, and County is providing additional grant funding to facilitate those corrections.

D. The Parties now desire to amend the Agreement to provide \$192,195.24 in additional grant funds, to require an additional owner match of \$4,929.60, to add a new, additional scope of work set forth in Exhibit E-1, and to extend the term to permit the completion of the new work.

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

1. The above Recitals are true and correct and are incorporated herein by reference. All capitalized terms not expressly defined within this Fourth Amendment shall retain the meaning ascribed to such terms in the Agreement.

2. Amendments to the Agreement made pursuant to this Fourth Amendment are indicated herein by use of strikethroughs to indicate deletions and bold/underlining to indicate additions. Except as modified herein, all remaining terms and conditions of the Agreement shall remain in full force and effect.

3. Article 1 of the Agreement is hereby amended to revise Sections 1.13, 1.16, and 1.21 as follows:

* * *

1.13 Grant Amount or Grant Funds. ~~One Hundred Thirty-two Thousand Dollars (\$132,000)~~ **Three Hundred Twenty-four Thousand One Hundred Ninety-five Dollars and**

Twenty-four Cents (\$324,195.24) of BMSD Grant Program funds that have been allocated by County to Grantees for the sole purpose of completing the Project.

* * *

1.16 Grantee Contribution Amount. The different between Project Cost and Grant Amount. Grantees are required to provide the Grantee Contribution Amount in order to qualify for County assistance through the Grant Programs. The Grantee Contribution Amount for this Project is ~~Thirty-three Thousand Dollars (\$33,000)~~ **Thirty-seven Thousand Nine Hundred Twenty-nine Dollars and Sixty Cents (\$37,929.60).**

* * *

1.21 Project Cost. The total cost of the Project. The total projected cost of the Project is ~~One Hundred Sixty-five Thousand Dollars (\$165,000)~~ **Three Hundred Sixty-two Thousand One Hundred Twenty-four Dollars and Eighty-four Cents (\$362,124.84).** However, the Parties acknowledge that Project Cost may exceed this estimate.

* * *

4. Section 5.3 of the Agreement is hereby amended to read as follows:

5.3 County has allocated ~~One Hundred Thirty-two Thousand Dollars (\$132,000)~~ **Three Hundred Twenty-four Thousand One Hundred Ninety-five Dollars and Twenty-four Cents (\$324,195.24)** in Grant Funds to pay for a portion of Project Cost. Grantees are required to pay the difference between Project Cost and Grant Funds, which is the Grantee Contribution Amount of ~~Thirty-three Thousand Dollars (\$33,000)~~ **Thirty-seven Thousand Nine Hundred Twenty-nine Dollars and Sixty Cents (\$37,929.60).** In addition, Grantees are solely responsible for paying any Project overruns or other additional costs related to the Project.

5. Section 3.1.1 of the Agreement is hereby amended to read as follows:

3.1.1 County shall disburse Grant Funds for County's pro rata share of Work costs, ~~which is eighty percent (80%) of the Exterior Work and more specifically as~~ delineated in Exhibit E-~~1~~. Such Grant Funds may be disbursed as payment for Work that has been completed and invoiced by Prime Contractor, Subcontractors, and materialmen, as applicable, ~~or as an advance of Grant Funds requested by Grantees and approved by County ("Grant Advance"), which approval shall be at the sole discretion of the Contract Administrator. Grantees may request Grant Advances up to a maximum aggregate amount of twenty percent (20%) of the projected Project Cost.~~ The Parties agree that disbursements for Work completed shall be made to ~~Grantees~~ **Prime Contractor** no more frequently than once a month and upon County's approval of Grantees' written request for payment accompanied by the following documentation: written confirmation acceptable to Contract Administrator that Grantees have paid their pro rata share of Work costs, which is twenty percent (20%) of the ~~Exterior Work~~, for Work that has been completed by Prime Contractors, Subcontractors, and materialmen, as applicable; the Schedule of Values, the Application(s) for Payment; all necessary waivers and releases for

the completed Work; and a monthly progress schedule for the remainder of the Work that indicates the start and completion dates of the various stages of the Work, including a narrative description of the Work currently being performed by Prime Contractor (collectively, "Invoice"). Invoice documents shall be in a form and manner customary in the construction industry as further defined below. ~~For Grant Advance requests, Grantees shall submit all of the following documents to Contract Administrator: (i) a completed Exhibit B, Grant Advance Request Form; and (ii) a preliminary Application for Payment with specific line items identifying the Work to be performed, including all estimated labor and materials required to carry out those line items. Within ten (10) days after completion of the work stated in the preliminary Application for Payment, Grantees shall submit all of the following documents to the Contract Administrator: (i) an updated Application for Payment detailing the actual work performed and expended amounts in accordance with Section 3.1.1.3 ("Certification of Expenditures"); (ii) an updated construction schedule; and (iii) all necessary waivers and releases for the completed Work. Within ten (10) days after full completion of all Work under this Agreement, Grantees shall submit all of the following to the Contract Administrator: (i) a final application for payment; (ii) a copy of the final permit sign off from the Building Department, including any applicable Certificates of Completion or Certificate of Occupancy; (iii) final releases of liens; and (iv) a warranty manual that includes all applicable warranty information. County, through the Contract Administrator, in its sole discretion, may approve or deny a Grant Advance request. If a Grant Advance is approved, County shall disburse to the Prime Contractor stated in the Grant Advance request the approved amount of the advance (which may be less than the amount requested) within ten (10) business days after approval of the Grant Advance request. For each Grant Advance, County shall not disburse any additional Grant Funds to Grantees or Prime Contractor until after the Work identified in the Grant Advance Application for Payment has been completed and subsequently verified by County, and the Certification of Expenditures received, unless County determines the advanced amount was insufficient to cover the work detailed in the Application for Payment, in which event County may, in the sole discretion of the Contract Administrator, approve an additional Grant Advance subject to the Grantees' compliance with the provisions of this section.~~ **After the Grantee Contribution Amount, as reflected in Exhibit E-1, is fully expended for Work costs specified in Exhibit E-1, County will pay one hundred percent (100%) of approved Invoices, up to a cumulative amount not to exceed the Total County Grant Funds reflected in Exhibit E-1. Any amounts due or incurred in excess of the Total County Grant Funds shall be the sole responsibility of Grantees.**

6. Section 6.1 of the Agreement is hereby amended to read as follows:
 - 6.1 The maximum amount payable by County under this Agreement shall not exceed the Grant Amount of ~~One Hundred Thirty-two Thousand Dollars (\$132,000).~~
7. Sections 6.13 through 6.16 of the Agreement are hereby amended to read as follows:
 - 6.13 County will disburse the approved Grant Funds in accordance with this Agreement only after Contract Administrator has determined that this Agreement, including amendments, has been executed by Grantees and that Grantees have provided

documentation acceptable to the Contract Administrator, verifying that Grantees have secured ~~and paid~~ the Grantee Contribution Amount. The Parties agree and acknowledge that Grantees shall be wholly and individually liable to County for the disbursement, expenditure, and use of Grant Funds. ~~For Grant Advances, County will disburse the approved Grant Advance within ten (10) business days after Contract Administrator's approval of the Grant Advance and County's receipt of a completed Terms and Conditions for Grant Fund Advance (Exhibit I), executed by Prime Contractor. No funds shall be advanced to Prime Contractor without receipt of fully executed Terms and Conditions for Grant Fund Advance in the form set forth in Exhibit I.~~

6.14 All Grant Funds that have been disbursed by County, ~~including any Grant Advances,~~ but not expended on the Project, if any, shall be returned to County by Grantees within thirty (30) days of the completion of the Project or upon written demand from County, whichever occurs first.

6.15 If Grantees have caused or permitted any Grant Funds, ~~including Grant Advances,~~ to be expended in violation of this Agreement, Grantees shall be responsible to refund such monies in full to County and any subsequent Grant Program funding shall be withheld by County.

6.16 METHOD OF EXPENDITURE APPROVAL AND GRANT DISBURSEMENT

County will disburse Grant Funds to Grantees or Prime Contractor in accordance with the terms of this article. Specifically, County will pay Grantees or Prime Contractor up to a maximum aggregate amount as follows:

Grant Program	Not-To-Exceed Amount
Façade Improvement	\$132,000.00 <u>\$324,195.24</u>
TOTAL NOT TO EXCEED	\$132,000.00 <u>\$324,195.24</u>

...

8. Exhibit A, Grant Specifications, of the Agreement at Section A is revised to read as follows:

A. Façade/Property Improvement Grant

~~The Grant provided by the County for this Project will be eighty percent (80%) of the total projected cost up to a maximum County commitment of \$132,000 ("Grant Amount" or "County Maximum Commitment"). Grantees shall be responsible for twenty percent (20%) of the total Project Cost ("Grantee Contribution Amount") plus any remaining amount owed, projected, or incurred beyond the County Maximum Commitment ("Remainder").~~

Upon execution of the Agreement, Grantees must deposit the Grantee Contribution Amount in a separate construction fund or account established by Grantees and provide documentation to the Contract Administrator verifying that Grantees have secured and deposited the Grantee Contribution Amount in such account and it is available for use prior to the commencement of the Project. No work shall commence unless and until Grantees have provided such documentation. **If the Grantee Contribution Amount is**

increased by amendment to the Agreement, Grantees must deposit the amount of the increase in the above-referenced separate construction fund no later than the effective date of the amendment.

...

9. Exhibit E, Scope of Work and Pro Rata Share of Work Costs, of the Agreement is hereby amended to include the attached Exhibit E-1. After the effective date of this Fourth Amendment, all references to Exhibit E shall be deemed to refer to both Exhibit E and Exhibit E-1, unless the context clearly indicates otherwise.

10. In the event of any conflict or ambiguity between this Fourth Amendment and the Agreement, the Parties agree that this Fourth Amendment shall control. The Agreement, as amended herein by this Fourth Amendment shall control. The Agreement, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter hereof that are not contained in the Agreement as amended in this Fourth Amendment. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

11. Preparation of this Fourth Amendment has been a joint effort of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.

12. Grantees acknowledge that through the date this Fourth Amendment is executed by Grantees, Grantees have no claims or disputes against County with respect to any of the matters covered by the Agreement.

13. The effective date of this Fourth Amendment shall be the date of complete execution by the Parties.

14. This Fourth Amendment may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have made and executed this Fourth Amendment: 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 _____, 2023, and Grantees, signing individually and by and through their Managing Member, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
Its Board of County Commissioners

By: _____
Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By: _____
Mayor
____ day of _____, 2023

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By: **Sandy Steed**  Digitally signed by
Sandy Steed
Date: 2023.05.30
14:48:11 -04'00'
Sandy Steed (Date)
Assistant County Attorney

By:  Digitally signed by René D.
Harrod
Reason: Approved as to form
Date: 2023.05.30 15:27:41
-04'00'
René D. Harrod (Date)
Chief Deputy County Attorney

SS

Brihm – WalBri BMSD Grant Agreement – Fourth Amendment
05/25/2023
#1029651

FOURTH AMENDMENT TO AGREEMENT BETWEEN BROWARD COUNTY, ALVERINE BRIHM, AND
WALBRI, LLC, FOR GRANT FUNDING AND ADMINISTRATION FOR FACILITY IMPROVEMENT OF
COMMERCIAL PROPERTY LOCATED IN THE BROWARD MUNICIPAL SERVICES DISTRICT

GRANTEES

ALVERINE BRIHM, an individual

By: Alverine Brihm
Alverine Brihm

26 day of May, 2023

WALBRI, LLC, a Florida limited liability company

By: Alverine Brihm
Authorized Signer

AkL/ Le J; bJ.N.J.
Print Name and Title

2.C. day of may, 2023

EXHIBIT E-1
Scope of Work and Pro Rata Share of Work Costs

Item	Project Scope of Work and Share of Costs	Cost
1	Site Improvements	\$172,476.84
	Install 15" HDPE Solid Pipe	
	Install Three (3) 42" Round Catch Basin	
	Install new concrete Flume	
	Overlay Existing Parking Lot 1" Type S3 adjacent to new drainage to slope towards Catch basin	
	Regrade existing Swale to new elevation	
	Relocate Two (2) Bottle Neck Tree (2)	
	Remove and Replace Type D Curb	
	Remove Existing Asphalt and Replace 1" Type S3 for the trenching of new drainage system	
	Install Sod in Swale Areas	
	Remove Existing Dead Tree	
	Material Delivery	
	Demolition, Dumpsters & Trash Hauling	
	Provide and Install Awning Around Building	
	Awning Sign	
	Electrical Work for Building (Electrical Trimmer and Lights)	
	Building Permits	
2	Signage	\$24,648.00
	Building Sign	
	Sign Design, Fabrication & Install	
	Total Estimated Project Cost	\$197,124.84
	Total County Grant Funds	\$192,195.24
	Total Grantee Contribution Amount	\$4,929.60