

**JOINT PARTICIPATION AGREEMENT BETWEEN BROWARD COUNTY AND
CITY OF PARKLAND FOR LANDSCAPE, HARDSCAPE, AND ARCHITECTURAL FEATURES WITHIN
THE ROUNDABOUT AT THE INTERSECTION OF HILLSBORO BOULEVARD AND NW 64TH
TERRACE/NW 74TH PLACE**

This is a Joint Participation Agreement (“Agreement”) between Broward County, a political subdivision of the State of Florida (“County”), and the City of Parkland, a municipal corporation organized and existing under the laws of the State of Florida (“City”) (collectively, the “Parties”).

RECITALS

A. County has designed and will construct road improvements on Hillsboro Boulevard (the “Project Corridor”) as outlined in Exhibit A, which is functionally classified as a County road under County's control.

B. City wishes to design landscaping, irrigation, hardscaping, and architectural features (the “Project”) at the intersection of NW 64th Terrace/ NW 74th Place and Hillsboro Boulevard, where County will be constructing road improvements.

C. City also desires to provide funding to County to cover the cost of constructing the Project.

D. City will provide ongoing and perpetual maintenance of the landscape, irrigation, hardscape, and architectural improvements at City’s expense.

E. County has determined that it is a mutual benefit to the residents of County and City to construct the Project with County’s road improvements, subject to the terms and conditions of this Agreement.

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

ARTICLE 1. DEFINITIONS

1.1 **Board** means the Board of County Commissioners of Broward County, Florida.

1.2 **Contract Administrator** means the Director of the Broward County Highway Construction and Engineering Division, or designee.

1.3 **County Administrator** means the administrative head of County, appointed by the Board.

1.4 **County Attorney** means the chief legal counsel for County, appointed by the Board.

1.5 **Division** means the Broward County Highway Construction and Engineering Division.

1.6 **Project** means the landscape, irrigation, hardscape, and architectural improvements requested by City.

ARTICLE 2. SCOPE OF PARTICIPATION

2.1 The Parties' will complete the following tasks:

2.1.1 Task One – City will provide specifications, a cost estimate (inclusive of 20% contingency), and signed and sealed construction documents for the Project to County, in accordance with the Project Schedule as shown in Exhibit B and pay the Project costs outlined in Article 3.

2.1.2 Task Two – City will assist County during the bidding process of the construction contract and provide the responses to the vendors' Requests for Additional Information regarding the Project.

2.1.3 Task Three – City will provide Construction Engineering and Inspection ("CEI") services during construction for the Project. During construction, City will review and approve or deny any change orders generated from the Project within three (3) business days according to the construction agreement executed by County, without delaying the construction schedule.

2.1.4 Task Four – County will construct the Project along with County's road improvements pursuant to County's competitive solicitation and bidding process and any and all applicable state and federal laws.

2.2 After final completion of construction, City shall be responsible for the ongoing and perpetual maintenance of the landscape, irrigation, hardscape, and architectural features, at City's expense, as follows:

2.2.1 City shall properly maintain and fertilize all trees, shrubs, groundcover and sod; keep trees, shrubs, groundcover and sod as free from disease and harmful insects as practicable; properly mulch trees, shrubs and groundcover, keeping them free from weeds; prune trees to keep them structurally sound and to remove any limbs that present a visual hazard or physical obstacle to the use of road right-of-way; remove and replace all trees, shrubs, groundcover, and sod that are dead or diseased or that otherwise fall below the initial level of beautification in the Project Corridor; and water all trees, shrubs, groundcover and sod either by truck, if necessary, or by the irrigation improvements.

2.2.2 City shall maintain the hardscape and architectural improvements in a clean, sanitary, and good condition and shall maintain any irrigation improvements in good condition and working order. City shall be responsible for any repair and maintenance of

the hardscape and any irrigation improvements, including all repair and replacement of materials due to any cause, including but not limited to normal wear and tear, acts of God, vandalism, and accidents.

2.2.3 City shall be responsible for obtaining any necessary permits and all utilities (including but not limited to electricity, water, sewage, or gas). City shall be responsible for the cost of such utilities and shall establish its own billing account directly with the utility company.

2.3 City shall not relocate, replace, modify, or alter all or any part of the Project without first obtaining a permit from the Division and the written approval of the Contract Administrator for such relocation, replacement, modification, or alteration.

2.4 If City takes any action or makes any omission that causes or results in alterations or damage to County property, City shall, at its own expense, restore such property to its condition before the alterations or damages. If City fails to make such restoration within thirty (30) calendar days after County's written request, County may make the restoration, and then invoice the City for the costs thereof. City shall pay such invoice within thirty (30) calendar days after receipt.

2.5 This Agreement does not change the functional classification of Hillsboro Boulevard.

2.6 City's maintenance obligations under this Agreement may be performed by City through the use of its employees, or City may enter into a contract with a third party to perform the services. If City contracts with a third party, City will remain fully responsible hereunder and must ensure that the third party complies at all times with each and every term, condition, duty, and obligation of the City set forth herein.

ARTICLE 3. COSTS

3.1 City shall pay to County an estimated amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) in accordance with Task One as described in Article 2.1.1 of this Agreement, within thirty (30) calendar days after the Effective Date of this Agreement (the "Project Payment"). If the Project costs are greater than the Project Payment, such costs shall be the sole responsibility of City and paid to County within thirty (30) calendar days after County's written notice to City regarding additional Project costs. After completion of the Project, if it is determined that the Project costs are less than the Project Payment, the difference will be refunded to City within thirty (30) calendar days after the determination.

3.2 City shall be responsible and pay for all costs and expenses associated with the design, construction, and the ongoing and perpetual maintenance of the landscape, irrigation, hardscape, and architectural improvements, including all utility charges, for the Project. County shall bear no costs for design, construction, maintenance, or utilities for the Project.

3.3 County will invoice City for increased costs associated with change orders for the Project. City shall remit payment to County for such increased costs no later than thirty (30) calendar days after receipt of the invoice.

ARTICLE 4. TERM AND TERMINATION

4.1 This Agreement starts on the Effective Date and continues in perpetuity following completion of the Project with respect to City's ongoing and perpetual obligation to maintain the landscape, irrigation, hardscape, and architectural improvements as set forth herein.

4.2 This Agreement may be terminated for cause by County if City breaches any of its obligations under this Agreement and has not corrected the breach within thirty (30) calendar days after receipt of written notice identifying the breach. County may, at the option of the Contract Administrator, cause such breach to be corrected and invoice City for the costs of the correction or may terminate this Agreement. If County opts to correct the breach and invoice City for the costs of correction, City shall pay such invoice within thirty (30) calendar days after receipt. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall, at County's sole election, be deemed a termination for convenience, which shall be effective thirty (30) calendar days after such notice of termination for cause is provided.

4.3 This Agreement may be terminated for convenience by the Board during the period ranging from execution of this Agreement until the City's completion of Task One. Such termination for convenience by the Board shall be effective on the termination date stated in the written notice provided by County to City, which termination date shall not be less than thirty (30) calendar days after the date of such written notice.

4.4 This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate if the County Administrator determines that termination is necessary to protect the public health or safety. Termination under this section shall be effective on the date County provides notice to the City of such termination.

4.5 If this Agreement is terminated in accordance with this Agreement, City shall remove the Project, at City's sole expense, unless the Contract Administrator, in writing, authorizes City to leave the Project in place. If the Project must be removed:

4.5.1 County will have no obligation to remove, relocate, reinstall, or replace any part of the Project, or in any way compensate City for any loss resulting from or arising out of the termination of this Agreement.

4.5.2 City must obtain a permit from the Division to remove the Project and return the property to its original condition, or a condition acceptable to the Contract Administrator following removal.

4.5.3 City is obligated to repair any damage to the property resulting from the removal

of the Project. If City fails to comply with the removal and/or repair obligations within thirty (30) calendar days of termination, County may perform them, and then invoice City for the cost thereof. City shall pay the invoice within thirty (30) calendar days after receipt.

4.5.4 No later than thirty (30) days after the effective date of the termination, County shall return the amount of the Project Payment received by County pursuant to Section 3.1 that has not been expended by County on the Project (remaining balance) as of the date of County's notice of termination.

4.6 Notice of termination shall be provided in accordance with Article 5 of this Agreement, except that notice of termination by the County Administrator, pursuant to Section 4.4 of this Agreement, may be verbal notice that shall be promptly confirmed in writing in accordance with Article 5 of this Agreement.

ARTICLE 5. NOTICES

Whenever either party desires or is required 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 acknowledgment of delivery, together with a contemporaneous email, addressed to the party for whom it is intended at the place last specified in this article. The manner in which and persons to whom notice shall be provided will remain the same unless and until changed in writing in accordance with this article. The Parties respectively designate the following persons for receipt and issuance of notice:

FOR COUNTY:

Director, Broward County Highway Construction and Engineering Division
1 North University Drive, Suite 300-B
Plantation, Florida 33324
Email: rtornese@broward.org

FOR CITY:

City Manager, City of Parkland
6600 University Drive
Parkland, FL 33067
Email: nmorando@cityofparkland.org

ARTICLE 6. INDEMNIFICATION

6.1 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 negligent or wrongful 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 herein shall 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.

6.2 If City contracts with a third party to perform any of City's obligations under this Agreement, City shall enter into a contract with such third party, which contract shall include the following provision:

6.2.1 Indemnification: Contractor shall indemnify and hold harmless Broward County, and all of Broward County's current, future, and former 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 contractor, its current or former officers, employees, agents, servants, or assigns, arising from, relating to, or in connection with this Agreement. If any Claim is brought against an Indemnified Party, contractor shall, at its own expense, upon written notice from Broward County, defend each Indemnified Party against each such Claim by counsel satisfactory to Broward County, or, at the option of Broward County, pay for an attorney selected by the County Attorney to defend the Indemnified Party.

6.3 The provisions of this article will survive the expiration or earlier termination of this Agreement.

ARTICLE 7. INSURANCE

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

7.2 Within five (5) calendar days after 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.

7.3 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.

7.4 The foregoing requirements shall apply to City's self-insurance, if any.

7.5 If City contracts with one or more third parties to perform any of City's obligations set

forth herein, City shall require that each third party procure and maintain insurance coverage that adequately covers the third party's exposure based on the services provided by that third party (and any subcontractors retained by the third party). City must ensure that all such third parties name "Broward County, Florida" as an additional insured and certificate holder under the applicable insurance policies. City shall not permit any third party to provide services required by this Agreement until the insurance requirements of the third party under this Section are met. If requested by County, City shall furnish evidence of all insurance required by this Section.

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

ARTICLE 8. MISCELLANEOUS

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

8.2 Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of City that are related to this Agreement. City shall keep such books, records, and accounts as may be necessary to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts 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 in written form at no cost to County.

City shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). City hereby grants County the right to conduct such audit or review at City's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

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. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) calendar days after presentation of County's findings to City.

8.3 Independent Contractor. City is an independent contractor under this Agreement. In performing under this Agreement, neither City nor its agents shall act as officers, employees, or agents of County. City has no power or right to bind County to any obligation not expressly undertaken by County under this Agreement.

8.4 Third Party Beneficiaries. Neither City nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

8.5 Assignment and Performance. Neither this Agreement nor any right or interest herein may be assigned, transferred, or encumbered by City without the prior written consent of County, which consent may be withheld in County's sole discretion. City represents that each person and entity that will perform 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 must equal or exceed prevailing industry standards for the provision of such services.

8.6 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 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.

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

8.8 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter. It may not be modified or terminated except as provided in this Agreement. If any provision is deemed invalid by a court of competent jurisdiction, it shall be considered severed from this Agreement, and such severance shall not invalidate the remaining provisions.

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

8.10 Interpretation. The headings contained in this Agreement are for reference purposes only and do not affect in any way 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.

8.11 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any Exhibit attached hereto or referenced or incorporated herein and any provision in this Agreement, the provisions contained in this Agreement shall prevail and be given effect.

8.12 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 that the exclusive venue for litigation arising from, related to, or in connection with this Agreement will be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **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.**

8.13 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 Parties.

8.14 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated by reference. The attached Exhibits A and B are incorporated into and made a part of this Agreement.

8.15 Representation of Authority. Each individual executing this Agreement on behalf of a party 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.

8.16 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.

8.17 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.

8.18 Time of the Essence. Time is of the essence for City's performance of all obligations under this Agreement.

IN WITNESS WHEREOF, the parties hereto 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 _____, 2024, and the City of Parkland, signing by and through its _____ City 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 _____, 2024

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

Gavin P. Rynard
By Rynard Digitally signed by Gavin P. Rynard
Date: 2024.05.22 09:53:20 -04'00'
Gavin P. Rynard (Date)
Assistant County Attorney

Nathaniel A. Klitsberg
By Nathaniel Klitsberg 2024.05.22 09:45:36 -04'00'
Nathaniel A. Klitsberg (Date)
Transportation Surtax General Counsel

NAK/gpr
Parkland JPA Hillsboro Boulevard Roundabout – Final Agreement
4/12/24

JOINT PARTICIPATION AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF PARKLAND
FOR LANDSCAPE, HARDSCAPE, AND ARCHITECTURAL IMPROVEMENTS WITHIN THE
ROUNDBOUT AT THE INTERSECTION OF HILLSBORO BOULEVARD AND 64TH TERRACE/NW
74TH PLACE

CITY

ATTEST:

Hyson Morales
CITY CLERK

CITY OF PARKLAND

By: *[Signature]*
CITY MAYOR

Richard W. Walker

Print Name

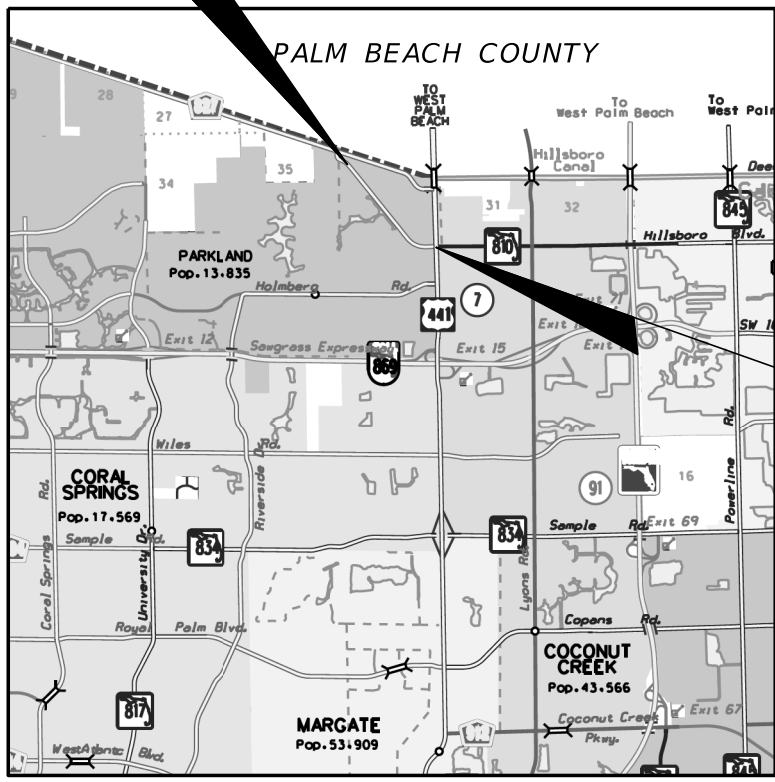
3rd day of May, 2023

I HEREBY CERTIFY that I have approved this Agreement as to form and legal sufficiency subject to execution by the parties:

[Signature]
City Attorney

EXHIBIT A
PROJECT CORRIDOR LIMITS

BEGIN CONSTRUCTION
HILLSBORO BOULEVARD
STA. 21+20.00



END CONSTRUCTION
HILLSBORO BOULEVARD
STA. 94+40.00

EXHIBIT B
PROJECT SCHEDULE

- County Design Completion by June 28, 2024
- County Construction Procurement Begin by July 12, 2024
- County Construction Material Procurement Begin by December 13, 2024