



FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF POMPANO BEACH FOR SURTAX-FUNDED MUNICIPAL TRANSPORTATION PROJECT: DIXIE HIGHWAY/ ATLANTIC BLVD CORRIDOR IMPROVEMENTS (POMP-002)

This First Amendment ("First Amendment") modifies the Agreement between Broward County, a political subdivision of the State of Florida ("County"), and the City of Pompano Beach, a municipality of the State of Florida ("Municipality") (each a "Party" and collectively referred to as the "Parties").

RECITALS

A. On or about November 10, 2022, the Parties entered into the Interlocal Agreement for Surtax-Funded Municipal Transportation Project for the Dixie Highway/Atlantic Blvd Corridor Improvements Project (POMP-002) ("Agreement").

B. The Agreement expires by its terms on January 1, 2026.

C. The Parties now desire to amend the Agreement to include the potential for a reimbursable inflation adjustment in connection with the Project (as defined in the Agreement – Segment 2).

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

1. The above Recitals are true and correct and are incorporated herein by reference. All capitalized terms not expressly defined in this First Amendment retain their meanings as defined in the Agreement.

2. Modifications to specific language in the Agreement made in this First Amendment are identified by use of strikethroughs to indicate deletions and bold/underlining to indicate additions. Except as modified in this First Amendment, all remaining provisions in the Agreement shall remain in full force and effect.

3. Section 5.4 of the Agreement is amended as follows:

Maximum Funding. Municipality acknowledges that the Maximum Funding Amount set forth below is the maximum amount payable by County and constitutes a limitation upon County's obligation to provide funding to Municipality for the Project. Municipality further acknowledges that subtotal amounts set forth below for the applicable phases and in the Funding Schedule (including as amended) are the maximum amounts payable for the applicable portions of the Project, and constitute limitations on County's obligation to provide funding to Municipality for the Project.

Description	Not-To-Exceed Amounts
Phase 1: Construction (<i>inclusive of 5% contingency</i>)	\$13,921,600.00
Maximum Reimbursable Inflation Adjustment	\$1,656,670.40
MAXIMUM FUNDING AMOUNT:	\$13,921,000.00 \$15,578,279.40

In no event shall County be liable to provide funding to Municipality in excess of the applicable amounts stated in the Funding Schedule or the Maximum Funding Amount, regardless of the basis for any claim or the basis for increased cost, including, without limitation, differing site conditions, delays, weather, or any other reason. If the actual costs of the Project exceed the amount County is obligated to fund per the Funding Schedule, as same may be amended pursuant to this Agreement, Municipality shall be solely responsible for funding any and all such additional amounts. Municipality is solely responsible for any and all costs to operate, support, and maintain the Project unless otherwise agreed in writing by the Parties; County has no obligation to fund any costs related to the Project except as expressly stated in this Agreement.

4. The provisions within the Funding Parameters Section of Exhibit B are amended as follows:

Municipality shall invoice County for up to a quarter of the applicable Total Maximum Not-To-Exceed Amount specified below in advance of the applicable Deliverable or Phase (“Application for Funding”). The first Application for Funding shall be submitted to the Contract Administrator no later than thirty (30) days after the full execution of this Agreement. Municipality shall submit no more than four separate Applications for Funding per funding schedule provided below.

Each quarter will be funded in advance by County per the schedule(s) stated below, with each funding amount determined by the Maximum Not-to-Exceed Amount for the applicable Deliverable less any unexpended funding for prior Deliverables. Unexpended funds for prior Deliverables shall be deducted from subsequent Applications for Funding or refunded to County, as requested by the Contract Administrator.

Each Application for Funding (after the first) shall include the information required in the Agreement including the following information for the prior Deliverables (as applicable): the amount of funding received and evidence of actual expenditures (including documentation demonstrating all invoices received from and payments made to Consultant/Contractor); a statement indicating the cumulative amount of CBE participation; an updated progress schedule; and all required certifications including that all Deliverables sought are statutorily eligible for funding under Section 212.055, Florida Statutes.

Absent prior written approval by the Contract Administrator, Municipality may not submit an Application for Funding for a Deliverable until all prior Deliverables have been satisfactorily completed.

Maximum Reimbursable Inflation Adjustment

After Project final completion, successful Project closeout, and all other Project funding has been expended on the Project, Municipality may submit an Application for Funding to County seeking reimbursement for eligible Project costs associated with inflation up to the Reimbursable Inflation Adjustment Amount specified below. An Application for Funding for the Reimbursable Inflation Adjustment Amount must include: the information set forth above for an Application for Funding; a certification that all other Project funding has been utilized; and invoices documenting expenditures for eligible Project Costs up to the Reimbursable Inflation Adjustment Amount. The Inflation Adjustment Amount may not exceed eleven and nine tenths percent (11.9%) of the Total Maximum Not-To-Exceed Amount excluding the Reimbursable

Inflation Adjustment Amount. This Inflation Adjustment Amount will only apply to Segment 2 of the Project.

Deliverable/Phase Description	Maximum Not-To-Exceed Amount
<p>Deliverable 1:</p> <ul style="list-style-type: none"> Dixie Highway and Atlantic Blvd - Storm utility structures and pipe procured. Dixie Highway (North bound from SW 3rd St to NE 10th St) - east side sitework demo and curb complete. Atlantic Blvd (I-95 to west side of the intersection of Dixie and Atlantic Blvd) - temporary MOT median work complete. North and South sides demo complete, 50% of storm structures installed. 	\$3,480,400.00
<p>Deliverable 2:</p> <ul style="list-style-type: none"> Dixie Highway (South bound from SW 3rd St to NE 10th St) - demo complete, 25% of the curb, 25% sidewalk, and 25% storm structures installed. Atlantic Blvd. (I-95 to west side of the intersection of Dixie and Atlantic Blvd) - storm structures, curb, and concrete sidewalk installed. 	\$3,480,400.00
<p>Deliverable 3:</p> <ul style="list-style-type: none"> Dixie Highway (South bound from SW 3rd St to NE 10th St) - demo complete, 75% of the curb, 75% sidewalk, and 75% storm structures installed. Atlantic Blvd (East side of the intersection of Dixie and Atlantic Blvd to NE 4th Ave) - Temporary MOT median work complete. North and South sides demo complete, 75% of storm structures installed. 	\$3,480,400.00
<p>Deliverable 4:</p> <ul style="list-style-type: none"> Dixie Highway (South bound from SW 3rd St to NE 10th St) - Curb, sidewalk, and storm structures installed. Asphalt and pavement markings complete. Signalization complete. Atlantic Blvd (East side of the intersection of Dixie and Atlantic Blvd to NE 4th Ave) – Curb, sidewalk, and storm structures installed. Asphalt and pavement markings complete. Signalization complete. Atlantic and Dixie intersection work complete. 	\$3,480,400.00
<p><u>Deliverable for Segment 2 - Final Completion, Successful Closeout, and County’s Receipt of Required Documentation, Reimbursable Inflation Adjustment</u></p>	<u>\$1,656,670.40</u>
<p>TOTAL MAXIMUM NOT-TO-EXCEED AMOUNT:</p>	\$13,921,000.00 <u>\$15,578,279.40</u>

5. If there is any conflict or ambiguity between this First Amendment and the Agreement, the Parties agree that this First Amendment shall control. The Agreement, as amended herein by this First Amendment, 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 First 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.

6. Preparation of this First 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.

7. The Parties agree and acknowledge that through the effective date of this First Amendment, Municipality has no claims against County regarding any matter covered by the Agreement, and Municipality has no right of set-off or counterclaims against any amount payable under the Agreement.

8. The effective date of this First Amendment shall be the date of complete execution by the Parties.

9. This First 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 hereto have made and executed this First Amendment: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its County Administrator, authorized to execute same by Board action on the 25th day of August, 2020, Agenda Item No. 86, and CITY OF POMPANO BEACH, signing by and through its Authorized Signer, duly authorized to execute same.

BROWARD COUNTY

BROWARD COUNTY, by and through
its County Administrator

By _____
Monica Cepero

____ 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

By _____
Gavin P. Rynard (Date)
Assistant County Attorney

By _____
Nathaniel A. Klitsberg (Date)
Transportation Surtax General Counsel

NK/gpr
POMP-002 – First Amendment
4/24/2024
#1098743.2

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MUNICIPALITY

ATTEST:

CITY OF POMPANO BEACH

CITY CLERK

By: _____
CITY MAYOR

Print Name

____ day of _____, 20__

By: _____
CITY MANAGER

Print Name

____ day of _____, 20__

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

City Attorney