



**FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF POMPANO BEACH FOR SURTAX-FUNDED MUNICIPAL TRANSPORTATION PROJECT: KENDALL LAKE NEIGHBORHOOD STORMWATER IMPROVEMENTS PROJECT (POMP-006)**

This is the First Amendment ("First Amendment") to the Interlocal Agreement (defined below) 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. The Parties entered into the Interlocal Agreement for Surtax-Funded Municipal Transportation Project for the Kendall Lake Neighborhood Stormwater Improvement Project (the "Project"), dated November 18, 2022 (the "Agreement"), which includes the construction and construction administration services to improve the drainage systems in the Kendall Lake Neighborhood in the City of Pompano Beach.

B. The Agreement expires by its terms on January 28, 2025.

C. The Parties now desire to amend the Agreement to include a reimbursable inflation adjustment for Municipality.

Now, therefore, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, 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 within this First Amendment shall retain the meaning ascribed to such terms in the Agreement.
2. Amendments to the Agreement made pursuant to this First 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.
4. 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 : Construction (inclusive of 5% contingency)	\$3,296,795.00

Description	Not-To-Exceed Amounts
<b><u>Reimbursable Inflation Adjustment</u></b>	<b><u>\$392,318.61</u></b>
MAXIMUM FUNDING AMOUNT:	\$3,296,795.00 <b><u>\$3,689,113.61</u></b>

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.

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

Municipality may invoice County for funding (“Application for Funding”), at intervals of not more than quarterly, for work to be completed on the Project up to the maximum not-to-exceed amounts per applicable Phase stated below **(excluding the Cost Escalation Amount specified below)**. Absent prior written approval by the Contract Administrator, Municipality may not invoice County for funding for a subsequent Phase until all prior Phases have been satisfactorily completed. Municipality may not invoice for a Phase for which a not-to-exceed amount has not been specified in the applicable Funding Schedule.

Each quarter will be funded in advance by County per the schedule stated below, with the quarterly funding amount determined by the Maximum Not-to-Exceed Amount for the applicable Phase or Deliverable divided by the number of quarters in the duration of that Phase or Deliverable, less any unexpended funding received during any prior quarter. Each Application for Funding (after the first) shall include for the prior quarter the amount of funding received and evidence of actual expenditures for that quarter including documentation demonstrating all invoices received from and payments made to Contractor or Consultant; and a statement indicating the cumulative amount of CBE participation through the end of the prior quarter. Municipality shall submit with each Application for Funding: an updated progress schedule; and a certification that all funding amounts sought are statutorily eligible for funding under Section 212.055, Florida Statutes.

#### **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.**

<b>Deliverable/Phase Description</b>	<b>Maximum Not-To-Exceed Amount</b>
Deliverable 1: Mobilization/Clearing & Grubbing/Permit/Bonds	\$824,198.75
Deliverable 2: Piping Installation	\$824,198.75
Deliverable 3: Catch Basins/Pavement Installation	\$824,198.75
Deliverable 4: Site Restoration/Close-out	\$824,198.75
<b><u>Deliverable – Final Completion, Successful Closeout, and County’s Receipt of Required Documentation.</u></b> <b><u>Reimbursable Inflation Adjustment Amount</u></b>	<b><u>\$392,318.61</u></b>
TOTAL MAXIMUM NOT-TO-EXCEED AMOUNT:	<b><u>\$3,296,795.00</u></b> <b><u>\$3,689,113.61</u></b>

7. In the event of 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.

8. 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.

9. The Parties agree and acknowledge that through the effective date of this First Amendment, Municipality has no claims against County with respect to any of the matters covered by the Agreement, and Municipality has no right of set-off or counterclaims against any of the amounts payable under the Agreement.

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

11. This First Amendment may be executed in counterparts, 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 \_\_\_\_\_, 2022

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 Rynard (Date)  
Assistant County Attorney

By \_\_\_\_\_  
Angela J. Wallace (Date)  
Transportation Surtax General Counsel

AJW/gpr  
POMP-006 – First Amendment  
8/XX/2023  
#23-114.01

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**MUNICIPALITY**

ATTEST:

DocuSigned by:  
  
D1C913A8ED334CA  
CITY CLERK

DocuSigned by:  


CITY OF POMPANO BEACH DocuSigned by:  
  
By: 502CB780EB3F480...  
CITY MAYOR

Rex Hardin

Print Name

23rd day of August, 20 23

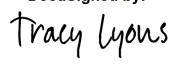
DocuSigned by:  
  
By: 7052A67F45A44C8...  
CITY MANAGER

Gregory P. Harrison

Print Name

23rd day of August, 20 23

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

DocuSigned by:  
  
EAD0181D13084ED... for  
City Attorney