

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF BOYNTON BEACH AND
THE CITY OF DELRAY BEACH
(CONSTRUCTION PHASE OF SE 36TH AVE.)**

THIS AGREEMENT (“Agreement” or “Interlocal Agreement”) is hereby made and entered into by and between the CITY OF BOYNTON BEACH, FLORIDA, a municipality organized under the laws of the State of Florida (hereinafter “Boynton Beach”), and the CITY OF DELRAY BEACH, FLORIDA, a municipality organized under the laws of the State of Florida (hereinafter “Delray Beach”), each a “Party” and collectively the “Parties.”

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" (hereinafter the “Act”) authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and;

WHEREAS, it is the purpose of the Act to provide a means by which the Parties may exercise their respective powers, privileges, and authority which they may separately, but which pursuant to this Interlocal Agreement and the Act they may exercise collectively; and

WHEREAS, the Parties have common interests in the rehabilitation of the right-of-way of SE 36th Avenue; and

WHEREAS, the eastbound lane of SE 36th Avenue resides within the municipal boundaries of Delray Beach, the westbound lane of SE 36th Avenue resides within the municipal boundaries of Boynton Beach, and the median between the lanes of SE 36th Avenue. is one half (1/2) owned and maintained by each Party (the “Project Area”); and

WHEREAS, the Parties previously entered into an Interlocal Agreement, dated May 19, 2020, as amended by that First Amendment dated February 25, 2021, to provide for the shared expenses of the engineering design for improvements to SE 36th Avenue; and

WHEREAS, the planning/design phase of the Project is complete; and

WHEREAS, there are cost savings and efficiencies gained by the Parties collaborating on the rehabilitation, which serves both a municipal and public purpose; and

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the Parties hereby agree as follows:

SECTION 1. PURPOSE

(a) This Agreement constitutes an interlocal agreement authorized by Section 163.01, Florida Statutes, being a joint exercise of power shared in common, which any

municipality could exercise separately and shall be filed with the Clerk of Circuit Court in and for Palm Beach County, Florida. The truth and accuracy of each recital clause set forth above is acknowledged by the Parties.

(b) The purpose of this Interlocal Agreement is to establish an agreement between the Parties in order to allocate each party's pro rata share of expenses for the construction phase of the rehabilitation of SE 36th Avenue from Seacrest Boulevard eastward to the Florida East Coast Railway right-of-way. The scope of work consists of roadway widening for an existing two-lane road with milling and resurfacing; a new 10-foot-wide concrete shared-use path on Boynton Beach's side, and an 8-foot-wide concrete shared-use path on Delray Beach's side; landscape removals and new plantings; irrigation; reconstruction of medians; 24-inch drainage pipe inclusive of drainage structures and 6-foot-wide exfiltration trenches; water service replacement; swale re-grading; lighting; and incidental construction of curbs, sidewalks, driveways, sod, pavement markings, signage, and utility reconstruction (the "Streetscape Portion") and construction of a new watermain (the "Watermain Portion Phase I") (hereinafter collectively referred to as the "Project"), as further described in the plans attached hereto as **Exhibit A**. The Parties acknowledge that additional street repair costs will be associated with the Watermain Portion Phase II project, which extends from the west side of the Florida East Coast Railway right-of-way. Any work, costs, or changes to bid quantities related to the Watermain Portion Phase II project shall be the sole financial responsibility of Boynton Beach. Any modifications to quantities or scope within the Phase II portion shall not affect the cost-sharing provisions established in this Interlocal Agreement for the Streetscape Portion and Watermain Portion Phase I.

SECTION 2. TERM OF AGREEMENT

(a) This Interlocal Agreement shall become effective upon being executed by both Parties.

(b) This Interlocal Agreement shall remain in effect until the Project is completed, and Delray Beach pays its pro rata share to Boynton Beach for the Project.

SECTION 3. TERMINATION

This Interlocal Agreement shall not be terminated by either Party, at any time during the term, unless:

- (a) Agreed to in writing by both Parties; or
- (b) As otherwise provided in this Agreement.

SECTION 4. COST SHARING AND PROCUREMENT OF THE PROJECT

(a) In consideration of Boynton Beach issuing a Request for Bids for the construction phase of the Project and entering into a contract with the selected contractor for the Project ("Contractor"), Delray Beach shall pay Boynton Beach its pro rata share of construction expenses, which shall consist of all Streetscape Portion construction expenses associated with Delray Beach's right-of-way or any other real property owned by Delray Beach located within the Project Area.

(b) The Project construction expenses related to the Streetscape Portion of the

Project shall be shared pro rata between the Parties; however, the elements of the construction specific to each Party's property, if any, shall be paid for by the respective Party.

(c) In conjunction with the Project, Boynton Beach is constructing a new watermain in the Project Area. The construction expenses related to the Watermain Portion Phase I and Phase II of the Project shall be paid for solely by Boynton Beach.

(d) Each Party agrees to pay its share of the actual cost of construction expenses for the Streetscape Portion of the Project. The total cost of construction of the Streetscape Portion of the Project is estimated to be \$2,657,411.20. A copy of the Project cost estimate is attached hereto as **Exhibit B**. The Parties agree to the following estimated pro rata expense allocation:

Boynton Beach Portion	\$1,343,135.60
Delray Beach Portion	\$1,314,275.60

The Parties agree that this is an estimate only and the actual cost sharing will be based on the final construction bids and actual expenditures incurred during construction. If the actual cost of the Streetscape Portion of the Project deviates from the estimated cost, the final pro rata portion of each Party shall be automatically adjusted upward or downward to reflect such deviation, without the need for a written amendment, provided that neither Party's portion shall exceed \$1,500,000.00 (the "Estimated Maximum Cost") without further approval by the applicable City Commission, and execution of a written amendment to this Agreement; which accounts for the base estimated construction cost plus a 10% allowance for estimation accuracy, and a 10% contingency for unforeseen conditions. Any increase beyond the Estimated Maximum Cost shall require a written amendment to this Interlocal Agreement approved by the applicable City Commission. In the event the Contractor's proposal exceeds \$2,657,411.20 plus a 10% allowance for estimation accuracy for the Streetscape Portion of the Project, the Parties will mutually agree to remove certain items from the scope of services, negotiate with the Contractor, modify the total pro rata cost, or negotiate with the Contractor, according to the Project's Request for Bids.

(e) Delray Beach shall make payments to Boynton Beach within 30 days after receipt of an invoice related to Delray Beach's pro rata share of the Project construction expenses.

(f) Boynton Beach shall invite a representative from Delray Beach's construction staff to serve on the procurement evaluation and selection panel for the construction phase of the Project, and once selected, Delray Beach shall participate in the process between Boynton Beach and the Contractor in negotiation of a contract for the Project.

(g) The Parties shall work together to conduct public meetings, which will allow the public of both Boynton Beach and Delray Beach to express any concerns related to the Project.

(h) Once Boynton Beach enters into a contract with the Contractor for the Project, Delray Beach shall not be able to withdraw payment of its pro rata share of construction expenses to be payable to Boynton Beach, as provided herein.

SECTION 5. PUBLIC RECORDS

The Parties are public agencies subject to Chapter 119, Fla. Stat. The Parties shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, the Parties agree to:

- (a) Keep and maintain all records that ordinarily and necessarily would be required by the Parties;
- (b) Provide the public with access to public records on the same terms and conditions that the Parties would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law;
- (c) Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law; and
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the Parties all records in possession of the Parties at the termination of this Agreement and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Parties in a format that is compatible with the information technology systems of the Parties. All records shall be transferred to the Parties prior to final payment being made to the Parties.
- (e) If either Party does not comply with this section, the non-breaching Party shall enforce the Agreement provisions in accordance with this Agreement and may unilaterally cancel this Agreement in accordance with state law.

SECTION 6. GOVERNMENT IMMUNITY

Except to the extent sovereign immunity may be deemed waived by entering into this Interlocal Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by either Party, nor shall anything included herein be construed as consent by either Party to be sued by a third party in any matter arising out of this Agreement. No Party shall be deemed to assume any liability for the negligent or wrongful acts or omissions of the other Party. Each Party is a state agency or political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the acts and omissions of its agents or employees to the extent required by applicable law. This section shall survive the expiration or termination of this Agreement.

SECTION 7. INSURANCE

Each Party is an entity subject to Section 768.28, Florida Statutes. Each party represents that it is insured and/or self-insured with coverage limits in accordance with state law. Each Party will provide the other Party with written verification of liability protection in accordance with state law upon request throughout the term.

SECTION 8. NOTICE AND PAYMENT ADDRESS

Unless otherwise stated herein, for notice to a Party to be effective under this Interlocal Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Payments shall be made to the address listed on Boynton Beach's invoice. Addresses may be changed by the applicable Party giving notice of such change in accordance with this Section.

As to City of Boynton Beach:
City of Boynton Beach
Attn: City Manager
100 East Ocean Ave.
Boynton Beach, FL 33435
Email address: DuggerD@bbfl.us

As to City of Delray Beach:
City of Delray Beach
Attn: City Manager
100 NW 1st Avenue
Delray Beach, FL 33444
Email address: Moore@mydelraybeach.com

SECTION 9. FORCE MAJEURE

Except as otherwise provided in this Interlocal Agreement, neither Party shall be deemed in default or in breach of this Interlocal Agreement to the extent it is unable to perform due to an event of Force Majeure. For the purpose of this Interlocal Agreement, Force Majeure shall mean and include any act of God, accident, lockout, strike or other labor dispute, riot or civil commotion, act of a public enemy, enactment, rule, or order of government or governmental instrumentality (whether domestic or international and whether federal, state or local, or the international equivalent thereof), or any other cause of any nature whatsoever beyond the control of either Party, which was not avoidable in the exercise of reasonable care and foresight.

SECTION 10. REMEDIES

Both Parties shall have any and all remedies as permitted by law. The Parties agree, however, to provide for positive dialogue and communications if disputes or disagreements arise as to the application or interpretation of the Interlocal Agreement provisions.

SECTION 11. MISCELLANEOUS PROVISIONS

(a) **Joint Preparation.** The preparation of this Agreement has been a joint effort of the Parties, and the resulting document shall not, solely as a matter of judicial constraint, be construed more severely against one of the Parties than the other.

(b) **Representation of Authority.** Each individual executing this Agreement on behalf of a Party represents and warrants that they are, on the date they sign this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and that they do so with full legal authority.

(c) **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed on behalf of each Party respectively, by persons authorized to execute same on their behalf.

(d) **Independent Contractors.** This Agreement does not and shall not be construed to make any officer or employee of Boynton Beach an officer or employee of Delray Beach for any purpose whatsoever, nor any officer or employee of Delray Beach an officer or employee of Boynton Beach for any purposes whatsoever. Neither Party is authorized to make or enter into any contract, agreement, or warranty for or on behalf of the other, unless the parties to this Agreement have entered into a written agreement expressly authorizing such.

(e) **Third-Party Beneficiaries.** Neither Boynton Beach nor Delray Beach 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.

(f) **Non-Discrimination.** The Parties agree no person shall, on the grounds of race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status, or sexual orientation, be excluded from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this Interlocal Agreement.

(g) **Severability.** If any terms or provision of this Interlocal Agreement, or the application thereof to any person or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Interlocal Agreement, or the application of such term or provision, to any person or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Interlocal Agreement shall be deemed valid and enforceable to the extent permitted by law.

(h) **Governing Law; Venue.** This Interlocal Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce or arising out of this Agreement shall be held exclusively in Palm Beach County, Florida. In any litigation brought to enforce the terms of this Interlocal Agreement, the Parties shall bear their own costs and attorney's fees incurred in connection therewith. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES EXPRESSLY WAIVE ANY RIGHT THE PARTIES MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION OR ANY CLAIM RELATED TO THIS AGREEMENT.**

(i) **Records Retention.** The Parties shall maintain records associated with this Interlocal Agreement, including, but not limited to, all accounts, financial, and technical records, research, or reports in accordance with Florida law.

(j) **Materiality and Waiver or Breach.** Each requirement, duty, and obligation set forth herein was bargained for at arm's-length. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Interlocal Agreement, and each is, therefore, a material term. Any Party's failure to enforce any provision of this Interlocal Agreement shall not be deemed a waiver of such provision or modification of this Interlocal Agreement. A waiver of any breach of a provision of this Interlocal Agreement shall not be deemed a waiver of

any subsequent breach and shall not be construed to be a modification of the terms of this Interlocal Agreement.

(k) **Counterparts and Multiple Originals.** This Interlocal Agreement may be executed in multiple originals, and 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 Interlocal Agreement.

(l) **Compliance with Laws.** Each Party 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 Interlocal Agreement.

(m) **Prior Agreements.** This Interlocal Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Interlocal Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Interlocal Agreement are contained herein.

(n) **Assignment.** Neither this Interlocal Agreement nor any term or provision hereof or right hereunder shall be assignable by either Party without the prior written consent of the other Party.

(o) **Interpretation.** The headings contained in this Interlocal Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Interlocal Agreement. All personal pronouns used in this Interlocal Agreement shall include any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein” refer to this Interlocal 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 Interlocal 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.

(p) **Filing.** This Interlocal Agreement and subsequent amendments thereto shall be filed by the Parties with the Clerk of the Circuit Court of Palm Beach County, Florida, in conformance with Section 163.01(11), Florida Statutes.

(Signatures on Following Page)

**INTERLOCAL AGREEMENT BETWEEN THE
CITY OF BOYNTON BEACH AND THE CITY OF DELRAY BEACH
(CONSTRUCTION PHASE OF SE 36TH AVE.)**

IN WITNESS WHEREOF, the Parties hereto have made and executed this Interlocal Agreement: City of Boynton Beach, signing by and through its Mayor, authorized to execute same by City Commission action on the ____ day of _____, 2025, and City of Delray Beach, signing by and through its _____, authorized to execute same by City Commission action on the ____ day of _____, 2025.

CITY OF BOYNTON BEACH

By: _____
Rebecca Shelton, Mayor

ATTEST:

City Clerk

Approved as to form

By: _____
Stacey R. Weinger
Deputy City Attorney

CITY OF DELRAY BEACH

By: _____
Thomas F. Carney, Jr., Mayor

ATTEST:

Alexis Givings, City Clerk

Approved as to form

By: _____
Lynn Gelin, City Attorney

EXHIBIT A
PROJECT PLANS

EXHIBIT B
COST ESTIMATE