

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF BOYNTON BEACH
AND
THE CITY OF DELRAY BEACH
(ENGINEERING DESIGN OF SE 36TH AVE)**

THIS AGREEMENT ("Agreement" or "Interlocal Agreement"), is made and entered into May 19, 2020, by and between the City of Boynton Beach, a Florida municipal corporation (hereinafter "Boynton Beach"), and the City of Delray Beach, a Florida municipal corporation (hereinafter "Delray Beach") collectively (the "Parties") or individually (a "Party").

WITNESSETH:

WHEREAS, the Parties are authorized pursuant to the Florida Interlocal Cooperation Act of 1969 as set forth in Section 163.01, et seq., Florida Statutes (hereinafter the "Act") to make efficient use of their respective powers, resources, authority and capabilities by enabling them to cooperate on the basis of mutual advantage and thereby provide the facilities and efforts identified herein in the manner that will best utilize existing resources, powers and authority available to each of them; 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 SE 36th Ave; and

WHEREAS, the eastbound lane of SE 36th Ave resides in Delray Beach, the westbound lane of SE 36th Ave resides in Boynton Beach, and the median between the lanes of SE 36th Ave is one half (1/2) owned and maintained by each Party; 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, the Parties express their mutual understandings and commitments as follows:

Section 1. STATEMENT OF PURPOSE

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 engineering design of the rehabilitation of SE 36th Ave from Seacrest Blvd. eastward to FEC Railroad Track ("Project"). This Agreement solely pertains to the engineering design expenses including engineering expenses related to geotechnical, environmental, and surveying services, and does not cover any construction expenses ("Engineering Expenses").

Section 2. COST SHARING AND PROCUREMENT OF THE PROJECT

2.1 In consideration of Boynton Beach issuing a Request for Qualifications for the engineering design of the Project, and entering into a contract with the selected engineer for the Project ("Selected Engineer"), Delray Beach shall pay to Boynton Beach its pro rata share of Engineering Expenses, which shall consist of all the Project Engineering Expenses associated with Delray Beach's right-of-way or any other real property owned by Delray Beach.

2.2 The Project Engineering Expenses shall be shared pro rata between the Parties, however, the elements of the design specific to each Party's property, if any, shall be paid for by the respective Party.

2.3 Each Party's share of Engineering Expenses, as provided herein, shall not exceed Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00). In the event the Selected Engineer's proposal exceeds Five Hundred Thousand and 00/100 Dollars (\$500,000.00), the Parties will mutually agree to remove certain items from the scope of services, or negotiate with the second place engineer, according to the Project's request for proposals.

2.4 Delray Beach shall make payments to Boynton Beach within 30 days of receipt of an invoice related to Delray Beach's pro rata share of the Project Engineering Expenses.

2.5 Boynton Beach shall invite a representative of Delray Beach's engineering staff to serve on the procurement evaluation and selection panel for the engineering design of the Project, and once selected, Delray Beach shall participate in the process between Boynton Beach and the Selected Engineer in negotiation of a contract for the Project.

2.6 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.

2.7 Once Boynton Beach enters into a contract with the Selected Engineer for the Project, Delray Beach shall not be able to withdraw payment of its pro rata share of Engineering Expenses to be payable to Boynton Beach, as provided herein.

Section 3. 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 agrees to:

3.1 Keep and maintain all records that ordinarily and necessarily would be required by the Parties.

3.2 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.

3.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.

3.4 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.

3.5 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 4. 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 5. DURATION AND TERMINATION

5.1 This Interlocal Agreement shall become effective upon being executed by both Parties.

5.2 This Interlocal Agreement shall remain in effect until the Project is completed and Delray Beach pays Boynton Beach for the final invoice related to the Project. This Agreement may be terminated by written mutual consent executed by both Parties.

Section 6. GOVERNING LAW/ VENUE / WAIVER OF JURY TRIAL

This Agreement shall be governed by the laws of the State of Florida. Any legal action to enforce the Agreement will be filed in Palm Beach County. 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.**

Section 7. LIABILITY AND INDEMNITY

7.1. Each Party shall be liable for its own actions and negligence and, to the extent permitted by law, the Parties and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions and negligence of the other. Nothing herein shall constitute, or be construed as, a waiver of sovereign immunity beyond the limits set forth in Florida Statute, Section 768.28, or of any defense available to the Parties as set forth in Florida Statutes, Section 768.28 or any other provisions of Florida law.

7.2 This section shall survive the termination or expiration of this Agreement.

Section 8. AMENDMENT OF THIS AGREEMENT

Amendments to this Interlocal Agreement shall be made by written consent of both Parties.

Section 9. EXECUTION OF AGREEMENT

This Agreement shall be executed by the Parties' authorized representatives pursuant to an appropriate resolution of the respective local governmental unit. Each Party shall be bound to the terms of this Interlocal Agreement as of the date it is signed by both Parties.

Section 10. SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Interlocal Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void or voidable, shall in no way affect the validity or enforceability of any other portion or provision of the Interlocal Agreement. Any void or voidable provision shall be deemed severed from the Interlocal Agreement and the balance of the Interlocal Agreement shall be construed and enforced as if the Interlocal Agreement did not contain the particular portion or provision held to be void. The Parties further agree to reform the Interlocal Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Interlocal Agreement from being held void should a provision which is of the essence of the Interlocal Agreement be determined to be void by a court of competent jurisdiction.

Section 11. NOTICES

11.1 Any notice given pursuant to the terms of this Agreement shall be in writing and done by Certified Mail, Return Receipt Requested. The effective date of such notice shall be the date of receipt, as evidenced by the Return Receipt. All notices shall be addressed to the following:

As to City of Boynton Beach:	Attn: City Manager City of Boynton Beach PO Box 310 Boynton Beach, FL 33425
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As to City of Delray Beach:	Attn: City Manager City of Delray Beach 100 NW 1 st Avenue Delray Beach, FL 33444
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11.2 Notices shall be effective when delivered to the address specified above. Changes in the respective addresses to which such notice may be directed may be made from time to time by any Party by written notice to the other Party. Facsimile and email are acceptable notice effective when received, however, facsimiles and emails received (i.e. printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Section 12: FILING

A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

Section 13: FORCE MAJEURE

Any Party delayed by a Force Majeure Event, as defined herein, in performing under this Interlocal Agreement shall use reasonable efforts to remedy the cause or causes of such Force Majeure Event. A delay due to a Force Majeure Event shall serve to toll the time to perform under this Agreement. "Force Majeure Event" shall mean any act of God, fire, flood, earthquake, explosion, hurricane, riot, sabotage, terrorist attack, windstorm, failure of utility service, or labor dispute.

Section 14: CONSTRUCTION

No Party shall be considered the author of this Interlocal Agreement since the Parties hereto have participated in negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one Party as opposed to the other Party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

Section 15: NO THIRD PARTY BENEFICIARY

No provision of this Interlocal Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of any Party.

Section 16: NON-DISCRIMINATION

The Parties shall not discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, or gender identity and expression in the performance of this Agreement.

Section 17: ASSIGNMENT

The Parties may not assign this Agreement in whole or in part, without prior written consent of the other, which may be granted or withheld at the such Parties' absolute discretion.

Section 18: SEVERABILITY

If any term of the Agreement or the application thereof shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement, other than those as to which it is held invalid or unenforceable,

shall not be affected thereby, and each term of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 19: COUNTERPARTS

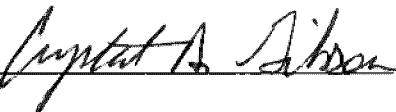
This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

Section 20: EFFECTIVE DATE

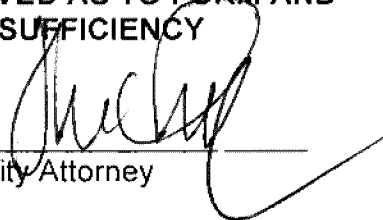
This Agreement is expressly contingent upon the approval by the Parties and shall become effective only when signed by the Parties. The effective date shall be the last date that it is executed by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date and year first written above.


ATTEST:

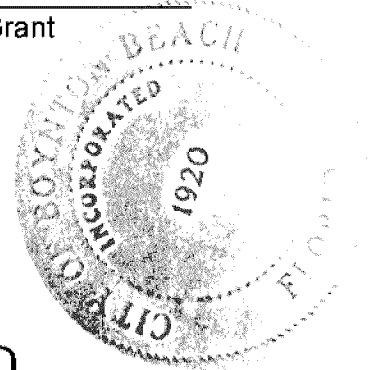
By: 

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: 
City Attorney

CITY OF BOYNTON BEACH


By: 
Name: Steven B. Grant
Title: Mayor



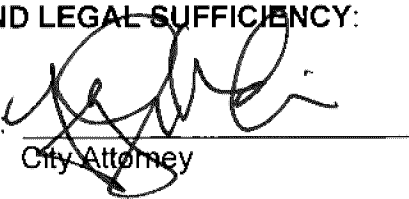
ATTEST:

By: 
Deputy City Clerk

CITY OF DELRAY BEACH

By: 
Name: Shelly Petrolia
Title: Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:**

By: 
City Attorney