

TRIPARTY AGREEMENT

AMONG

BROWARD METROPOLITAN PLANNING ORGANIZATION

And

CITY OF COCONUT CREEK

And

METROPOLITAN TRANSPORTATION ENGINEERING & CONSTRUCTION  
COOPERATIVE

For

LYONS ROAD MOBILITY SAFETY PROJECT

This is an Agreement (“Agreement”) made and entered into by and among: **BROWARD METROPOLITAN PLANNING ORGANIZATION**, created pursuant to Section 339.175, Florida Statutes, hereinafter referred to as "BMPO,"

AND

**CITY OF COCONUT CREEK**, a Florida municipal corporation hereinafter referred to as “CITY”,

AND

**METROPOLITAN TRANSPORTATION ENGINEERING & CONSTRUCTION COOPERATIVE**, created pursuant to Section 163.01, F.S. hereinafter referred to as “MTECC”

WHEREAS, the BMPO, CITY, and MTECC hereinafter collectively referred to as the “Parties”.

WHEREAS, the BMPO is the Grantee of the Community Project Funding (hereinafter referred to as the “Grant”) from the U.S. Department of Housing and Urban Development (“HUD” or “Grantor”) for the Lyons Road Pedestrian Mobility Safety Project (the “Project”) identified as BMPO project number B-23-CP-FL-0383; and

WHEREAS, the Parties to this Agreement desire to participate cooperatively to utilize the Grant and local funds to implement the Project; and

WHEREAS, the BMPO has set aside \$3,510,000 (“Grant Funds”) to reimburse MTECC’s design and construction of the Project improvements shown in Exhibit “A”, which is located in the City of Coconut Creek; and

WHEREAS, the CITY has agreed to fund \$35,000 of local funds plus costs of CITY requested betterments, and cost overruns; and

WHEREAS, this Agreement is intended to define those roles and responsibilities of the Parties with respect to the development, engineering, construction, and maintenance of the Project including, but not limited to, procurement activities, invoicing, review and approval of eligible costs, compliance with grant provisions including conformance with scope, schedule, and budget and related timely reporting, as well as all HUD requirements and related reporting that were not enumerated in this Agreement; and

WHEREAS, BMPO will use the Grant as the mechanism to reimburse MTECC, as MTECC completes specified work documented in progress reports submitted with invoices for this Project; and

WHEREAS, the BMPO is willing to utilize the Grant Funds to fund the Project which will be administered by the BMPO and implemented by MTECC; and

WHEREAS, the BMPO is responsible for ensuring that the Grant Funds are properly utilized to implement the Project and that Parties comply with Grant requirements; and

WHEREAS, the Parties desire to enter into an Agreement whereby the duties and obligations of each party to the others are set forth therein.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1  
DEFINITIONS AND IDENTIFICATIONS

For purposes of this Agreement, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - Means this document, Articles 1 through 12, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **BMPO Board** – The Broward Metropolitan Planning Organization Board.
- 1.3 **BMPO Contract Administrator** - The BMPO Executive Director, or his/her designee. The primary responsibilities of the BMPO Contract Administrator are to coordinate and communicate with CITY, MTECC, and HUD.
- 1.4 **Grant Agreement** –The Grant Agreement (#B-23-CP-FL-0383) outlines the scope, requirements and funding for the project. The grantor is HUD and grantee is BMPO. Condition to and subject to successful grant obligation by HUD.
- 1.5 **MTECC Contract Officer** - The Executive Director of MTECC, or his/her designee. The primary responsibilities of the MTECC Contract Officer are to coordinate and communicate with the CITY and BMPO and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, the Parties may rely on the instructions or determinations made by the MTECC Contract Administrator; provided, however, that such instructions and determinations do not change the Project.

- 1.6 **Local Funds** – Refers to the “non-federal” CITY contribution of \$35,000, not funded by HUD under this Agreement.
- 1.7 **Obligation (Grant)** – Refers to the federal government’s legal commitment pursuant to the Grant to pay the federal share of the Project’s cost.
- 1.8 **Project** – The Project consists of the services described in Article 2 hereof.

ARTICLE 2  
PURPOSE AND SCOPE

- 2.1 The purpose of this Agreement is to set out the terms and conditions for MTECC to provide for the design and construction of the Project. The Project’s improvements are shown in Exhibit “A” attached hereto incorporated by reference.
- 2.2 In Fiscal Year 20\_\_, the BMPO will make available \$3,510,000 of funds from the Grant for the implementation of the Project. The Project is for the benefit of the CITY that agrees upon acceptance of the completed Project, to operate and maintain for the useful life, all Project elements as a condition of the funding. Through this Agreement, the BMPO will utilize the Grant Funds and Local Funds, subject to HUD’s Obligation, to reimburse MTECC to complete the design and construction of the agreed Project improvements.

ARTICLE 3  
BMPO, MTECC, AND CITY REQUIREMENTS

- 3.1 BMPO Requirements – The BMPO will have the following overall requirements for the Project after the obligation of the Federal Grant funds:
  - 3.1.1 Grant Oversight – BMPO shall have the overall responsibility for oversight and administration of the Grant to ensure MTECC implements the Project in accordance with the Grant requirements. This will include, but not limited to, review and approval of procurement documents, progress reports provided by MTECC and follow up on any required issues. BMPO will participate in periodic meetings with the Parties to review the status of Project implementation, activities, and utilization of Grant and Local Funds.
  - 3.1.2 Invoice Review and Approval, Grant Reimbursements and Audits– BMPO shall review the invoices submitted by MTECC for the reimbursement of eligible Grant Agreement expenses in accordance with Section 6. BMPO will make payment to MTECC, in accordance with the BMPO prompt payment policies. BMPO will submit eligible costs to the HUD for reimbursement. BMPO will conduct or cooperate in any audits of the Project as required by the Grantor or any federal or state agency.

- 3.1.3 Grant Close-Out – Pursuant to Grant requirements, BMPO shall provide for the overall Grant close out process in partnership with CITY.
- 3.1.4 Annual Monitoring – BMPO shall monitor the Project as required by the Grantor to ensure project elements are in place and maintained for the useful life of the Project. The CITY agrees to the continued operation of the Project for its originally intended purpose for a minimum of the useful life of the assets as referenced in the Manufacturer’s Specification Sheets attached as Exhibit “F”. The Grant requires the CITY to provide annual reports to the BMPO on the condition of the assets through the useful life of the Project and be responsible for repayment to HUD should the assets be taken out of service before the useful life is met. The Grant requires the CITY to be responsible for maintenance of the Project and related utilities, facilities, and equipment after completion of the work.
- 3.2 MTECC Requirements – MTECC shall be responsible for the design, construction, and construction engineering inspection (CEI) of the Project in compliance with all Grant requirements. MTECC will implement these elements within the Federal and grant requirements on behalf of the BMPO and CITY. These elements will include the following major components:
  - 3.2.1 Project Management – MTECC shall provide a project manager to lead the design and construction of the Project including managing the design consultant and the Construction Engineering and Inspection (“CEI”) consultant. Key activities are shown below:
    - 3.2.1.1 Project Lead – Provide overall direction on behalf of BMPO for the implementation of the Project. Responsible for the development of monthly progress and financial reports and invoices for submittal to the BMPO as required in Article 6. The financial reports and invoice format and content of monthly invoice to be approved by the BMPO. Reimbursements will occur on a monthly basis to MTECC.
    - 3.2.1.2 Oversight of Design Consultant – Provide the oversight and management of the MTECC design consultant. Reviews and recommends approval of MTECC design consultant invoices prior to submittal to the BMPO. Manages the design review process. Ensures the designs are complete in accordance with the Project scope. Provides oversight of the development of the plans and specifications for the construction bid process.
    - 3.2.1.3 Oversight of the Construction, and Construction Engineering and Inspection (CEI) Consultant - Provide oversight and management of the construction contract. Provide oversight and management of MTECC CEI consultant who will provide day to day oversight of the construction contractor (“Contractor”). Reviews and recommends approval of construction contract and CEI consultant invoices prior to submittal to the BMPO. Ensures the CEI provides

proper oversight of the construction activities in accordance with the Project plans and specifications. Provides oversight of the construction bid process and overall construction activities. Provides BMPO with documentation of CEI activities and finding in a monthly report signed by professional engineer.

3.2.1.4 Progress Reporting - Preparation of monthly progress reports for distribution to BMPO.

3.2.1.5 Project Close-Out and Transfer – Provides the direction and oversight of the Project close-out and partners with BMPO to participate in the close-out in accordance with Article 6. After approval of the completed Project, CITY will assume the Project improvements in their respective jurisdictions for operations and maintenance.

3.2.2 Procurement – MTECC shall procure the design, construction, and CEI consultants for the Project. MTECC shall ensure that the procurement follows all Federal and grant requirements and provide documentation to BMPO.

3.2.3 Project Design – MTECC shall ensure the design meets the scope, budget, and schedule set for the Project under Federal and Grant requirements. The BMPO and CITY may be part of routine project briefings and review of the design for meeting the Project goals. The design will include the development of a complete design in 30%, 60%, and 100% plans with design reviews at each stage. Once the design is complete MTECC and its design consultants will develop the plans, specifications, and preparation for all materials to bid the construction of the Project.

3.2.4 Project Construction – MTECC shall ensure the construction meets the scope, budget, and schedule set for the Project under the Federal and Grant requirements in accordance with the design plans and specifications. This will include:

3.2.4.1 CEI – MTECC shall ensure the proper CEI for the overall construction of the Project. This will include oversight of the construction including required materials testing, monitoring of construction activities, and review and recommendations on contractor progress reports (invoices), and project close out.

3.2.4.2 Construction – MTECC will ensure through a qualified contractor the construction of the Project.

3.2.4.3 Project Close-Out and Acceptance – MTECC will provide, through the Project Manager and CEI, the proper oversight and close-out of the construction of the Project. MTECC will coordinate with the BMPO on the close-out and the BMPO will review the materials and when satisfied with the close-out accept the Project from MTECC.

- 3.2.5 Right of Way Certification – MTECC will take the lead in partnership with CITY to secure the certification/easements required to provide the required use of right of way for the Project.
- 3.3 CITY Requirements – The CITY are owners and operators of the Project and the key requirements include:
- 3.3.1 Local Funds– The CITY will pay local funds as defined above to MTECC within 30 days of the execution of this Agreement.
- 3.3.2 Environmental Clearance – The CITY will provide documentation of environmental clearances required for the Project to move forward to the design and construction stage of the Project.
- 3.3.3 Right of Way Certification – The CITY will secure the certification/easements required to provide the required use of right of way for the Project.
- 3.3.4 Responsibility for Project Expenses – The CITY shall be solely responsible for all costs related to the completion of the Project, inclusive of all hard costs, soft costs, administrative fees and related expenditures (“Project Expenses”). Project Expenses may include those expenses deemed reimbursable under the Grant Agreement attached as Exhibit “G” (“Reimbursable Expenses”) as well as non-reimbursable expenses, which are comprised of any additional work, costs, fees, or expenses related to the Project beyond Reimbursable Expenses (“Non-Reimbursable Expenses”). MTECC shall prepare requests for reimbursement on behalf of the CITY for submission to the BMPO in the form set forth in the Grant Agreement. Notwithstanding, the CITY shall be responsible for all Project Expenses that are not reimbursed by the BMPO under the Grant Agreement.
- 3.3.4.1 Project Account; Payment of Project Expenses. The CITY shall, prior to the award of a contract/task order to the Contractor for the design or construction of the Project, advance to MTECC an amount equal to 10 percent of the Project Budgeted Expenses included in Exhibit E (the “Operating Contribution”). The Operating Contribution shall be separate from, and above and beyond, the amount of local contribution and in the form of CITY funds. The Operating Contribution shall be held by MTECC in a designated Project Fund, which may be a Sub-fund of the overall MTECC Trust Fund to pay Project Expenses (the “Project Fund”).
- 3.3.4.2 Payment of Project Expenses. The Contractor and consultants shall submit invoices for work on the Project to MTECC. MTECC shall pay all Contractor and consultant invoices from the Project Fund. Concurrent with each Contractor and consultant payment, MTECC

shall prepare a request for reimbursement on behalf of the CITY for submission to BMPO in the form set forth in the Grant Agreement. MTECC shall deposit all Reimbursement Payments into the Project Fund. If at any time during the Project, the balance of funds available in the Project Fund are insufficient to pay for Project invoices, MTECC shall notify the CITY and the CITY shall, within fourteen (14) days of receipt of such notice, increase the Operating Contribution in an amount necessary to timely pay such Project invoices.

3.3.4.3 Disbursement of Project Account Balance. Within thirty (30) days of the acceptance of the Project by the CITY and payment of all outstanding invoices, MTECC shall transfer any remaining balance of the CITY funded (excludes Grant) Project Fund to the CITY.

3.3.4.4 Project Delivery Fee. The CITY shall pay to MTECC, a fee in the amount of \$35,000 for direct Project support (the “Project Delivery Fee”). The Project Delivery Fee is not a budgeted Project Expense and will not be deposited into the Project Fund.

3.3.4.5 Betterments. The CITY may request during the design phase for certain additional improvements above and beyond the scope of the Grant. A request for Betterments must be made to MTECC, which has no obligation to accept the request, and all costs are borne by the CITY, which shall be advanced to MTECC at the time the betterment is approved by the CITY and MTECC.

3.3.5 Project Operations and Maintenance – The CITY will participate in the review of the Project close-out to ensure the Project elements are complete. The CITY will be responsible and provide for the operations and maintenance of the Project elements in accordance with the Grant requirements.

3.3.5.1 Access to Project Site. The CITY shall grant a right of way certification for the Project site, as necessary, permitting ingress and egress to MTECC and any and all Contractors and any other agent or representative of, or engaged by MTECC to facilitate the completion of the Project in the form attached hereto as Exhibit “B”.

3.3.5.2 Ownership of Project Deliverables. The CITY shall, as the third-party beneficiary of the Project Delivery Agreement, be the beneficial owner of all Project deliverables provided by the Contractor a description of which is attached hereto as Exhibit “C” (the “Project Deliverables”).

- 3.3.5.3 Enforcement of Warranties. The CITY shall be solely responsible for the enforcement of any and all warranties, as applicable, for labor and materials on the Project upon acceptance of the Project.
- 3.3.5.4 Claims for defects. The CITY shall be solely responsible for the prosecution of any and all claims for defects in workmanship and/or design services upon acceptance of the Project.
- 3.3.6 Permitting – The CITY agrees to review, pay, and expedite approval of all required permits for the improvements within their respective authority and jurisdiction.

ARTICLE 4  
GRANT PASS THROUGH REQUIREMENTS

Grant Indemnity – CITY failure to reasonably perform its obligations related to the receipt of the Grant Funds shall constitute a material breach of this Agreement. The CITY, to the extent permitted by law, agrees to indemnify and hold the BMPO harmless from any liability, demand, claim, penalty or any other adverse action resulting from breach by CITY, MTECC or its contractor or subcontractor, its obligations related to the receipt of the Grant Funds, including, any demand for return of all or a portion of the Grant Funds (including interest and penalties).

ARTICLE 5  
TERM

This Agreement shall be effective upon execution by all Parties and shall continue in full force and effect until each Party has performed all obligations and responsibilities under this Agreement, with respect to the Grant Funds imposed on BMPO by HUD for receipt of federal funds under the Grant for the Project. Upon completion of the Grant, the BMPO will provide a closeout letter to all Parties.

ARTICLE 6  
CONSIDERATION AND PAYMENT

- 6.1 The BMPO shall have no obligation to independently fund the costs of the Project.
- 6.2 Reimbursement of BMPO and MTECC’s expenses for the Project funded under the Grant shall be subject to the cost principles set forth in the OMB Final Rule (2 CFR Chapter I, and Chapter II, Parts 200, 215, 220, 225, and 230), as well as the applicable provisions of the Grant. The BMPO agrees to reimburse MTECC for its expenditures that are allowable under the Grant for the Project. The BMPO shall charge costs associated with the BMPO’s oversight of the Project.

- 6.3 MTECC shall be reimbursed for the eligible costs on a monthly basis for progress on the Project. MTECC shall submit monthly invoices with proper backup documentation in a format provided by BMPO.

Upon receipt of a properly documented invoice, BMPO shall pay MTECC within 30 days utilizing the Grant and Local Match. The invoice shall include payroll records and invoices from MTECC's contractor(s) and proof of payment to contractor(s) to verify that MTECC has incurred the costs set out in its invoice. The BMPO reserves the right to require MTECC to submit additional reasonable documentation to verify that MTECC has incurred the costs set out in its invoice.

If BMPO disputes any items on an invoice for a reasonable cause, BMPO may deduct that disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deductions shall be documented to MTECC and the Parties agree to timely meet to resolve any such disputes.

- 6.4 Completion of the construction phase will be deemed to have occurred when MTECC submits all receipts, approved permits, certificate of completion, if any, copies of all permits with all required sign-offs, and all other necessary documentation indicating the construction phase has been completed in a satisfactory manner. Final required sign-off shall include a professional engineer's signing and sealing that the Project is complete and operational, in substantial conformance with the approved Project plans and specifications.

At the completion of the Project, MTECC shall provide verified actual costs satisfactorily demonstrated to have been expended by all contractors for completion of the Project. Upon satisfactory review and approval of all required documentation from MTECC, the BMPO shall pay the balance of the total contract amount after the costs previously invoiced and reimbursed.

- 6.5 The BMPO's obligation to provide reimbursement to MTECC shall be limited to the availability of grants funds to BMPO from HUD and Local Funds, which are specifically earmarked for the Project. In the event that Grantor shall deny any of BMPO's request for payments relating to the Project, or if Grantor shall request the return of any Grant Funds relating to the Project that have been previously paid, MTECC shall, within sixty (60) days of receiving notice from BMPO of Grantor's denial or request for return of Grant Funds already paid, return to BMPO the funds that Grantor has declined to reimburse or requested to be returned. CITY and MTECC requirement to return funds shall include the payment of any interest or penalties required by Grantor.

## ARTICLE 7 GOVERNMENTAL IMMUNITY

Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Parties are state agencies or political subdivisions

as defined in Chapter 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of their agents or employees to the extent permitted by law.

ARTICLE 8  
INSURANCE

MTECC is an entity subject to Section 768.28, Florida Statutes, and MTECC shall furnish the BMPO with written verification of liability protection in accordance with state law prior to final execution of this Agreement. MTECC shall ensure that all consultants and contractors provide written verification of insurance to protect Parties as shown in Exhibit “D”.

ARTICLE 9  
DISPUTE RESOLUTION / TERMINATION

- 9.1 Resolution of Disputes: If the Parties to this Agreement are unable to resolve any issue, an Agreement will be drafted for the CITY and BMPO in which they may be in disagreement covered herein, such dispute will be resolved in the following manner:
- (a) First, the disputing parties will meet together through the BMPO Executive Director, the respective municipal manager or administrator and the MTECC Contract Officer, or their respective designee;
  - (b) If the disputing parties are still unable to resolve the dispute, the disputing parties agree to further attempt to resolve the dispute in accordance with governmental conflict resolution procedures specified in Chapter 164 or 186, Florida Statutes or such other processes deemed mutually agreeable and appropriate by the parties involved.
- 9.2 This Agreement may not be terminated by the Parties until all requirements of the HUD Grant are met.
- 9.3 This CITY may assume the MTECC requirements in the Agreement, with BMPO concurrence, for reasons including, but not limited to, MTECC’s repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

ARTICLE 10  
MAINTENANCE OF RECORDS & AUDITS

- 10.1 The Parties shall maintain books, records, documents, and other evidence directly pertinent to work under this Agreement in accordance with generally accepted accounting principles and practices. The Parties shall also maintain for a period of three (3) years from the latter of the date of Grant close-out or expiration of this Agreement the financial information and data used by the Parties in the preparation or support of the proposed or actual costs

submitted for reimbursement under this Agreement. Parties agree to permit the BMPO, HUD, the U.S. Department of Housing and Urban Development Secretary and the U.S. Comptroller General, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records and to conduct performance and/or financial audits of Parties' books, records and accounts pertaining to the Grant expenditures for this Project.

- 10.2 The Parties shall be responsible for meeting the audit requirements of the OMB Final Rule (2 CFR Chapter I, and Chapter II, Parts 200, 215, 220, 225, and 230), and any further revision or supplement thereto. The Parties agree that the audit will be conducted in accordance with U.S. Government Accountability Office (U.S. GAO) "Government Auditing Standards." Upon the BMPO's request, CITY and MTECC must submit a copy of its audit, completed in accordance with the above-described requirements, within 30 days after completion of the audit, but no later than one year after the end of the audit period.
- 10.3 MTECC and any of its contractors and subcontractors shall preserve and make available, at reasonable times for examination and audit by the BMPO, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by BMPO to be applicable to CITY and MTECC and any of its contractors' and subcontractors' records, MTECC and its contractors and subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by either Party or its subcontractors.

#### ARTICLE 11 NONDISCRIMINATION

- 11.1 In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 52 U.S.C. Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S. C. Section 12132, Federal transit law, 49 U.S.C. Section 5332, and implementing regulations; the Parties will not discriminate against any employee, applicant for employment, or contractor hired, or any passenger provided transit service because of race, color, religion, national origin, ancestry, sex, age, or disability.
- 11.2 Contract Assurance: Neither MTECC, nor any of its contractors and subcontractors may discriminate on the basis of race, color, national origin, or sex in the performance of this

Agreement. MTECC shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of this US Department of Transportation-assisted Agreement. Failure by MTECC to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement, or any other remedy allowed by law.

ARTICLE 12



\_Closing Soon\_

For MTECC:

Executive Director  
MTECC  
100 West Cypress Creek Road, Suite 650  
Fort Lauderdale, Florida 33309

With a copy to:

Matthew Pearl, Esq  
MTECC General Counsel[  
200 East Broward Blvd., Suite 1900  
Fort Lauderdale, Florida 33301

For BMPO:

Executive Director  
Broward Metropolitan Planning Organization  
100 West Cypress Creek Road, Suite 650  
Fort Lauderdale, Florida 33309

With a copy to:

Alan L. Gabriel, Esq.  
BMPO General Counsel  
200 East Broward Blvd., Suite 1900  
Fort Lauderdale, Florida 33301

- 12.3 Assignment and Performance: Neither this Agreement nor any right or interest created herein shall be assigned, transferred, or encumbered without the prior written consent of the other party or parties. The references herein to HUD shall include any successor agency or department of the United States Government.
- 12.4 Compliance with Laws: Parties 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.
- 12.5 Severance: In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY, MTECC, or the BMPO elect to terminate this Agreement. An election to terminate

this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

- 12.6 Joint Preparation: Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.
- 12.7 Priority of Provisions: If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 12 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 12 shall prevail and be given effect; provided, however, anything in this Agreement to contrary, the Grant and all HUD mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement.
- 12.8 Jurisdiction, Venue, Waiver of Jury Trial: This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, BMPO, MTECC, AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS ANY PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**
- 12.9 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 by CITY, MTECC, and the BMPO Board or others delegated authority to or otherwise authorized to execute same on their behalf.
- 12.10 Prior Agreements: This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

- 12.11 Incorporation by Reference: The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. Exhibits referenced herein is incorporated into and made a part of this Agreement.
- 12.12 Representation of Authority: Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he/she is, on the date he/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.
- 12.13 Multiple Originals: Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

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IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: CITY through its [\_\_\_\_\_], signing by and through its \_\_\_\_\_, authorized to execute same by action on the \_\_\_\_\_ day of \_\_\_\_\_, 2024, and [CITY OF \_\_\_\_\_, FLORIDA], through it [\_\_\_\_\_], signing by and through its [\_\_\_\_\_] and BROWARD METROPOLITAN PLANNING ORGANIZATION, signing by and through its Chair and Executive Director, duly authorized to execute same.

**“City of Coconut Creek”**

By: \_\_\_\_\_

Karen M. Brooks, City Manager

This \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Attest:

By: \_\_\_\_\_  
Joseph J. Kavanagh, City Clerk

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
Terrill C. Pyburn, City Attorney

**“MTECC”**

By: \_\_\_\_\_  
Andrea McGee, Chair  
\_\_\_\_\_.

By: \_\_\_\_\_  
Lowell R. Clary, Executive Director

This \_\_\_\_ day of \_\_\_\_\_, 2024.

This \_\_\_\_ day of \_\_\_\_\_, 2024

Attest:

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY FOR THE USE OF AND  
RELIANCE BY THE MTECC ONLY:

By: \_\_\_\_\_  
Matthew Pearl, MTECC General Counsel  
Weiss Serota Helfman Cole & Bierman PL

**“BMPO”**

BROWARD METROPOLITAN  
PLANNING ORGANIZATION

By: \_\_\_\_\_  
Gregory Stuart, Executive Director

By \_\_\_\_\_  
Frank Ortis, Chair

\_\_\_\_ day of \_\_\_\_\_, 2024

\_\_\_\_ day of \_\_\_\_\_, 2024

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY FOR THE USE OF AND  
RELIANCE BY THE BMPO ONLY:

By: \_\_\_\_\_  
Alan L. Gabriel, BMPO General Counsel  
Weiss Serota Helfman Cole & Bierman PL

## **EXHIBITS**

- Exhibit "A" – Project Improvements (To be attached)**
- Exhibit "B" – Access to Project Site (To be attached)**
- Exhibit "C" – Project Deliverables (To be attached)**
- Exhibit "D" – Verification of Insurance (To be attached)**
- Exhibit "E" – Project Budget (To be attached)**
- Exhibit "F" – Grant Agreement (To be attached)**
- Exhibit "G" – Manufacturer's Specification Sheets (To be attached)**