

LAP Project Administration Agreement

This Project Administration Agreement (“Agreement”) is made and entered into on this ____ day of _____, ____ (the “Effective Date”) by and between the **METRO TRANSPORTATION ENGINEERING & CONSTRUCTION COOPERATIVE**, duly organized and existing under Section 163.1, Florida Statutes, (“MTECC”) and _____, a Florida Municipal Corporation (the “City”).

Whereas, the City will be receiving financial assistance from the Florida Department of Transportation (the “Department”) pursuant to the terms and conditions set forth in a Local Agency Program Agreement (the “LAP Agreement”) for the completion of the Project as defined therein (the “Project”); and

Whereas, the City desire to further define their roles and responsibilities for the administration of the Project; and

Whereas, this Agreement shall be incorporated into the LAP agreement as an Exhibit thereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Purpose.** The Purpose of this Agreement is to define the roles and responsibilities of MTECC and the City for the delivery of the Project (as defined in the LAP Agreement).
2. **Term.** The term of this Agreement shall commence upon the Effective Date and shall remain in full force and effect until [REDACTED].
3. **MTECC Project Administration Services.** MTECC shall perform the following Services:
 - a. **Procurement.** With concurrence of the Department, MTECC shall solicit and award a contract for the completion of the Project in accordance with all applicable laws and LAP requirements and applicable legal requirements (the “Project Delivery Agreement”). The City shall provide staff to participate in the procurement process including the evaluation team to select the qualified entity to complete the Project (the “Contractor”).
 - b. **Project Delivery Agreement Beneficiary.** The City shall be designated as a third party beneficiary in the Project Delivery Agreement and shall be expressly authorized to take any and all actions necessary to enforce the provisions of the Project Delivery Agreement against the Contractor.
 - c. **Contract Administration.** MTECC shall provide oversight of the design or construction Contractor and Project Delivery Agreement including: 1) review of

Contractor invoices and payment of the invoices from the Project Fund; 2) provision of all Project reporting to the Department required under the LAP Agreement on behalf of the City 3) coordination with the City, Department and the Contractor 4) project close out reviews and related oversight activities to ensure the Project is delivered in accordance with the LAP Agreement and applicable laws, rules, regulations, standards, and technical specifications.

- d. **LAP Reimbursement.** MTECC shall prepare a request for reimbursement on behalf of the City for submission to the Department in the form set forth in the LAP Agreement.
- e. **Review of deliverables.** MTECC shall, in consultation with the City, Department and Contractor, review the design plans at 30%, 60%, 90%, and 100% completion. MTECC will ensure that design review comments are timely resolved and project oversight for timely completion of a quality design for the Project.

4. Financial Obligations for the Project

- a. **Responsibility for Project Expenses.** The City shall be 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 LAP Agreement ("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 Department in the form set forth in the LAP Agreement. Notwithstanding, the City shall be responsible for all Project Expenses that are not reimbursed by the Department under the LAP Agreement.
- b. **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 percent of the Project Budgeted Expenses (the "Operating Contribution"). The Operating Contribution may be in the form of City funds or, of Project funds advanced to the City by the Department at the request of the City. 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").
- c. **Payment of Project Expenses.** The Contractor shall submit invoices for work on the Project to MTECC. MTECC shall pay all contractor invoices from the Project

Fund. Concurrent with each Contractor payment, MTECC shall prepare a request for reimbursement on behalf of the City for submission to the Department in the form set forth in the LAP Agreement. City shall transfer all reimbursement payments received from the Department (“Reimbursement Payments”) to the Project Fund. 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.

- d. **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 Project Fund to the City.
- e. **Project Delivery Fee.** The City shall pay to MTECC, a fee in the amount of _____ for direct Project support (the “Project Delivery Fee”). The Project Delivery Fee is not budgeted Project Expense and will not be deposited into the Project Fund.

5. Project Implementation.

- a. **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. **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 _____ (the “Project Deliverables”). Check if applicable for construction project [].
 - i. Upon Project Completion of Construction. Prior to completion of construction, the City shall participate in the final walk-through and punch list of pending items for the Project. Prior to acceptance of the Project, the City shall review and confer with MTECC. Upon completion and acceptance of the Project, MTECC, as owner, shall transfer design and construction improvements for the Project to the City.

- ii. **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.
 - c. **Claims for defects.** The City shall be solely responsible for the prosecution of any and all claims for defective workmanship and/or design services upon acceptance of the Project.
- 6. **Insurance.** During the term of this Agreement, MTECC shall carry and require the Contractor's to carry and provide written verification of insurance of the types and minimum amounts as set forth in Exhibit "C," attached hereto, and in accordance with state law. Additionally, if MTECC elects to purchase excess liability coverage, it will furnish a certificate of insurance to the City listing the City as a certificate holder and an additional insured.

MTECC Contractors will include provisions that protect the City and MTECC including the following:

- a. Insurance: MTECC Contractors shall keep and maintain, at their sole cost and expense, insurance of the types and minimum amounts as set forth in the MTECC Certificate of Insurance attached hereto as Exhibit "C", and specifically protect MTECC by naming the "Metro Transportation Engineering & Construction Cooperative" and by naming the City as an additional insured under the Commercial General Liability Insurance policy as well as any Excess Liability policy;
 - b. MTECC Contractors shall furnish to MTECC and the City certificates of insurance and endorsements evidencing the insurance coverage specified above prior to beginning the performance of services under this Agreement; and
 - c. Coverage is not to cease and is to remain in full force and effect until all performance required of the Contractor is complete.
- 7. **Sovereign Immunity.** Nothing in this Agreement is intended to serve as a waiver of sovereign immunity by the Parties nor shall anything included herein be construed as consent by the Parties to be sued by third parties in any matter arising out of this Agreement. The Parties are entities subject to Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of their employees while acting within the scope of their office or employment pursuant to Section 768.28, Florida Statutes (2022), as may be amended or revised.

8. **Remedies for Damages Caused by Contractor.** In the event that the City determines that it has been damaged by any action, error or omission of the Contractor its employees, agents, officers, partners or subcontractors in Contractor's performance under the Project Delivery Agreement, City agrees that it shall pursue any and all remedies directly against Contractor. The City expressly agrees to hold MTECC, its board members, employees, officers and agents harmless for any damages incurred by the City arising from the completion of the Project by the Contractor pursuant to the Project Delivery Agreement.
9. **Indemnification.** The City shall indemnify and hold harmless, MTECC, its board members, officers, employees, agents, servants, agencies and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City and its officers, employees, agents, servants, agencies or instrumentalities may incur as a result of any and all claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the MTECC or MTECC's officers, employees, agents, servants, partners, principals or Contractors, or any other individual performing work on the County's behalf under this Agreement. The City shall pay all claims and losses of any kind in connection therewith and shall investigate and defend all claims, suits or actions. Further, this indemnification shall only be to the extent and within the limitations of, Section 768.28 Florida Statutes, whereby the City shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000.00, or any claim or judgment or portions thereof, which, when totaled with all other claims or judgments paid by the City or any other governmental entity covered under Section 768.28 arising out of the same incident or occurrence which exceeds the sum of \$300,000.00 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the performance of this agreement.
10. **Dispute Resolution.** If the Parties are unable to resolve an issue about which there may be a disagreement regarding a matter covered in this Agreement, the Parties agree to resolve the dispute in accordance with the governmental conflict procedures specified in Chapter 164, Florida Statutes, or such other process mutually agreed upon in writing by MTECC and the City.
11. **Law, 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. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement is litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern

District of Florida. **BY ENTERING INTO THIS AGREEMENT, THE CITY AND MTECC HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

12. **Public Records.** Each party shall retain all records related to this Agreement and any Services provided hereunder in accordance with the State of Florida public records retention law and applicable Federal rules and regulations. Each party shall have access to such records, for the purposes of inspection and audit, until such time as the law allows said records to be destroyed.
13. **Reporting, Audit, and Related Requirements:** MTECC shall respond to all audits in accordance with Section [redacted] LAP Agreement. The City and accounts of MTECC and the MTECC's contractors that are related to the provision of services under this Agreement. MTECC shall keep and cause its contractors to keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of MTECC and the MTECC contractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, MTECC or the MTECC contractor, as applicable, shall make same available at no cost to MTECC in written form.
14. **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and 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.
15. **Notices.** In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. First-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section:

MTECC:

MTECC
Attn: Executive Director
100 W. Cypress Creek Road
6th Floor, Suite 650
Fort Lauderdale, FL. 33309

City: _____

Attn: _____

Current e-mail: _____

16. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any other agreement, representation, or communication, whether oral or written, between the Parties relating to the specific subject matter of this Agreement.
17. **Headings.** The section and subsection headings in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
18. **Joint Preparation.** This Agreement has been jointly prepared by the Parties and shall not be construed more strictly against either Party.
19. **Severability.** In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.
20. **Non-Discrimination.** MTECC shall not, in any of its activities, including employment, discriminate against any individual on the basis of race, color, national origin, age, religion, creed, sex, disability, sexual orientation, gender, gender identity, gender expression, marital status, or any other protected classification as defined by applicable law.
21. **Survival of Terms.** Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement which (a) the Parties have expressly agreed shall survive any such termination, or (b) remain to be performed and by their nature would be intended to be applicable following any such termination or expiration. Any liabilities which have accrued prior to termination pursuant to the insurance and/or indemnification obligations set forth below shall survive the termination of this Agreement.
22. **Waiver.** No delay or omission by either Party hereto, in the exercise of any right or remedy hereunder, shall impair such right or remedy or be construed to be a waiver thereof. Any waiver of any such right or remedy by any Party must be in writing and signed by the Party against which such waiver is sought. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or any other covenant herein contained. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.
23. **Assignment.** The respective obligations of the Parties set forth in this Agreement shall

not be assigned, in whole or in part, without the written consent of the other Parties hereto.

24. **Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in the Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Parties any right, remedy, or claims under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Parties.

25. **Effective Date.** This Agreement shall become effective upon the execution by the Parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Interlocal Agreement to be executed the day and year as first stated above.