

**CITY OF HOLLYWOOD
INTEROFFICE MEMORANDUM**

TO: Mayor and Commissioners **DATE:** January 16, 2025
FROM: Damaris Henlon, Interim City Attorney
SUBJECT: Proposed Temporary Access Agreement with Broward County for the Tilling and Escarpment Removal for the Shore Protection Project Segment III.

I have reviewed the above referenced Agreement with the participating Department/Office(s), and the proposed general business terms and other significant provisions are as follows:

- 1) Department/Division involved – Design and Construction Management
- 2) Type of Agreement – Temporary Access Agreement
- 3) Method of Procurement (RFP, bid, etc.) – n/a
- 4) Term of Contract:
 - a) initial – date the agreement is fully executed until November 1, 2027 or when beach tilling is completed
 - b) renewals (if any) – n/a
 - c) who exercises option to renew – n/a
- 5) Contract Amount – n/a
- 6) Termination Rights –

Termination. This Agreement may be terminated:

- a. By either Party with at least sixty (60) calendar days advance written notice to the other Party.
- b. For cause by the aggrieved Party if the Party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved Party identifying the breach. If County erroneously, improperly, or unjustifiably terminates this Agreement for cause, such termination shall be deemed a termination for convenience in accordance with Section 5(c).
- c. For convenience by Broward County Board of County Commissioners with at least thirty (30) calendar days advance written notice to City. City acknowledges that it has received good, valuable, and sufficient consideration for County's right to terminate this Agreement for convenience including in the form of County's

obligation to provide advance notice to City of such termination in accordance with this section.

- d. By the Broward County Administrator (“County Administrator”) upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare.

Notice of termination shall be provided in accordance with the “Notices” section of this Agreement except that notice of termination by the County Administrator to protect the public, health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

In addition to any termination rights stated in this Agreement, County shall be entitled to seek any and all available contractual or other remedies available at law or in equity including recovery of costs incurred by County due to City’s failure to comply with any term(s) of this Agreement.

Termination. This Agreement may be terminated with or without cause, by either Party with at least sixty (60) calendar days advance written notice to the other Party. Notice of termination shall be provided in accordance with the “Notice” section of this Agreement.

7) Indemnity/Insurance Requirements –

Governmental Immunity and Liability. Except to the extent sovereign immunity may be deemed waived by entering into this 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. 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. County will include indemnification language, substantially in the form below, in all contracts whereby County allows a party to access the Property pursuant to this Agreement:

CONTRACTOR shall at all times hereafter indemnify, hold harmless and, at the County Attorney's option, defend or pay for an attorney selected by the County Attorney to defend County and City, or their officers, agents, servants, and employees (collectively and individually “Indemnified Party”) from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Contractor, its employees, agents, servants, or officers, or accruing,

resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against an Indemnified Party by reason of any such claim, cause of action, or demand, CONTRACTOR shall, upon written notice from County, resist and defend such lawsuit or proceeding by counsel satisfactory to County or, at County's option, pay for an attorney selected by County Attorney to defend County and City. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

8) Scope of Services –

Grant of Access. City hereby grants unto County, its contractors, subcontractors, consultants, and employees access on, over, across, and through the Property to perform beach tilling and escarpment removal as well as inspection and monitoring of the same and any incidental uses necessary thereto, during the term of this Agreement as such term is hereinafter described. Specifically, the County is authorized to till and remove the escarpment on the beach areas denoted by the green/blue/red lines on Exhibit A. County and its contractors, subcontractors, consultants, and employees are authorized to access the beach at the beach access points designated in Exhibit A and marked on the accompanying map. Finally, County and its contractors, subcontractors, consultants, and employees may stage and store equipment and vehicles overnight at the staging locations described and indicated on the map in Exhibit A.

9) Other Significant Provisions: n/a

cc: George R. Keller, Jr. CPPT, City Manager