

**AGREEMENT**

**Between**

**BROWARD COUNTY**

**and**

**CITY OF DANIA BEACH**

**for**

**FOR DRAINAGE RETENTION EASEMENT TO DISCHARGE AND STORE TREATED  
STORMWATER RUNOFF AT THE DANIA SALTMARSH  
TO BENEFIT WEST LAKE PARK**

# **AGREEMENT**

**Between**

**BROWARD COUNTY**

**and**

**CITY OF DANIA BEACH**

**for**

**FOR DRAINAGE RETENTION EASEMENT TO DISCHARGE AND STORE TREATED  
STORMWATER RUNOFF AT THE DANIA SALTMARSH  
TO BENEFIT WEST LAKE PARK**

This is an Agreement ("Agreement"), made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

**and**

CITY OF DANIA BEACH, a municipal corporation of the State of Florida, hereinafter referred to as "CITY," collectively referred to as the "Parties."

## **WITNESSETH:**

WHEREAS, COUNTY owns certain land in CITY known as the Dania Saltmarsh, hereinafter referred to as "COUNTY's Property," consisting of approximately 80 acres adjacent to West Lake Park ("Park"); and

WHEREAS, COUNTY manages the Park as an estuarine system that continually benefits from improved water flow through COUNTY's Property to avoid a hypersaline condition in the sensitive Park ecosystem; and

WHEREAS, CITY has experienced severe drainage problems in the area adjacent to COUNTY's Property; and

WHEREAS, CITY has requested and COUNTY is willing to grant CITY a Drainage Retention Easement to allow CITY to discharge and store treated stormwater runoff from CITY property onto COUNTY's Property, under the terms of this Agreement; and

WHEREAS, the Parties desire to enter into this Agreement providing for COUNTY to grant CITY a Drainage Retention Easement as provided for herein, in exchange for CITY constructing and providing perpetual maintenance of a stormwater retention swale and inflow/outflow structures on approximately 0.72 acres of COUNTY's Property, and performing mitigation activities to benefit COUNTY by improving the native plant community in the Park, as further described herein; and

WHEREAS, construction of the Drainage facilities described herein will receive, treat, and release excess stormwater to sheetflow into the Park benefitting COUNTY by providing additional fresh water to the Park system and improving the ecologically viable habitat in the Park, while benefitting CITY by alleviating drainage problems in CITY adjacent to COUNTY's Property; and

WHEREAS, CITY shall comply with Permit Application Number 110106-11, hereinafter referred to as the ("PERMIT"), issued by the South Florida Water Management District ("SFWMD"), License Number DF11-1042 and License Application Number L2009-011, hereinafter referred to as the ("LICENSE"), issued by Broward County Environmental Protection and Growth Management Department ("EPGMD"), and Permit Number SAJ-2011-00199 (IP-MJW), hereinafter referred to as ("USACOE PERMIT") issued by the United States Army Corp of Engineers ("USACOE"); said PERMIT, LICENSE, and USACOE PERMIT are incorporated herein by reference; 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

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This Agreement includes Articles 1 through 9, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Board** - The Board of County Commissioners of Broward County, Florida.
- 1.3 **Contract Administrator** - The Director of the Broward County Parks and Recreation Division or the Manager of the Parks and Recreation Division's Planning and Development Group. The primary responsibilities of the Contract Administrator are to coordinate and communicate with CITY's Designated Representative to manage and supervise the activities set forth herein in accordance with the terms and conditions of this Agreement. In the administration of this Agreement, as contrasted with matters of policy, the Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Project.
- 1.4 **County Administrator** - The administrative head of COUNTY appointed by the Board.
- 1.5 **County Attorney** - The chief legal counsel for COUNTY appointed by the Board.

- 1.6 **Designated Representative** - The Public Services Director for CITY, responsible for the day to day operation of the Project.
- 1.7 **Division** - The Broward County Parks and Recreation Division.
- 1.8 **Drainage facilities** - The drainage pipes and other appurtenant structures, equipment, and materials for the stormwater retention swale and inflow/outflow structures to be constructed for discharging treated stormwater runoff into West Lake Park.
- 1.9 **Project** – The Project consists of the activities described in Articles 2 and 4.

## ARTICLE 2

### GRANT OF DRAINAGE RETENTION EASEMENT

- 2.1 COUNTY shall grant CITY, its successors and assigns, the non-exclusive right to a perpetual Drainage Retention Easement, over, upon, across, and under COUNTY's Property described in Exhibit "A," attached hereto, and specifically the Drainage Retention Easement Area described in Exhibit "B," attached hereto, to construct, reconstruct, maintain, operate, repair, replace, and remove, at its sole cost, the Drainage facilities, subject to CITY's compliance with the obligations outlined in Article 4.
- 2.2 The Drainage Retention Easement is subject to CITY obtaining and maintaining written approval of all governmental entities and agencies with jurisdiction over the activities to be performed for the Project.
- 2.3 CITY shall have the right to clear the Drainage Easement Retention Area of bushes and trees consistent with COUNTY's regulation of Tree Trimmers set forth in Chapter 9, Article XI, Broward County Code of Ordinances.
- 2.4 Notwithstanding COUNTY's right to terminate this Agreement, including extinguishing the Drainage Retention Easement, as provided in Article 8, COUNTY has a right to seek an action for specific performance and damages in the event CITY utilizes the Drainage Retention Easement for purposes not specifically authorized by this Agreement.
- 2.5 CITY acknowledges that the Drainage Retention Easement Area is being provided "as-is," and the soil and groundwater condition has not been investigated or assessed by COUNTY. CITY shall adequately identify and properly handle any contaminants or contaminated media including, but not limited to, contaminated soil, vegetation, or water encountered in the Drainage Retention Easement Area that could affect worker safety, or environmental quality.
- 2.6 Amending the Drainage Retention Easement Area. In the event it becomes necessary to amend the Drainage Retention Easement Area for reasons

determined by federal, state, or local agencies having jurisdiction over the Drainage facilities, and CITY desires to continue having a Drainage Retention Easement, COUNTY shall consider amending the Drainage Retention Easement Area, so long as the Contact Administrator has determined that it will not negatively impact any natural resources. In the event COUNTY approves amending the Drainage Retention Easement Area as provided in this Section 2.6, CITY shall be responsible for all costs associated with amending the Drainage Retention Easement Area including, but not limited to, relocating, if necessary, the Drainage facilities and any costs for associated environmental remediation required by any regulatory agencies. CITY may exercise any administrative, judicial, or appellate rights available to it to challenge the determination by a federal, state, or local agency that any of the Drainage facilities be relocated; provided, however, CITY is liable for any expenses, fines, damages, claims, suits, demands, or causes of action of any kind or nature in any way arising out of or resulting from CITY's exercise of such rights. The County Administrator is authorized to enter into an amendment to this Agreement to amend the Drainage Retention Area.

### ARTICLE 3

#### TITLE/RESERVATION OF TITLE

This Agreement shall vest in CITY no right, title nor interest in and to COUNTY Property described in Exhibit "A," other than the privilege of using same for the expressed purposes and on the terms and conditions set forth herein. It is expressly understood that the fee ownership of the Park shall remain in COUNTY for such use as COUNTY, its successors or assigns may desire, subject only to the rights hereby given to CITY.

### ARTICLE 4

#### CITY'S OBLIGATIONS AND COUNTY'S RESERVATION OF RIGHT TO USE SURFACE

4.1 CITY's obligations. In consideration of COUNTY granting CITY a Drainage Retention Easement under the terms of this Agreement, CITY shall comply with the following:

4.1.1 CITY shall construct the Drainage facilities within the Drainage Retention Easement Area designated in Exhibit "B." CITY shall ensure that the Drainage Retention Easement Area is delineated by the installation of a silt barrier fence. No staging or storing of any items, including construction debris, shall occur outside the silt barrier fence. CITY shall construct the Drainage facilities in accordance with the design plans set forth in Exhibit "C," Design Plans for Stormwater Retention Swale, attached hereto, and maintain the Drainage facilities in perpetuity to ensure proper stormwater treatment and flow.

- 4.1.2 CITY shall own, maintain, and repair the Drainage facilities at CITY's sole cost. CITY shall be responsible for any damage to improvements now or hereafter existing on COUNTY's Property, including, but not limited to, sidewalks, pavement, landscaping, signage, irrigation equipment, or machinery, or any other improvements, including other facilities within the Drainage Retention Easement Area constructed by other utilities, or any cable company, and any water or waste water utilities that may result from CITY's access to the Drainage Retention Easement Area, promptly restoring the same to the condition at least equal to that existing immediately prior to such damage or injury, at no cost whatsoever to COUNTY. If it becomes necessary, CITY shall excavate within the area of the Drainage facilities in order to repair or maintain same. CITY's obligations after repairing or maintaining the Drainage Retention Easement Area shall be to adequately fill and compact any such excavation to a grade determined by COUNTY, in its sole and absolute discretion.
- 4.1.3 CITY shall complete the mitigation activities required under this Agreement within the Drainage Retention Easement Area, and shall comply with all requirements for mitigation construction, monitoring, and long-term management under this Agreement.
- 4.1.4 CITY shall ensure that all work performed on COUNTY's Property substantially conforms to the requirements of the PERMIT, LICENSE, and USACOE PERMIT, and the mitigation plan submitted by CITY and approved by the Division's Environmental Section. Copies of monitoring reports shall be submitted to the Division's Environmental Section.
- 4.1.5 CITY shall, at its expense, provide initial aerial photographs taken from three (3) different views prior to commencement of any construction related activities on the Drainage facilities. An additional set of aerial photographs comprising the same three (3) views shall be taken by CITY within thirty (30) days of completion of the Project's construction and related mitigation work, as provided in this Subsection 4.1.5. Photos shall be taken at an altitude not greater than 500'. Color prints of each set of aerial photographs shall be on 8" x 10" single weight, glossy paper and provided to the Contract Administrator. If a digital camera is utilized, digital images shall also be provided to the Contract Administrator by email.
- 4.1.6 CITY shall ensure that its contractor(s) hired to perform any construction and mitigation activities required under this Agreement act in a manner that will minimize damage to any non-nuisance or native vegetation that are not intended to be removed pursuant to the approved mitigation plan. CITY shall ensure replacement of non-target trees and other plants that are injured or lost due to the contractor's negligence or carelessness. Replacement shall be based on the most current and accepted industry standards available with

regard to plants injured or killed, and shall be consistent with COUNTY's tree replacement regulations and the Division's environmental policies.

- 4.1.7 CITY shall contact the Division's Environmental Section for an inspection following completion of the construction and mitigation activities under this Agreement. The Division's Environmental Section shall have thirty (30) days after notice of completion by CITY to complete its inspection to determine acceptance. If no objections are made by the Division's Environmental Section and provided to CITY within thirty (30) days of notice of receipt of CITY's completion, the construction and mitigation activities under this Agreement will be deemed accepted by COUNTY.
- 4.1.8 CITY shall, at its cost, construct, keep in good repair, and maintain in perpetuity, the Drainage facilities in accordance with all laws, ordinances, and regulations now or hereafter imposed by all governmental bodies, agencies or regulatory entities having jurisdiction over such activities, including the reasonable requirements of COUNTY.
- 4.1.9 CITY shall promptly pay all contractors that provide any labor, materials, or supplies for the construction, repair, or maintenance of the Drainage facilities, or that perform any mitigation activities under this Agreement.
- 4.1.10 CITY shall, upon the request of COUNTY, provide all correspondence and compliance documents submitted by CITY to the regulatory entities issuing the PERMIT, LICENSE, and USACOE PERMIT, or any other regulatory entities with jurisdiction over the Project, or received by CITY from such regulatory entities, including copies of final inspection reports, letters of concern, warning letters, and violation notices.
- 4.1.11 CITY shall not create any obstruction or condition on COUNTY's Property which is or may become dangerous to COUNTY, its officers, agents, servants, employees, invitees, or the public.
- 4.1.12 CITY shall not disrupt any Park operations or Park use by patrons while fulfilling any of its obligations under this Agreement.
- 4.1.13 CITY shall not dispose of any contaminants including, but not limited to, hazardous or toxic substances, petroleum, fuel oil, or petroleum by-products, chemicals, or other agents produced or used in CITY's operations under this Agreement on the Drainage Retention Easement Area or adjacent lands, or in any manner not permitted by law. CITY shall be liable for all costs associated with any clean-up of the Drainage Retention Easement Area on COUNTY's Property that is a result of CITY's operations and use of the Drainage Retention Easement Area.

## **4.2 COUNTY's Reservation of Rights.**

4.2.1 COUNTY expressly reserves the right to continue to use or to allow third parties to use the surface of COUNTY's Property; provided, however, that such continued use will not unreasonably interfere with the rights and uses granted CITY hereunder.

4.2.2 COUNTY, or its duly authorized agents, representatives, or employees, shall have the right at any and all times to inspect the Drainage Retention Easement Area, and the performance of CITY, or its contractors, in any matter pertaining to this Agreement.

## **ARTICLE 5**

### **TERM**

5.1 The term of this Agreement shall commence upon complete execution by the Parties, and shall continue in perpetuity, as provided for herein, unless extended or terminated earlier as provided for herein.

5.2 CITY's obligations under this Agreement for construction of the Drainage facilities and performance of the mitigation activities, including all permitting requirements, shall be completed the earlier of three (3) years from commencement of this Agreement or upon satisfactory completion of all CITY's construction and mitigation obligations set forth herein, unless extended by the Parties. The Contract Administrator is authorized to extend the time for completion of CITY's construction and mitigation obligations for up to twelve (12) months.

5.3 CITY's obligations under this Agreement for maintenance and repair of the Drainage facilities shall continue in perpetuity, unless this Agreement is terminated earlier as provided for herein.

## **ARTICLE 6**

### **LIABILITY/INDEMNIFICATION**

6.1 The Parties are state agencies or political subdivisions of the State of Florida subject to the limitations set forth in Section 768.28, Florida Statutes, and each party shall be fully responsible for acts and omissions of its officers, agents, or employees to the extent required by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity is applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement or any other contract.



## 6.2 Indemnification Requirements for CITY's Contractor.

In the event CITY contracts with a third party contractor(s) ("Contractor") to perform any construction, repair, maintenance, or mitigation related activities for the Project, CITY shall include in its contract with the successful Contractor the following requirements:

Indemnification. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Broward County, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Contractor and persons employed or utilized by Contractor in the performance of this Contract. These indemnifications shall survive the term of this Contract.

## ARTICLE 7

### INSURANCE

7.1 The Parties are state agencies or political subdivisions under Section 768.28, Florida Statutes, and each party shall furnish the other party with written verification of liability protection in accordance with state law prior to final execution of this Agreement. In the event CITY elects to purchase excess liability coverage, Broward County, shall be named as an additional insured and certificate holder under said policy, and COUNTY shall be notified of said coverage and provided evidence of same.

## 7.2 Insurance Requirements for CITY's Contractor.

In the event CITY contracts with a third party contractor(s) ("Contractor") to perform any construction, repair, maintenance, or mitigation related activities for the Project, CITY shall include in its contract with the successful Contractor the requirements set forth below in favor of COUNTY in addition to any CITY requirements, and CITY shall provide COUNTY, prior to commencement of any activities, Certificates of Insurance evidencing compliance with the following requirements:

- a. Commercial General Liability: Contractor shall maintain Commercial General Liability coverage with minimum limits of Five Hundred Thousand Dollars (\$500,000.00) each occurrence combined single limit for bodily injury and property damage.
- b. Business Automobile Liability: Contractor shall maintain Business Automobile Liability coverage with minimum limits of Five Hundred Thousand Dollars (\$500,000.00) each occurrence combined single limit for bodily injury and property damage.

- c. Workers' Compensation Insurance and Employers' Liability: Contractor shall maintain Workers' Compensation Insurance for all employees in compliance with Chapter 440, Florida Statutes, "Workers' Compensation Law." Policy shall include Employers' Liability.
- d. Pollution Liability/Environmental Impairment Liability: Contractor shall maintain Pollution Liability/Environmental Impairment Liability insurance including clean-up costs with minimum limits of One Million Dollars (\$1,000,000.00) per claim. Policy shall remain in force for two (2) years after services are performed by Contractor.
- e. Builder's Risk Insurance: Contractor performing construction services shall maintain Builder's Risk insurance and provide an all risk Completed Value form Builder's Risk Policy with a deductible not to exceed Ten Thousand Dollars (\$10,000.00) each claim for all perils except wind and flood.
- f. Additional Insured: Contractor shall endorse the Parties as additional insureds to the Commercial General Liability Policy and any Excess Policies. The additional insured endorsements shall read "City of Dania Beach, Florida," and "Broward County."

## ARTICLE 8

### TERMINATION

- 8.1 This Agreement may be terminated 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. Termination for cause shall include, but is not limited to, either party's repeated (whether negligent or intentional) failure to suitably perform their respective obligations for the Project; or failure to continuously perform the work/activities for the Project in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.
- 8.2 COUNTY may terminate this Agreement for any of the following reasons:
  - 8.2.1 Failure of CITY to construct the Drainage facilities in accordance with the terms of this Agreement.
  - 8.2.2 Failure of CITY to pretreat the stormwater discharged onto COUNTY's Property.
  - 8.2.3 Repeated violation of the PERMIT, LICENSE, and USACOE PERMIT issued to CITY for the activities under this Agreement.

8.2.4 Failure of CITY to utilize the Drainage Retention Easement for purposes not specifically authorized by this Agreement.

8.2.5 If COUNTY's efforts, after due diligence, result in a finding by COUNTY that the stormwater discharge into the Park lake adversely impacts the environmental quality to a substantial degree.

8.2.6 Failure of CITY to comply with its obligations outlined in Articles 2 and 4.

8.3 This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare.

8.4 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

## ARTICLE 9

### MISCELLANEOUS

#### 9.1 INDEPENDENT CONTRACTOR

CITY is an independent contractor under this Agreement. Services provided by CITY pursuant to this Agreement shall be subject to the supervision of CITY. In providing such services, neither CITY nor its agents shall act as officers, employees, or agents of COUNTY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to CITY or CITY's agents any authority of any kind to bind COUNTY in any respect whatsoever.

#### 9.2 THIRD PARTY BENEFICIARIES

Neither CITY nor COUNTY 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.

#### 9.3 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of

delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

FOR COUNTY:

Dan West, Director,  
Parks and Recreation Division  
950 NW 38th Street  
Oakland Park, Florida 33309

FOR CITY:

Robert Baldwin, City Manager  
City of Dania Beach  
100 W. Dania Beach Blvd.  
Dania Beach, Florida 33004

With a copy to:

Thomas J. Ansbro, City Attorney  
City of Dania Beach  
100 W. Dania Beach Blvd.  
Dania Beach, Florida 33004

**9.4 MATERIALITY AND WAIVER OF BREACH**

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof.

Either party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this 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 Agreement.

**9.5 COMPLIANCE WITH LAWS**

CITY 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.

## **9.6 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 either party elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after final court action, including all available appeals.

## **9.7 JOINT PREPARATION**

The Parties and their counsel have participated fully in the drafting 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.

## **9.8 INTERPRETATION**

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this 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 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.

## **9.9 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 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

## **9.10 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 Parties acknowledge that jurisdiction of any controversies or legal disputes 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, CITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, ARISING FROM, OR IN CONNECTION WITH THIS AGREEMENT.**

#### **9.11 AMENDMENTS**

The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. 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 the Board and CITY or others delegated authority to or otherwise authorized to execute same on their behalf.

#### **9.12 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. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

#### **9.13 FORCE MAJEURE**

If the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, ordinance of any governmental agency, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, provided that the party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-performance exceeds sixty (60) days, the party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any right either party may otherwise have to terminate this Agreement.

**9.14 ASSIGNMENT**

This Agreement shall not be assigned in whole or in part without the prior written consent of COUNTY. Any assignment made either in whole or in part without the prior written consent of COUNTY shall be void and without legal effect.

**9.15 INCORPORATION BY REFERENCE**

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. The attached Exhibits "A," "B" and "C" are incorporated into and made a part of this Agreement.

**9.16 REPRESENTATION OF AUTHORITY**

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or 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.

**9.17 RECORDATION**

This Agreement shall be recorded by COUNTY in the Public Records of Broward County, Florida, upon the complete execution of the Parties.

**9.18 MULTIPLE ORIGINALS**

Multiple copies of this Agreement may be executed by the Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, and CITY OF DANIA BEACH, signing by and through its Mayor, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
Ex-officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor

\_\_\_\_\_ day of \_\_\_\_\_, 2014

Insurance requirements  
approved by Broward County  
Risk Management Division

Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By \_\_\_\_\_  
Signature (Date)

\_\_\_\_\_  
Print Name and Title above

By \_\_\_\_\_  
Patrice M. Eichen (Date)  
Assistant County Attorney

\_\_\_\_\_  
Angela J. Wallace (Date)  
Deputy County Attorney



AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF DANIA BEACH FOR  
DRAINAGE RETENTION EASEMENT TO DISCHARGE AND STORE TREATED  
STORMWATER RUNOFF AT THE DANIA SALTMARSH TO BENEFIT WEST LAKE  
PARK

CITY

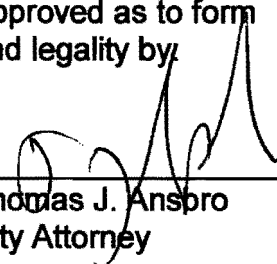
ATTEST:

CITY OF DANIA BEACH, FLORIDA, a  
municipal corporation

By \_\_\_\_\_  
Louise Stilson, CMC  
City Clerk

By \_\_\_\_\_  
Walter B. Duke, III, Mayor

Approved as to form  
and legality by:

  
\_\_\_\_\_  
Thomas J. Anspro  
City Attorney

Approved by:

\_\_\_\_\_  
Robert Baldwin  
City Manager

**EXHIBIT "A"**

**COUNTY'S PROPERTY**

**LEGAL DESCRIPTION:**

**Parcel 1.6 of CA 92-27530**

The Southwest  $\frac{1}{4}$  (SW $\frac{1}{4}$ ) of the Northwest  $\frac{1}{4}$  (NW  $\frac{1}{4}$ ) of the Northwest  $\frac{1}{4}$  (NW  $\frac{1}{4}$ ), Less the West 35 feet for road purposes and Less the East 437 of the West 472 feet of the North 316.04 feet thereof, of Section 2, Township 52 South, Range 42 East.

Said Land situate in Broward County, Florida.

**Parcel 1.7 – Project 5097 Dania Saltmarsh Environmentally Sensitive Lands**

The West  $\frac{1}{2}$  (W  $\frac{1}{2}$ ) of the Southwest  $\frac{1}{4}$  (SW  $\frac{1}{4}$ ) of the Northwest  $\frac{1}{4}$  (NW  $\frac{1}{4}$ ), Less the West 35 feet for road purposes, of Section 2, Township 52 South, Range 42 East.

Said Land situate in Broward County, Florida.

## **EXHIBIT "B"**

### **DRAINAGE RETENTION EASEMENT AREA**

A portion of Parcel No.1.6 of CA 92-27530, and Parcel 1.7 Project No.5097 "DANIA SALT MARSH ENVIRONMENTALLY SENSITIVE LANDS" of Official Records Book 19462, Page 959 of the Public Records of Broward County, Florida, all lying within the Northwest One-Quarter (N.W. ¼) of Section 2, Township 51 South, Range 42, Broward County, Florida, and being more particularly described as follows:

**BEGINNING** at the Southwest corner of "FLORIDA POWER AND LIGHT COMPANY ENVIRONMENTALLY SENSITIVE LAND PROJECT No.5097," according to Official Records Book 19462, Page 959, of the Public Records of Broward County, Florida;

THENCE North 87°22'07" East on the South line of said "FLORIDA POWER AND LIGHT COMPANY ENVIRONMENTALLY SENSITIVE LAND PROJECT No.5097," a distance of 6.22 feet;

THENCE South 22°29'54" East, a distance of 13.11 feet;

THENCE South 02°09'59" East, a distance of 50.21 feet;

THENCE South 03°10'40" East, a distance of 49.16 feet;

THENCE South 00°55'42" East, a distance of 47.96 feet;

THENCE South 02°51'35" East, a distance of 100.00 feet;

THENCE South 00°43'51" West, a distance of 43.36 feet;

THENCE South 06°55'17" East, a distance of 51.52 feet;

THENCE South 13°44'23" East, a distance of 48.41 feet;

THENCE South 05°02'01" West, a distance of 52.94 feet;

THENCE South 03°55'45" East, a distance of 50.00 feet;

THENCE South 11°06'06" East, a distance of 65.82 feet;

THENCE South 03°56'44" West, a distance of 66.05 feet;

THENCE South 03°13'52" East, a distance of 68.25 feet;

THENCE South 01°48'13" East, a distance of 150.00 feet;

THENCE South 04°49'15" East, a distance of 47.63 feet;

THENCE South 00°40'53" East, a distance of 46.92 feet;

THENCE South 03°50'55" East, a distance of 50.05 feet;

THENCE South 01°36'19" East, a distance of 50.97 feet;

## EXHIBIT "B"

### DRAINAGE RETENTION EASEMENT AREA (continued)

THENCE South 00°22'28" East, a distance of 65.83 feet;

THENCE South 08°40'14" East, a distance of 53.74 feet;

THENCE South 04°30'55" West, a distance of 51.28 feet;

THENCE South 05°23'57" East, a distance of 51.12 feet;

THENCE South 02°04'59" West, a distance of 52.41 feet;

THENCE South 00°54'03" East, a distance of 45.27 feet;

THENCE South 08°06'26" East, a distance of 45.77 feet;

THENCE South 04°34'32" East, a distance of 56.93 feet;

THENCE South 10°15'48" East, a distance of 57.72 feet;

THENCE South 05°24'47" East, a distance of 82.35 feet;

THENCE South 02°24'14" West, a distance of 49.81 feet;

THENCE South 06°10'27" West, a distance of 48.36 feet;

THENCE South 00°53'45" West, a distance of 32.38 feet;

THENCE South 01°42'22" West, a distance of 40.91 feet;

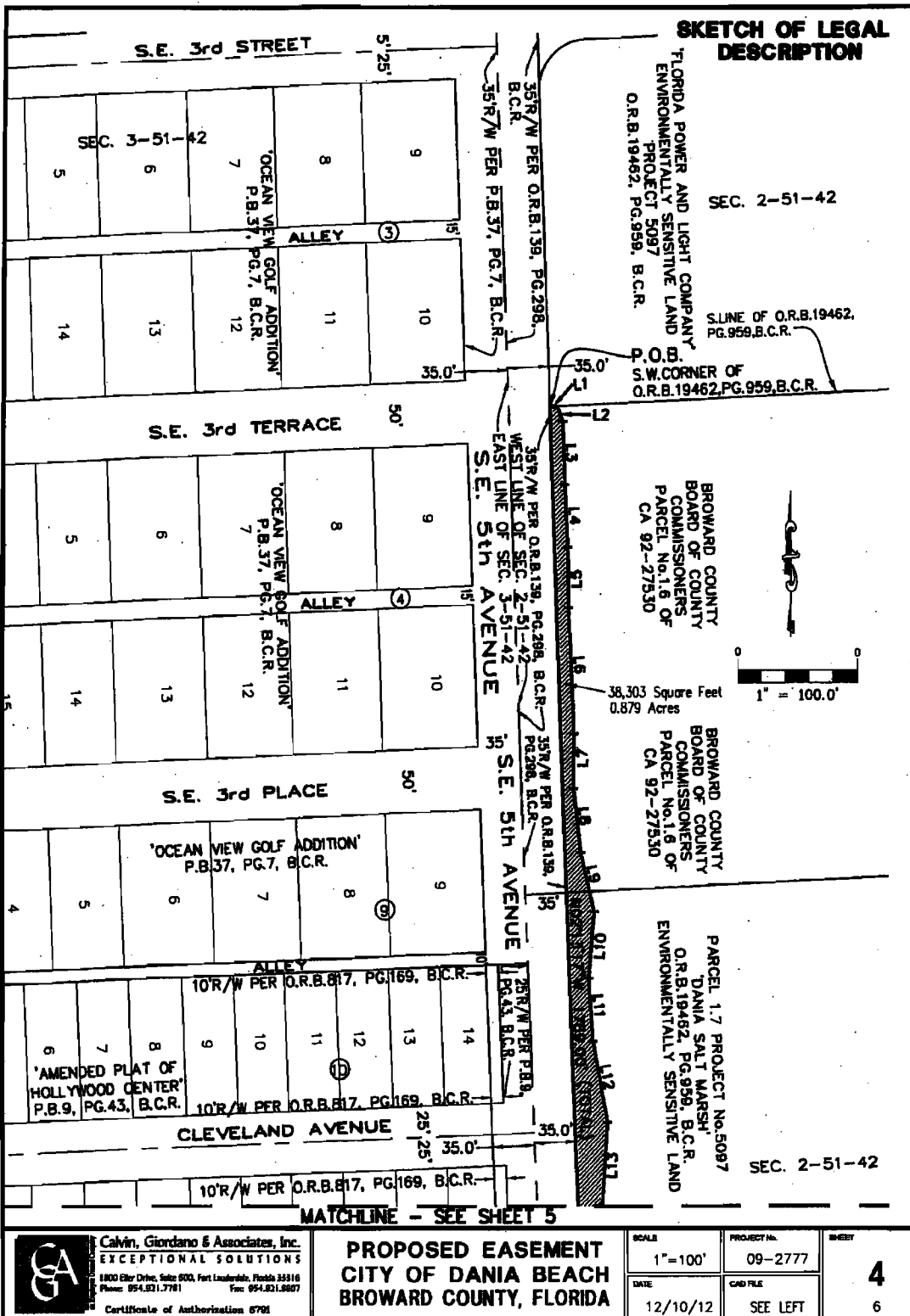
THENCE South 62°21'30" West, a distance of 21.74 feet to the intersection with the North line of "HOLLYWOOD BEACH PARK No. 2 AMENDMENT," according to the plat thereof as recorded in Plat Book 14, Page 51 of the Public Records of Broward County, Florida, said intersection also being with the South line of said Northwest One-Quarter (N.W. ¼) of Section 2;

THENCE South 87°11'02" West on said North line of "HOLLYWOOD BEACH PARK No. 2 AMENDMENT," and said South line of the Northwest One-Quarter (N.W. ¼) of Section 2, a distance of 3.14 feet to the intersection with the East right-of-way line of S.E. 5<sup>th</sup> Avenue, according to Official Records Book 640, Page 541, and Official Records Book 139, Page 298, both of the Public Records of Broward County, Florida;

Thence North 02°13'17" West on said East right-of-way line of S.E. 5<sup>th</sup> Avenue, a distance of 1,789.00 feet to the **POINT OF BEGINNING**;

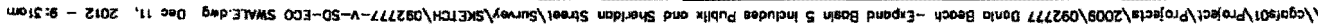
Said lands lying in the City of Dania Beach, Broward County, Florida, and containing 38,303 square feet (0.879 acres), more or less.

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**EXHIBIT "B"**

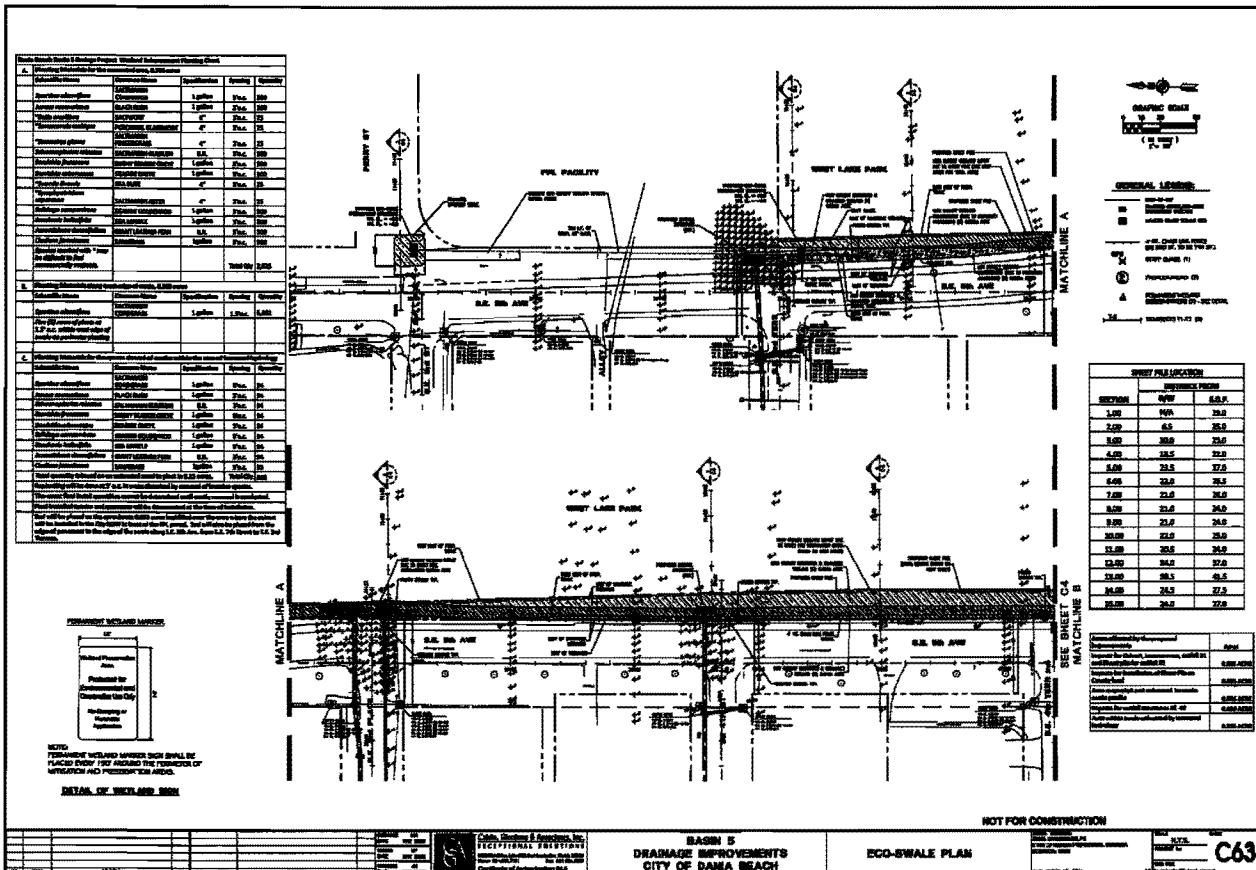
**(continued)**



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## DESIGN PLANS FOR STORMWATER RETENTION SWALE





# **EXHIBIT "C"** **DESIGN PLANS FOR STORMWATER RETENTION SWALE** **(continued)**

