

**AGREEMENT**

*between*

**THE CITY OF COCONUT  
CREEK,**

**KLEMOW AT 5100 HILLSBORO,  
LLC, and FIRST BAPTIST  
CHURCH AT COCONUT CREEK,  
INC.**

*for*

**CONSTRUCTION OF IMPROVEMENTS TO THE EXISTING COCONUT CREEK 69<sup>TH</sup>  
STREET GREENWAY**

THIS AGREEMENT ("Construction Agreement") is made and entered into this day of , 2018, by and between the City of Coconut Creek, a municipal corporation, with principal offices located at 4800 West Copans Road, Coconut Creek, FL 33063 (the "CITY"), KLEMOW AT 5100 HILLSBORO, LLC., a Florida limited liability company ("Klemow") with principal offices located at 6950 Griffin Road, Davie, FL. 33314 and FIRST BAPTISH CHURCH AT COCONUT CREEK, INC., a Florida not for profit corporation ("FBC") with principal offices at 5000 W. Hillsboro Blvd., Coconut Creek, FL 33073 (collectively the "Developers") to provide for construction of improvements to the existing Coconut Creek 69<sup>th</sup> Street Greenway.

**RECITALS**

- A. The Developers are the Developers and owners of the In the Pines and First Baptist Church of Hillsboro projects which comprise the First Baptist Church at Hillsboro Plat. The City and Developers have entered into an agreement of even date herewith for the design and funding of a portion of the 69<sup>th</sup> Street Greenway "Design Agreement"
- B. The Developers and the City wish to enter into this Construction Agreement to provide for the actual construction of the 69<sup>th</sup> Street Greenway improvements as provided in the Design Agreement. The Developers agree to enter into a construction agreement with a licensed general contractor to perform the construction of the 69<sup>th</sup> Street Greenway improvements as provided in this Construction Agreement and further agree that this Construction Agreement shall be attached to and made a part of the agreement with the contractor. The contractor chosen by the Developers shall be referred to as the "Contractor".
- C. As provided in the Design Agreement, the City has agreed to pay the Developers the amount of Sixty Thousand Dollars (\$60,000.00) for the construction of the 69<sup>th</sup> Street Greenway improvements ("Improvements"). The balance of the cost of the Improvements shall consist of the One Hundred Fifty Thousand Dollars (\$150,000.00) Park Impact Fee (as defined in the Design Agreement) with the remainder to be paid by the Developers.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Developers agree as follows:

**1) The Contract Documents**

The contract documents consist of this Agreement, conditions of the contract (General, Supplementary and other Conditions), drawings, specifications, all addenda issued prior to, and all modifications issued after execution of this Agreement. These contract documents form the Agreement, and all are as fully a part of the Agreement if attached to this Agreement or repeated therein.

**2) The Work**

The Developers through the Contractor shall perform all work for the City required by the contract documents as set forth below:

- a) Contractor shall furnish all labor, materials, and equipment necessary as indicated in the specifications herein.
- b) Contractor shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. Contractor shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. Contractor shall at all times have a competent field supervisor on the job site to enforce these policies and procedures at the Contractor's expense.
- c) Contractor shall provide the City with written notice prior to the beginning of work under this Agreement and prior to any schedule change with the exception of changes caused by inclement weather.

- d) Contractor shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to the Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.
- e) The City acknowledges that the Developers and the Contractor shall have unfettered access to property owned by the City necessary to complete the Work.

**3) Insurance**

Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as reasonably required by the City's Risk Manager before beginning work under this Agreement including, but not limited to, Workers' Compensation, Commercial General Liability. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City's Risk Manager certificates of all insurances required under this section prior to beginning any work under this Agreement. The Contractor shall be responsible for all actions of his subcontractors and shall ensure that all subcontractors comply with the above guidelines, retaining necessary insurance in force, where required, throughout the term of this agreement.

Contractor and Developers shall indemnify and hold the City harmless for any damages resulting from failure of the Contractor to take out and maintain such insurance. Contractor's Liability Insurance policies shall be endorsed to add the City as an additional insured. Contractor shall be responsible for payment of all deductibles and self-insurance retentions on Contractor's Liability Insurance policies as applicable

**4) Time of Commencement**

The work to be performed under this Agreement shall be commenced after execution of the Agreement and not later than thirty (30) days after (i) the installation by the City of an operable FPL meter for the Greenway Improvements and (ii) the date that Contractor receives the Notice to Proceed.

**5) Contract Sum**

The City shall pay the Developers in current funds for the performance of the work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of Sixty Thousand Dollars and no cents (\$60,000.00).

**6) Payments**

Payments will be made in accordance with contract documents. Payment will be made monthly for work that has been completed, inspected and properly invoiced. A retainage of ten percent (10%) will be deducted from the monthly payment. The City may, at its sole discretion, reduce the retainage to five percent (5%) after successful completion of fifty (50%) of work. Retainage monies will be released upon satisfactory completion and final inspection of the project.

**7) Waiver of Liens**

Prior to final payment of the Contract Sum, a final waiver of lien shall be submitted by all suppliers, subcontractors, and/or Contractors who worked on the project that is the subject of this Agreement.

**8) Warranties**

**Warranty of Title:**

Developers shall cause the Contractor to warrant to the City that all goods and materials furnished under the contract will be new unless otherwise specified and that Contractor possesses good, clear, and marketable title to said goods and there are no pending liens, claims, or encumbrances whatsoever against said goods. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective.

**Warranty of Specifications**

Contractor shall warrant that all goods, materials and workmanship furnished, whether furnished by the Contractor or its subcontractors and suppliers, will comply with the specifications and drawings and other descriptions supplied or adopted.

**Warranty of Merchantability**

Contractor shall warrant all material and workmanship for a minimum of one (1) year from date of project completion and acceptance by the City. If within one (1) year after acceptance by the City, or within such larger period of time as may be prescribed by law any of the work is found to be defective or not in accordance with the contract documents, the Contractor shall after receipt of a written notice from the City to do so, promptly correct the work unless the City has previously given the Contractor a written acceptance of such condition.

**9) Indemnification**

The Developers and the Contractor shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of the Contractor or its officers, employees, agents, subcontractors, or independent Contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. The above provisions shall survive the termination of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination hereof.

Nothing contained herein is intended nor shall be construed to waive City's rights and immunities under the common law or Florida Statutes 768.28, as amended from time to time.

**10) Anti-Discrimination**

That Contractor shall for itself, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees, as a part of the consideration hereof, hereby covenant and agree that:

- a) No person on the ground of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity or expression shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of or performance of services described herein; and

- b) Contractor, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity or expression.

**11) Independent Contractor**

Contractor is an independent Contractor under this Agreement. Personal services provided by the Contractor shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of the Contractor.

**12) Assignment and Subcontracting**

Contractor shall not transfer or assign the performance required by this Agreement without the prior consent of the City. This Agreement, or any portion thereof, shall not be subcontracted without the prior written consent of the City nor shall the Contractor assign any monies due or to become due to him or her, without the previous written consent of the Contract Administrator.

**13) Notice**

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the following addresses.

CITY

City Manager  
City of Coconut Creek  
4800 West Copans Road  
Coconut Creek, FL 33063  
With a copy to the City Attorney at the same address.

DEVELOPERS

Klemow at 5100 Hillsboro, LLC  
Contact Name: Jordan Klemow, Managing Member

Address: 6950 Griffin Road  
City, State, Zip: Davie, FL 33314  
Phone: 954-321-8731  
Fax: 954-321-8736  
Email: admin@klemow-inc.com

First Baptist Church of Coconut Creek, Inc.  
Contact Name: Pastor Adam Alley, President  
Address: 5000 W. Hillsboro Blvd.  
Coconut Creek, FL 33073  
Phone: 954-422-9611  
Email: info@fbcocc.com

**CONTRACTOR**

TKO Construction Corp.

Contact Name: Jordan Klemow, President

Address: 6950 Griffin Road

City, State, Zip: Davie, FL 33314 Phone: 954-321-8731

Fax: 954-321-8736

Email: admin@klemow-inc.com

**14) Termination**

This Agreement may be terminated by City or Developers for cause or by the City for convenience, upon thirty (30) days of written notice by the terminating party to the other party for such termination in which event the Developers shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that the Developers abandon this Agreement or causes it to be terminated, Developers shall indemnify the City against loss pertaining to this termination.

**Default by Developers:** In addition to all other remedies available to the City, this Agreement shall be subject to cancellation by the City should the Developers or the Contractor neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by Contractor of written notice of such neglect or failure. Notwithstanding the above, in the event of a default by the Developers or the Contractor under this Agreement, the City shall not withhold permits inspections or certificates of occupancy for any portion of the In The Pines project other than certificates of occupancy for the last building to be constructed, which is contemplated to be Building FF, or any portion of the First Baptist Church project other than a certificate of occupancy for Phase I of the project.

**15) Agreement Subject to Funding**

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the CITY OF COCONUT CREEK in the annual budget for each fiscal year of this Agreement, and is subject to termination without any penalty due to lack of funding.

**16) Venue**

The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place exclusively in Broward County, Florida and that all litigation between them in the federal courts shall take place exclusively in the Southern District in and for the State of Florida.

**17) Signatory Authority**

The Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

**18) Severability; Waiver of Provisions**

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**19) Merger; Amendment**

This Agreement constitutes the entire Agreement between the Contractor and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Contractor and the City.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF COCONUT CREEK, through its City Manager or designee and the Developers. signing by and through their authorized officers(President, Owner, CEO, etc.) duly authorized to execute same.

**CITY OF COCONUT CREEK**

ATTEST:

\_\_\_\_\_  
Mary C. Blasi, City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Leslie Wallace May  
City Clerk

\_\_\_\_\_  
Date

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Terrill Pyburn, City Attorney

\_\_\_\_\_  
Date



**DEVELOPERS**

ATTEST:

KLEMOW AT 5100 HILLSBORO, LLC  
Company Name

\_\_\_\_\_  
(Corporate Secretary)

\_\_\_\_\_  
Signature of President/Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type/Print Name of Corporate Secy.

\_\_\_\_\_  
Type/Print Name of President/Owner

(CORPORATE SEAL)

**CORPORATE ACKNOWLEDGEMENT**

STATE OF FLORIDA: COUNTY OF \_\_\_\_\_:

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared \_\_\_\_\_, of KLEMOW AT 5100 HILLSBORO, LLC, a Florida limited liability company. to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_, 201

\_\_\_\_\_  
Signature of Notary Public  
State of Florida at Large

\_\_\_\_\_  
Print, Type or Stamp  
Name of Notary Public

- Personally known to me or
- Produced Identification

\_\_\_\_\_  
Type of I.D. Produced

DID take an oath, or DID NOT take an oath

ATTEST:

FIRST BAPTIST CHURCH AT COCONUT CREEK, INC.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
(Corporate Secretary)

\_\_\_\_\_  
Signature of President/Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type/Print Name of Corporate Secy.

\_\_\_\_\_  
Type/Print Name of President/Owner

(CORPORATE SEAL)

**CORPORATE ACKNOWLEDGEMENT**

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_:

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared \_\_\_\_\_, of \_\_\_\_\_ a \_\_\_\_\_ Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 201 .

\_\_\_\_\_  
Signature of Notary Public  
State of Florida at Large

\_\_\_\_\_  
Print, Type or Stamp  
Name of Notary Public

- Personally known to me or
- Produced Identification

\_\_\_\_\_  
Type of I.D. Produced

DID take an oath, or DID NOT take an oath

