

INTERIM AGREEMENT

This Interim Agreement (the "Agreement") is entered into this _____ day of _____, 2022, by and between the **CITY OF FORT LAUDERDALE, FLORIDA**, a Florida municipal corporation ("CITY") and **TBC – THE BORING COMPANY**, a Delaware Corporation ("TBC"), authorized to do business in the State of Florida, (both entities sometimes hereinafter referred to herein singularly, each as a "Party", jointly as "Parties") pursuant to Section 255.065(6), Florida Statutes:

RECITALS

WHEREAS, on June 21, 2021, the CITY received an unsolicited proposal from TBC pursuant to Section 255.065(6), Florida Statutes (the "Proposal") to design, build, operate, and maintain a subsurface tunnel transportation system as described in the Proposal (the "Project" or "Las Olas Loop"); and

WHEREAS, pursuant to Resolution No. 21-130 the City Commission, at its meeting on July 6, 2021, determined that the Proposal submitted by TBC serves a public purpose as a facility or project, including, but not limited to, any mass transit facility, that is used or will be used by the public at large or in support of an accepted public purpose or activity, and as proposed, constitutes a qualifying project pursuant to Section 255.065, Florida Statutes; and

WHEREAS, following the July 6, 2021 regular City Commission meeting, the CITY publicly advertised the Proposal and requested alternate proposals for a period of forty-five (45 days) after the initial publication date, through August 30, 2021; and

WHEREAS, prior to the expiration of the forty-five (45) day period, the CITY received two additional proposed project submissions, both of which were not accepted because they were deemed non-responsive and were not accompanied by the necessary application fee required by Resolution No. 13-187; and

WHEREAS, on October 5, 2021, the City Commission adopted Resolution No. 21-223, wherein the CITY provided notice of its decision to proceed with the unsolicited proposal submitted by TBC for the design, construction, operation, and maintenance of a proposed subsurface tunnel system from Downtown Fort Lauderdale to Fort Lauderdale Beach, and authorized negotiations for a proposed interim and/or a comprehensive agreement with TBC, in accordance with Section 255.065, Florida Statutes; and

WHEREAS, in accordance with Section 255.065(6), Florida Statutes, a responsible public entity is authorized to enter into an Interim Agreement with a private entity proposing the development or operation of a qualifying project, before or in connection with the negotiation of a Comprehensive Agreement, for purposes of authorizing the private entity to commence activities for which it can be compensated related to the proposed qualifying project, including but not limited to, project planning and development, design, environmental analysis and mitigation, survey, obtaining

leasing commitments, and other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities, as well as purposes related to an aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate; and

WHEREAS, before and in connection with the negotiation of a Comprehensive Agreement, the CITY and TBC are desirous of commencing activities related to the Project under terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable considerations, the adequacy and receipt of which are hereby acknowledged, the CITY and TBC agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein by reference.

2. Effective Date, Commencement, and Term; Grant of Property Access Rights.

2.1 The Effective Date of this Agreement shall be the date the last Party executes this Agreement. This Agreement shall remain in effect until superseded by the execution of a Comprehensive Agreement or unless otherwise terminated by mutual agreement.

2.2 TBC, through its agents, vendors, employees and contractors, is authorized and, contingent upon obtaining all insurance required under Section 6 and all necessary approvals and permits, to enter CITY-owned and controlled property, including dedicated rights-of-way (collectively the "Property") within the general area identified in Exhibit C in order to commence the activities outlined in Section 3 starting on the Effective Date.

3. TBC's Scope.

3.1 TBC will commence undertaking the activities described in this Section 3 and further outlined in the Proposal attached as Exhibit A as needed for the development of the Project in accordance with, and to the extent permitted by Section 255.065(6), Florida Statutes.

3.2 Purpose and Scope. The purpose of this Agreement is for TBC to collect the information necessary to enter into a Comprehensive Agreement with the CITY. TBC will perform engineering and planning due diligence, either in-house or by the hiring of outside consultants and contractors, to gain sufficient information required to complete preliminary tunnel alignment and station design, and provide firm-fixed pricing and schedule for design-build delivery and operation and maintenance of the Project to inform negotiation of a definitive Comprehensive Agreement.

3.3 Investigation and Testing. TBC will conduct such investigations, discoveries, inspections, and testing of the Property that are necessary for the Project, including geotechnical testing and boring, environmental studies, and surveying, as needed, provided that TBC shall not undertake any destructive testing without prior written City approval, not to be unreasonably withheld or delayed.

3.4 Design and Standard of Care. TBC will design the Project, and otherwise undertake all activities under this Agreement, in accordance with the Proposal, applicable law, and the customary standard of care for a professional engaged in the same or equivalent type of activity in the State of Florida.

3.5 Access to Property. TBC and its agents, vendors, employees and contractors (collectively, the "TBC Parties"), are authorized and entitled to enter upon the Property (in coordination with the CITY) for the purpose of conducting the activities necessary for the completion of the Project as outlined in the Proposal. All entries upon the Property shall be at the sole cost and risk of TBC and the TBC Parties. TBC, and not the CITY, shall have liability for any damages or injuries sustained, or for damages or injuries caused, by TBC or any TBC Parties. TBC shall provide the CITY with reasonable advance written notice of any proposed entry, including notice of the time of such entry, a description of the activities to be undertaken, and such other information as the CITY may reasonably request. In undertaking any such entry TBC shall use reasonable efforts to minimize any unnecessary interference with CITY, third-party, or public activities, and in no event shall TBC obstruct any public right of way or any means of ingress or egress from any building or facility without prior written CITY approval, not to be unreasonably withheld or delayed.

3.6 Reporting and Consultation. TBC shall provide the CITY with reports no less frequently than 30 days regarding the progress of the scope of work, and otherwise consult with the CITY regarding the same upon request.

3.7 No Obligation; Negotiations. The Parties will work diligently, in good faith, to negotiate and prepare a mutually agreeable form of Comprehensive Agreement for the Project on the basis of the Proposal incorporating the principles and agreements discussed between the Parties during the negotiations. However, neither Party will be bound, obligated, or liable, as a result of such negotiations prior to execution of any such Comprehensive Agreement, and the CITY shall furthermore not be bound by the terms of the Proposal other than as necessary to give effect to the scope of this Agreement. Notwithstanding the foregoing, in accordance with Section 255.065(6), Florida Statutes, the Parties agree that neither this Agreement, nor any work to be performed in accordance thereto, obligate the CITY or TBC to enter into a Comprehensive Agreement.

4. CITY's Responsibilities and Obligations.

4.1 Cooperation. TBC's development of the Project through the term of this Agreement is contingent upon the CITY's cooperation with TBC and TBC's ability to proceed with the Project as outlined in the Proposal unhindered by factors outside of TBC's control.

4.2 Contingencies. The CITY agrees that the following items are critical contingencies that, along with the other terms and conditions contained in the Proposal, must occur for the successful development of the Project: easements or other dedications of CITY right-of-way to CITY to TBC, and a revenue-sharing arrangement; all of which will be defined and negotiated throughout the term of this Agreement so as to be incorporated into the final Comprehensive Development Agreement.

4.3 Reimbursement. CITY shall reimburse TBC, its agents, vendors, employees, consultants, and contractors the costs incurred by TBC for the work and services actually provided under this Agreement through payments made under this Section 4.3 in amounts not to exceed those set forth in Exhibit B; the payments are due upon the achievement of the milestones set forth in Exhibit B. The CITY will own any resulting work product. Reference attached Exhibit B for reimbursable items for the work under this Agreement. TBC shall be entitled to bill the CITY following the completion of milestones, and subject to the not to exceed amounts, as listed in Exhibit B. Payments to TBC shall be due within 60 days after receipt of invoice. Other than its obligation to make such payments, the CITY is not liable for any TBC or project cost, or to otherwise provide any subsidy or make any expenditure on TBC's behalf, under the terms of this Agreement.

5. Indemnification, Warranty, Liability, Intellectual Property.

5.1 TBC shall protect, defend, indemnify and hold harmless the CITY, its officials, officers, employees and agents from and against any and all claims, demands, causes of action, lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses, including reasonable attorney's fees and costs through trial and the appellate level, or liabilities of every kind, nature or degree arising out of or in connection with: (a) the rights, responsibilities and obligations of TBC under this Agreement; (b) the breach or default by TBC, its agents, vendors, employees, consultants, or contractors of any covenant or provision of this Agreement; or (c) the negligent acts or omission or willful misconduct of TBC or its agents, vendors, employees, consultants, or contractors; but only to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of TBC, its agents, vendors, employees, consultants, or contractors or persons utilized by TBC. Without limiting the foregoing, this indemnity includes any and all such claims, suits, or causes of action relating to: (a) personal injury, death, damage to property, defects in construction, rehabilitation or restoration of any of the Property by TBC, its agents, vendors, employees, consultants, or contractors; (b) alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right by TBC, its agents, vendors, employees,

consultants, or contractors; or (c) any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court by TBC, its agents, vendors, employees, consultants, or contractors.

5.2 TBC further agrees that, upon proper and timely notice from CITY, TBC will defend any such claims at its sole expense. If called upon by CITY, TBC shall assume and defend not only itself but also the CITY in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to the CITY, provided that the CITY (exercisable by CITY's Attorney) shall retain the right to approve the counsel proposed by TBC.

5.3 This indemnification shall survive termination, revocation or expiration of this Agreement and shall cover any acts or omissions occurring during the term of the Agreement, including any period after termination, revocation or expiration of the Agreement while any curative acts are undertaken and is not limited by insurance coverage. Notwithstanding the foregoing, in no event shall the discovery by TBC of contamination at the Property alone be considered damage to property, resulting from TBC's or its agents, vendor, employees or contractors' use of or access to the Property which is subject to the indemnity covenants of TBC contained herein. The CITY shall be liable and responsible for the handling and remediation of all hazardous materials not created, transported, disturbed, or brought upon the Property by TBC.

5.4 All inspection and other materials, equipment, goods, signs and any other personal property of TBC, its agents, employees or contractors, shall be protected solely by TBC. TBC acknowledges and agrees that the CITY assumes no responsibility, whatsoever, for any such items and that the security and protection of any such items from theft, vandalism, the elements, acts of God, or any other cause, are strictly the responsibility of TBC. Furthermore, TBC agrees to remove all such items and otherwise restore Property to a commercially reasonable condition upon the completion of any Property access activity.

5.5 TBC will bind all of its CONSULTANTS to these indemnification provisions.

5.6 LIMITATION OF LIABILITY. WITH RESPECT TO ANY DEATH OR PERSONAL INJURY, OR IN THE CASE OF WILFUL MISCONDUCT, CRIMINAL CONDUCT, RECKLESSNESS, OR GROSS NEGLIGENCE, NEITHER PARTY WILL BE LIABLE FOR (I) ANY INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, WHETHER IN BREACH OF CONTRACT, TORT, OR OTHERWISE, EVEN IF NOT FORESEEABLE, OR (II) WITH RESPECT TO CLAIMS AGAINST TBC, AMOUNTS IN THE AGGREGATE IN EXCESS OF THE FEES PAID TO TBC HEREUNDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION ACCRUES OR THE POLICY LIMITS OF REQUIRED INSURANCE, WHICHEVER IS GREATER, AND WITH RESPECT TO CLAIMS AGAINST THE CITY, AMOUNTS IN THE

AGGREGATE IN EXCESS OF THE FEES PAID TO TBC HEREUNDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION ACCRUES, BUT NO GREATER THAN THE LIABILITY LIMITS SET FORTH IN SECTION 768.28, FLORIDA STATUTES (2021), AS MAY BE AMENDED OR REVISED. IN ADDITION, TBC WILL NOT BE LIABLE FOR ANY COST OR PROCUREMENT OF SUBSTITUTE SERVICES. WITH RESPECT TO INDEMNITY OBLIGATIONS, THE CAP IN SECTION 6(II) IS HEREBY INCREASED TO THIRTY-SIX (36) MONTHS.

5.7 CITY will own all deliverables specifically created for CITY, limited to the deliverables specifically described in Exhibit B. TBC shall and hereby does assign all such intellectual property rights in the deliverables to CITY. In addition, at CITY's request and expense, TBC will help CITY record and perfect such rights. Notwithstanding the foregoing, TBC does not assign any TBC IP. "TBC IP" means all intellectual property that is either (i) created by TBC (or any of its providers) prior to the Effective Date, or (ii) created by TBC (or any of its providers) separately from the applicable deliverable. To the extent any TBC IP is incorporated into any deliverable by TBC, it grants CITY a perpetual, royalty-free, license to use such TBC IP as necessary to use the applicable deliverable. Except as set forth above in this Section, no intellectual property rights are assigned or transferred hereunder.

6. Insurance.

6.1 TBC will carry Commercial General Liability insurance and coverage as follows:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits of:

\$1,000,000 each occurrence and \$1,000,000 aggregate

Policy must include coverage for contractual liability and independent contractors.

The CITY, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured - Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability assumed by TBC under the indemnification provisions of this Agreement.

6.2 TBC shall cause its architect/engineer, and other entities performing work under this Agreement (each a "CONSULTANT" and collectively, "CONSULTANTS") to procure and maintain, during the term of this Agreement and during any renewal or extension term of this Agreement, at their sole expense, insurance of such types and with such terms and limits as noted below that are applicable to each CONSULTANT'S work.

6.3 Providing proof of and maintaining adequate insurance coverage are material obligations of CONSULTANTS. CONSULTANTS shall provide the CITY a certificate of insurance evidencing such coverage. CONSULTANTS' insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by CONSULTANTS shall not be interpreted as limiting TBC's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida, subject to approval by the CITY's Risk Manager.

6.4 The coverages, limits, and/or endorsements required herein protect the interests of the CITY, and these coverages, limits, and/or endorsements shall in no way be required to be relied upon by TBC or CONSULTANTS for assessing the extent or determining appropriate types and limits of coverage to protect TBC and/or CONSULTANTS against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the CITY's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by TBC under this Agreement.

6.5 The following insurance policies and coverages are required for CONSULTANTS:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits of:

- \$1,000,000 each occurrence and \$1,000,000 aggregate

Policy must include coverage for contractual liability and independent contractors.

The CITY, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured - Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability assumed by TBC under the indemnification provisions of this Agreement.

Professional Liability/Errors and Omissions Coverage

If a CONSULTANT is performing professional services, coverage must be afforded under a Professional Liability policy with limits of:

- \$1,000,000 each claim
- \$2,000,000 general aggregate limit
- \$100,000 deductible not to exceed

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage with limits of \$1,000,000 combined single limit each accident.

If CONSULTANTS do not own vehicles, CONSULTANTS shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Pollution and Remediation Legal Liability (Hazardous Materials)

For the purpose of this section, the term ‘hazardous materials’ includes all materials and substances that are designated or defined as hazardous by Florida or federal law or by the rules or regulations of Florida or any federal agency. If work being performed involves hazardous materials, CONSULTANTS shall procure and maintain any or all of the following coverage, as applicable, to the extent required in a subsequent written agreement or amendment to this Agreement, signed by the Parties.

A. Contractors Pollution Liability Coverage

For sudden and gradual occurrences and in an amount not less than \$1,000,000 per claim arising out of this Agreement.

B. Asbestos Liability Coverage

For sudden and gradual occurrences and in an amount not less than \$1,000,000 per claim arising out of work performed under this Agreement.

C. Disposal Coverage

CONSULTANTS shall designate the disposal site and furnish a Certificate of Insurance from the disposal facility for Environmental Impairment Liability Insurance, covering liability for sudden and accidental occurrences in an amount of \$1,000,000 per claim and shall include liability for non-sudden occurrences in an amount of \$1,000,000 per claim.

D. Hazardous Waste Transportation Coverage

CONSULTANTS shall designate the hauler and furnish a Certificate of Insurance from the hauler for Automobile Liability insurance with Endorsement MCS90 for liability arising out of the transportation of hazardous materials in an amount of \$1,000,000 per claim limit and provide a valid EPA identification number.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the CITY must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the CITY's Risk Manager, if they are in accordance with Florida Statutes.

CONSULTANTS waive, and CONSULTANTS shall ensure that CONSULTANTS' insurance carrier waives, all subrogation rights against the CITY and the CITY's officers, employees, and volunteers for all losses or damages. The CITY requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

CONSULTANTS must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

6.6 Insurance Certificate Requirements.

a. CONSULTANTS shall provide the CITY with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.

b. CONSULTANTS shall provide to the CITY a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.

c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of CONSULTANTS to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.

d. In the event the Agreement term goes beyond the expiration date of the insurance policy, CONSULTANTS shall provide the CITY with an updated Certificate of Insurance prior to the expiration of the insurance currently in effect. The CITY reserves the right to suspend the Agreement until this requirement is met.

e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.

f. The CITY shall be named as an Additional Insured on all required Commercial General Liability, Business Automobile Liability and Pollution Liability policies.

g. The CITY shall be granted a Waiver of Subrogation on CONSULTANTS' Workers' Compensation insurance policy.

h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

i. The Certificate Holder should read as follows:
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

j. CONSULTANTS have the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention. Any costs for adding the CITY as an Additional Insured shall be at CONSULTANTS' expense.

k. If CONSULTANTS' primary insurance policy/policies do not meet the requirements, as set forth in this Agreement, CONSULTANT may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

l. CONSULTANTS' insurance coverage shall be primary insurance as respects to the CITY, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

m. All required insurance policies must be maintained until the CONSULTANT'S work is complete. Any lapse in coverage shall be considered breach of this Agreement. In addition, CONSULTANT must provide to the CITY confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The CITY reserves the right to review, at any time, coverage forms and limits of CONSULTANTS' insurance policies.

n. CONSULTANT shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to CONSULTANTS' insurance company or companies and the CITY's Risk Management office, as soon as practical.

o. It is TBC's responsibility to ensure that CONSULTANTS and any and all subcontractors comply with these insurance requirements. Any and all deficiencies are the responsibility of TBC.

7. 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 in this Agreement expresses the

mutual intent of each Party and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one Party than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.

8. Costs of Preparation. Each Party is responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation, execution, and delivery of this Agreement and the Comprehensive Agreement.

9. Severability. If any provision of this Agreement, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Agreement, or the application of the remainder of the provisions, shall not be affected. Rather, this Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this Agreement are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of the Agreement is to be construed as a separate and independent covenant of the Party who is bound by or who undertakes it, and each is independent of any other provision of this Agreement, unless otherwise expressly provided. All terms and words used in this Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and other gender, as the context requires.

10. No Waiver of Sovereign Immunity. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

11. No Third-Party Beneficiaries. The Parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the Parties intend to directly or substantially benefit a third party by this Agreement. The Parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the Parties based upon this Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

12. Non-Discrimination. TBC shall not discriminate against any person in the performance of duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

13. Material Breach. Either Party may terminate this Agreement because of a material breach of this Agreement by the other Party, provided that before such termination, the defaulting Party shall be entitled to ten (10) days written notice and an opportunity to cure the breach within such period (or if the breach cannot be cured in 10 days, then the defaulting Party shall provide a plan for curing the breach within 10 days

and promptly commence curing the breach). Notice of any breach shall be sent as provided in Section 16.

14. Entire Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

15. Governing Law. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be adjudicated exclusively via commercial arbitration. **By entering into this Agreement, the CITY and TBC hereby expressly waive any rights either Party may have to a trial by jury of any civil litigation related to this Agreement or any acts or omissions in relation thereto.**

16. Notice. Whenever any Party desires to give notice to any other Party, it must be given by written notice sent by electronic mail, followed by registered United States mail, with return receipt requested, addressed to the Party for whom it is intended at the place designated below and the place so designated shall remain such until they have been changed by written notice in compliance with the provisions of this section. For the present, the Parties designate the following as the respective places for giving notice:

CITY:

City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301
Attn: City Manager (clagerbloom@fortlauderdale.gov)

With a copy to:

City of Fort Lauderdale
City Attorney's Office
100 North Andrews Avenue
Fort Lauderdale, Florida 33301
(aboileau@fortlauderdale.gov)

TBC:

Mike Thompson
3395 Cambridge Street
Las Vegas, NV 89169
mike.thompson@boringcompany.com

With a copy to:

Ashley Steinberg
3395 Cambridge Street
Las Vegas, NV 89169
legal@boringcompany.com

17. Prohibition Against Contracting With Scrutinized Companies. Subject to Odebrecht Construction, Inc., v. Prasad, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation, 715 F.3d 1268 (11th Cir. 2013), with regard to the “Cuba Amendment,” the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2021), that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in Section 287.135, Florida Statutes (2021), as may be amended or revised. The CITY may terminate this Agreement at the CITY’s option if the Contractor is found to have submitted a false certification as provided under subsection (5) of Section 287.135, Florida Statutes (2021), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2021), or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2021), as may be amended or revised.

18. Public Entity Crimes. In accordance with the Public Crimes Act, Section 287.133, Florida Statutes, a person or affiliate who is a contractor, consultant or other provider, who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the CITY, may not submit a bid on a contract with the CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to the CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the CITY, and may not transact any business with the CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed

on the convicted vendor list. Violation of this section by contractor shall result in cancellation of the CITY purchase and may result in contractor debarment.

19. Public Records.

IF TBC HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO TBC'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, 100 NORTH ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV.

TBC shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service.
2. Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2021), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of this Agreement if TBC does not transfer the records to the CITY.
4. Upon completion of the Agreement, transfer, at no cost, to the CITY all public records in possession of TBC or keep and maintain public records required by the CITY to perform the service. If TBC transfers all public records to the CITY upon completion of this Agreement, TBC shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If TBC keeps and maintains public records upon completion of this Agreement, TBC shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

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WITNESS WHEREOF, the CITY and the TBC have set their hands and seals on this Interim Agreement as above.

ATTEST:

CITY OF FORT LAUDERDALE, a
Florida municipal corporation of the
State of Florida

DAVID R. SOLOMAN
City Clerk

By: _____
DEAN TRANTALIS
Mayor

By: _____
CHRISTOPHER J. LAGERBLOOM
City Manager

Date: _____

Approved as to form:
ALAIN E. BOILEAU, City Attorney

By: _____
ALAIN E. BOILEAU
City Attorney

WITNESSES:

TBC – The Boring Company, a Delaware Corporation

By: _____

{name}

{title}

[Witness print/type name]

[Witness print/type name]

STATE OF FLORIDA:

COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2022, by _____ as TBC – The Boring Company, a Delaware corporation.

(NOTARY SEAL)

(Signature of Notary Public – State of Florida)

Print, Type or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

EXHIBIT A – PROJECT PROPOSAL

EXHIBIT B – REIMBURSEMENT

The CITY shall reimburse TBC for the scope of work completed under this Agreement in accordance with the milestones completed below, in amounts not to exceed those indicated in the right-hand column below.

Milestone	Description	Not to Exceed Amount
1	Completion of Alternatives Analysis	\$50,000
2	Completion of Geotechnical Report	\$225,000
3	Completion of 30% Civil and Architectural Design Drawings for Tunnels and Stations	\$100,000
4	Completion of Cost Estimate and Schedule for Design-Build Project Delivery	\$0

1. Alternatives Analysis

TBC will study the existing physical environment in relation to project objectives to determine a preferred project alternative. Preliminary project alternatives analysis has already been initiated during prior correspondence between TBC and the CITY. TBC will continue to collaborate with City staff and leadership as appropriate to present, evaluate, and select an alternative to frame the work further elaborated below.

2. Geotechnical Report

TBC will oversee a geotechnical field investigation to characterize the geotechnical and environmental conditions along the alignment of the selected alternative. TBC will prepare a Geotechnical Work Plan to direct the data collection and analysis by a subcontractor.

The results of the geotechnical investigation will inform structural calculations and approach to construction for tunnels and ancillary features.

TBC will also review existing data and perform a field investigation to characterize environmental conditions associated with constructing and operating the selected project alternative, including potential hazardous materials, brownfields, soil management requirements, and water treatment.

3. 30% Civil and Architectural Design Drawings for Tunnels and Stations

TBC will prepare initial conceptual plans and undergo field studies to produce a 30% plan set. Sub-tasks of this phase are outlined below.

Conceptual plan set: A preliminary (15%) plan set will be prepared for the selected project alternative. This plan set will include tunnel alignment and profile drawings reflecting available topographical, structural, and utility information, as well as proposed locations for ancillary facilities (e.g., egress shafts and maintenance facilities).

Subsurface feasibility study: TBC will obtain and review as-built drawings of above-ground structures, such as buildings and bridges, as well as underground structures, such as buried utilities, tunnels, and abandoned structures to inform the mitigation measures required.

Utility coordination: TBC will coordinate with utility owners to ensure that the system will not conflict with existing utilities.

Subsurface due diligence: TBC will perform on-site locating of utilities using a multi-stage approach of non-invasive geophysical scanning followed by physical confirmation of utility depths by potholing the lines.

Construction engineering: TBC will develop a plan to construct the TBM launch location, the stations, and ancillary facilities including logistics strategies, site layout, truck paths, etc.

30% plan set: Upon evaluating the geotechnical, environmental, and structural assessments listed above, TBC will refine and add detail to the selected tunnel alignment and profile drawings and architectural reference plans. Additionally, other key project design assumptions, including station dimensions and supporting tunnel infrastructure, will be determined.

4. Completion of Cost Estimate and Schedule for Design-Build Project Delivery

In addition to the work undertaken above, TBC will provide a cost estimate and schedule for design-build project delivery to inform the negotiation of a Comprehensive Agreement for an underground public transportation system.

EXHIBIT C – AVAILABLE PROPERTY AREA

