

**Prepared by and return to:
Shari C. Wallen, Esq.
City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301**

ASSUMPTION OF LIABILITY AND HOLD HARMLESS AGREEMENT

THIS ASSUMPTION OF LIABILITY AND HOLD HARMLESS AGREEMENT is entered into this ____ day of _____, 2019, by and between:

DiamondRock FL Owner, LLC, a Delaware limited liability company, whose principal address is 2 Bethesda Metro Center, Suite 1400, Bethesda, MD 20814 (“OWNER”)

and

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida having a principal address at 100 North Andrews Avenue, Fort Lauderdale, FL 33301 (hereinafter “CITY”)

R E C I T A L S

WHEREAS, OWNER is the owner of a pedestrian bridge located at 321 North Fort Lauderdale Beach Boulevard, Fort Lauderdale, Florida and legally described in **Exhibit “A”** attached hereto and made a part hereof (“the “Property”); and

WHEREAS, the Property is located over State Road A1A (“A1A”), a right-of-way which is under the jurisdiction of the State of Florida Department of Transportation (“FDOT”);

WHEREAS, OWNER wishes to have a mural painted on the Property; and

WHEREAS, OWNER has committed to the payment of all costs for the painting and maintenance of the mural, including but not limited to: artist fees, permit fees, bonds, materials, and maintenance costs; and

WHEREAS, in order to permit the mural to be painted the Property, FDOT requires the CITY to enter into an agreement entitled “Community Aesthetic Feature Agreement” which is attached hereto and incorporated herein as **Exhibit “B”**; and

WHEREAS, the terms and conditions set forth in the Community Aesthetic Feature Agreement imposes the responsibility for payment and maintenance of the mural on the City; and

WHEREAS, as a condition to the CITY executing the Community Aesthetic Feature Agreement, OWNER agrees to assume all of the City's responsibilities and liabilities under the Community Aesthetic Feature Agreement; and

WHEREAS, a mural on the pedestrian bridge would serve a legitimate public purpose of enhancing the architectural structures and improving aesthetics within the CITY.

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

1. **Recitals.** The foregoing Recitals are true and correct and are incorporated herein.
2. **Terms.** The following terms, as used and referred to herein, shall have the meanings set forth below, unless the context indicates otherwise.

City Manager means CITY's Chief Executive Officer, its City Manager, or his or her designee.

City Engineer means the City Engineer (Urban Design Engineer) for the CITY, or his designee. In the administration of this agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the City Engineer. For the purposes hereof, the CITY Engineer's designee shall be the Urban Design Engineer.

Day(s). In computing any period of time expressed in day(s) in this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Effective Date means the effective date of this Assumption of Liability and Hold Harmless Agreement, which shall be the date upon which both (i) this Agreement is executed by the proper corporate officials for OWNER and the CITY and (ii) the Agreement is executed by FDOT and the CITY.

Person means any individual, firm, partnership (general or limited), corporation, company, association, joint venture, joint stock association, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or association, or body politic, including any heir, executor, administrator, trustee, receiver, successor or assignee or other person acting in a similar representative capacity for or on behalf of such Person.

3. **Compliance and Default.** OWNER agrees to assume any and all liability and responsibility for the City's performance under the Community Aesthetic Feature Agreement. OWNER hereby agrees to abide by and comply with each and every term and condition set forth

in the Community Aesthetic Feature Agreement and failure to comply shall constitute a default under this Assumption of Liability and Hold Harmless Agreement. Any acts or omissions by OWNER or OWNER's contractors, agents or employees that are not in compliance with the terms and conditions of the Community Aesthetic Feature Agreement shall constitute a default under this Assumption of Liability and Hold Harmless Agreement. The Community Aesthetic Feature Agreement is incorporated into this Assumption of Liability and Hold Harmless Agreement as if fully set forth herein.

4. Indemnification and Hold Harmless.

(a) OWNER shall protect, defend, indemnify and hold harmless the CITY, its officers, employees, volunteers, and agents from and against any and all claims, lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses charged or incurred, including reasonable attorney's fees actually incurred, or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of OWNER under the Community Aesthetic Feature Agreement and this Assumption of Liability and Hold Harmless Agreement, conditions contained therein, the location, construction, repair, maintenance, or use by OWNER of the pedestrian bridge, or the breach or default by OWNER of any covenant or provision of the Community Aesthetic Feature Agreement or this Assumption of Liability and Hold Harmless Agreement; provided, however, OWNER shall never be liable or responsible for any occurrence arising out of or resulting from the intentional acts or gross negligence of the CITY, its officers, agents and employees. However, this exception shall not be deemed a waiver of the CITY'S sovereign immunity. Without limiting the foregoing, any and all such charges, claims, suits, causes of action relating to personal injury, death, damage to Property, defects in construction, rehabilitation or painting of a mural on the Property by OWNER or others, including but not limited to costs, claims, charges and other expenses charged or incurred, including reasonable attorney's fees and costs actually incurred or liabilities arising out of or in connection with the rights, responsibilities and obligations of OWNER under the Community Aesthetic Feature Agreement and this Assumption of Liability and Hold Harmless Agreement, or any actual violation of any applicable and known statute, ordinance, administrative order, rule or regulation or decree of any court by OWNER with respect to performance of the painting of the mural on the Property, is included in the indemnity.

(b) OWNER further agrees that upon delivery of proper and timely notice of a violation under the Community Aesthetic Feature Agreement it shall investigate, handle, respond to, provide defense for, and defend any such violation at its sole expense. The CITY shall retain the right to select counsel (in coordination and after consultation with OWNER) of its own choosing as deemed appropriate. This indemnification shall survive termination, revocation or expiration of the Community Aesthetic Feature Agreement and this Assumption of Liability and Hold Harmless Agreement and shall cover any acts or omissions occurring during the term of the Community Aesthetic Feature Agreement and this Assumption of Liability and Hold Harmless Agreement.

5. Insurance. At all times during the term of the Community Aesthetic Feature Agreement and this Assumption of Liability and Hold Harmless Agreement, OWNER, at its expense, shall keep or cause to be kept in effect the insurance coverages set forth in the Community Aesthetic Feature Agreement and OWNER shall cause such coverage to be extended

to CITY as an additional insured and shall furthermore provide Certificates of Insurance to CITY at least fourteen (14) days prior to the commencement of the Community Aesthetic Feature Agreement and annually thereafter on the anniversary date of the policies.

6. Removal of Improvements and Restoration of Improvement Area.

(a) Except as may otherwise be expressly provided herein, it is agreed that upon termination of the Community Aesthetic Feature Agreement, in whole or in part, OWNER shall remove or paint over the mural in accordance with the terms and conditions of the Community Aesthetic Feature Agreement, and OWNER shall restore the Property and the right of way and any impacted public utilities to conditions reasonably acceptable to FDOT. Such removal and restoration shall be at OWNER's sole cost and expense. In the event OWNER fails to begin to remove all or any part of the mural in accordance with the Community Aesthetic Feature Agreement contemplated herein within thirty (30) days after written demand by FDOT or CITY, the CITY is hereby authorized to remove or paint over the mural that interferes with the easement rights or the public's use of Property and the dedicated rights-of-way and restore the Property and right of way and any public utilities to conditions acceptable to FDOT, and all reasonable costs associated with the removal and restoration thereof shall be fully reimbursed by OWNER.

(b) In the event OWNER fails to remove or paint over the mural, when required to do so in accordance with this Community Aesthetic Feature Agreement, and CITY finds it necessary to remove the mural or paint over it in accordance with the foregoing, then the total expense incurred by the CITY in removing the mural or painting over it and the reasonable administrative costs associated therewith shall be considered a special assessment and lien upon the Property. OWNER consents to and grants the CITY the right to place a lien on the Property in the event OWNER shall fail to reimburse the CITY to the extent required by this paragraph. OWNER shall have sixty (60) days from the date of the statement of the total expenses incurred by the CITY and the administrative costs associated therewith within which to pay or contest to the CITY the full amount due. Failure to timely pay the amount due or serve upon the CITY Manager a written letter contesting the statement of assessed expenses and administrative costs after an adequate review of no less than sixty (60) days will result in the matter being scheduled before the CITY Commission for consideration of and adoption of a Resolution assessing against the Property the expenses and administrative costs associated with the CITY's removal or painting over of the mural. The Resolution may also impose a special assessment lien against the Property for the expenses and costs so assessed. A Notice of the Special Assessment assessed by the CITY Commission for the unpaid expenses and costs as stated above shall be recorded with the CITY Clerk and in the Public Records of Broward County, Florida. The assessed expenses and costs and the lien provided for herein may be foreclosed in the manner provided by law. Any lien filed pursuant to this Assumption Agreement shall be subordinate to any mortgages/construction financing obtained for any portion of the Property, whether the mortgage/construction financing obtained before or after the Claim of Lien is recorded.

7. Event of Default; Remedy. In the event the OWNER fails to perform or violates any of the terms or conditions of the Community Aesthetic Feature Agreement or this Assumption of Liability and Hold Harmless Agreement or is in breach or default in any term or condition thereof, the CITY shall notify OWNER of the specific failure or violation of this

Assumption of Liability and Hold Harmless Agreement or the Community Aesthetic Feature Agreement in writing and OWNER shall thereafter have a period of thirty (30) days to cure any such failure or violation to the CITY'S reasonable satisfaction and to the extent OWNER shall fail to cure same within said 30 day period, such failure shall be considered an "Event of Default" hereunder. Upon the occurrence of an Event of Default, the CITY shall have the right 1) to take any equitable action to enforce the terms and conditions of the Community Aesthetic Feature Agreement or this Assumption of Liability and Hold Harmless Agreement, it being stipulated by the parties that since the Community Aesthetic Feature Agreement and this Assumption of Liability and Hold Harmless Agreement deal with the right to use public easements and rights-of-way of FDOT for a governmental purpose, a violation or breach of any term or condition of the Community Aesthetic Feature Agreement or this Assumption of Liability and Hold Harmless Agreement constitutes an irreparable injury to the public and CITY for which there is no adequate remedy at law, or 2) take such curative action that was required to be taken by the OWNER under the Community Aesthetic Feature Agreement or this Assumption of Liability and Hold Harmless Agreement and the cost and expense incurred in CITY's curative actions shall be passed on to and owed by OWNER, in which case OWNER shall be liable for payment to CITY for all reasonable and necessary costs and expenses incurred by CITY in connection with the performance of the action or actions associated with the mural. OWNER shall reimburse CITY within thirty (30) days following written demand for payment thereof. Interest shall begin to accrue on the unpaid amount thirty (30) days after the CITY sends the written demand for payment to OWNER, at a rate of twelve percent (12%) per annum simple interest but in no event shall interest exceed the highest amount allowed by Florida law. If a dispute arises as to the need for, or amount due to the CITY for repairs or maintenance undertaken by CITY in accordance with the Community Aesthetic Feature Agreement or Assumption of Liability and Hold Harmless Agreement, and such dispute is not resolved within thirty days (30) days after the date that CITY makes the written demand for payment, OWNER shall pay to CITY the undisputed amount and shall provide CITY with a bond or other security acceptable to CITY for the disputed amount pending a resolution of the dispute by negotiation or litigation. If OWNER does not make the payments required under this Section within the thirty (30) day period set forth herein, then CITY shall have a right to record a Claim of Lien against the Property, which Lien may be either (a) for the total amount of the fines, including all subsections thereunder, or (b) for all reasonable and necessary costs and expenses of any cure undertaken by CITY in accordance with this Section, the cost of any interim insurance policy as provided herein, and reasonable attorneys' fees and costs associated therewith. The Lien shall be effective upon the recording of a Claim of Lien in the Public Records of Broward County, Florida, which Claim of Lien shall state all amounts due and owing to CITY. The Lien may be foreclosed by CITY in the same manner as provided by law for foreclosure of mortgage liens. The Lien shall continue until payment to CITY of the amounts set forth in the Lien (at which time CITY shall record a satisfaction of such lien). In addition to the Lien, CITY shall have all other rights and remedies granted to it at law or in equity for OWNER's failure to pay the fines owed or reimburse CITY for curative actions taken by CITY. CITY shall have all other rights and remedies granted to it at law or in equity for OWNER's failure to pay the fines owed or reimburse CITY for curative actions taken by CITY. The remedies found within this Section are cumulative. The exercise of one does not preclude the exercise of any other remedy.

8. Emergencies. If an emergency situation arises with respect to the Community Aesthetic Feature Agreement or the Assumption of Liability and Hold Harmless Agreement

where the mural or any condition of the Property thereof presents an imminent threat to the health or safety of Persons or property, the CITY shall make reasonable efforts to provide telephone and fax or email notice to OWNER's Contact Person. If actual notice of the emergency is given to OWNER and OWNER shall thereafter fail to take timely action to correct the emergency situation, then, to the extent the continuance of the emergency situation would pose an imminent threat to health or safety to Persons or property, CITY may undertake such limited actions as are necessary to eliminate the emergency; and CITY shall be entitled to recover its reasonable costs of cure or resolve the emergency from OWNER in accordance with provisions hereof. For the purposes of this Paragraph, OWNER Contact Person shall be **Daniel Estevez** telephone number **(954)245-3049**; and e-mail address: **DANIEL.ESTEVEZ@WESTINFTLAUDERDALE.COM** In the event the OWNER's Contact Person or any other information pertaining to the OWNER's Contact Person shall change, such change shall be provided to the CITY Engineer in writing.

9. Damage to Public Property. In the event the use, operation, maintenance, repair, construction, demolition, painting, or reconstruction of the Property the cause(s) any damage whatsoever to any other public property, then OWNER shall be responsible for the reasonable cost of repair and shall, at CITY's option, make said repairs, subject to CITY's reasonable satisfaction.

10. Notices.

(a) Except as provided in subparagraph (c) below, whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to any matter set forth in the Community Aesthetic Feature Agreement or this Assumption of Liability and Hold Harmless Agreement, each such notice, demand, request or other communication shall be in writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by hand delivery, or by a nationally recognized overnight courier, or by mailing the same by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the address set forth below, or at such other address or addresses and to such other person or firm as OWNER may from time to time designate by notice as herein provided.

(b) All notices, demands, requests or other communications hereunder shall be deemed to have been given or served for all purposes hereunder upon receipt if by hand delivery, or upon one (1) business day after deposit with such overnight courier as required above, or upon two (2) business days after deposit with the United States mail, postage prepaid, in the manner aforesaid, provided, however, that for any distance in excess of five hundred (500) miles, air mail service or Federal Express or similar carrier shall be utilized, if available.

AS TO CITY: Christopher J. Lagerbloom, ICMA-CM
City Manager
City Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

With copy to: Alain Boileau, Esq.
City Attorney
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

With a copy to: Anthony Fajardo
Director of the Department of Sustainable Development
City of Fort Lauderdale
700 NW 19th Avenue
Fort Lauderdale, FL 33311

AS TO OWNER: DiamondRock FL Owner, LLC
ATTN: General Counsel
2 Bethesda Metro Center, Suite 1400
Bethesda, MD 20814

With a copy to: The Westin Fort Lauderdale Beach Resort
ATTN: Daniel Estevez
General Manager
321 North Fort Lauderdale Beach Blvd.
Fort Lauderdale, FL 33304

(c) As to activities under Paragraph 8, Emergencies, notice need not be given in accordance with subparagraph (a) above, but notice shall be sufficient if given to the Contact Person pursuant to Paragraph 8, Emergencies.

11. Independent Contractor. As between CITY and OWNER, OWNER is an independent contractor under this Assumption of Liability and Hold Harmless Agreement. In providing such services, neither OWNER nor its agents shall act as officers, employees, or agents of CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to OWNER or OWNER's agents any authority of any kind to bind CITY in any respect whatsoever.

12. Joint Preparation. Each party and its counsel have participated fully in the review and revision of this Assumption of Liability and Hold Harmless Agreement and acknowledge that the preparation of this Assumption of Liability and Hold Harmless 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 Assumption of Liability and Hold Harmless Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

13. Interpretation of Agreement; Severability. This Assumption of Liability and Hold Harmless Agreement shall be construed in accordance with the laws of the State of Florida. If any provision hereof, or its application to any person or situation, is deemed invalid or

unenforceable for any reason and to any extent, the remainder of this Assumption of Liability and Hold Harmless Agreement or the application of the remainder of the provisions, shall not be affected. Rather, this Assumption of Liability and Hold Harmless Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this Assumption of Liability and Hold Harmless Agreement are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of this Assumption of Liability and Hold Harmless 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 Assumption of Liability and Hold Harmless Agreement, unless otherwise expressly provided. All terms and words used in this Assumption of Liability and Hold Harmless 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.

14. Successors. This Assumption of Liability and Hold Harmless Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns. It is intended that this Assumption Agreement and the rights and obligations set forth herein shall run with the land and shall bind every person or entity having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

15. No Waiver of Sovereign Immunity. Nothing contained in this Assumption Agreement is intended to serve as a waiver of sovereign immunity by the CITY to which sovereign immunity may be applicable.

16. 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 Assumption Agreement. None of the parties intend to directly or substantially benefit a third party by this Assumption of Liability and Hold Harmless Agreement. The parties agree that there are no third-party beneficiaries to this Assumption of Liability and Hold Harmless Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this Assumption of Liability and Hold Harmless 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.

17. Non-Discrimination. OWNER shall not discriminate against any Person in the performance of duties, responsibilities and obligations under this Assumption of Liability and Hold Harmless Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

18. Records. Each party shall maintain its own respective records and documents associated with this Assumption of Liability and Hold Harmless Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, Florida Statutes as applicable, and any resultant award of attorney's fees for non-compliance with that law.

19. 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 Assumption of Liability and Hold Harmless 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.

20. Waiver. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Assumption of Liability and Hold Harmless Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Assumption of Liability and Hold Harmless Agreement shall not be deemed a waiver of such provision or modification of this Assumption of Liability and Hold Harmless Agreement. A waiver of any breach of a provision of this Assumption 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 Assumption of Liability and Hold Harmless Agreement.

21. Governing Law. This Assumption of Liability and Hold Harmless 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 Assumption of Liability and Hold Harmless Agreement and any action involving the enforcement or interpretation of any rights hereunder, shall be brought exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Assumption of Liability and Hold Harmless 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 Assumption of Liability and Hold Harmless Agreement, CITY and OWNER hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to the Community Aesthetic Feature Agreement or this Assumption Agreement or any acts or omissions in relation thereto.**

22. Recording. This Assumption of Liability and Hold Harmless Agreement shall be recorded in the Public Records of Broward County, Florida, the costs of which shall be borne by OWNER. OWNER shall record this Assumption of Liability and Hold Harmless Agreement and a copy of the recorded Assumption of Liability and Hold Harmless Agreement shall be provided to City and filed with the City Clerk's Office.

23. Term. This Assumption of Liability and Hold Harmless Agreement shall continue in full force and effect until such time as the Community Aesthetic Feature Agreement is terminated or becomes null and void by removal or painting over of the mural on the Property, or it is terminated by operation of law or in accordance with the terms of the Community Aesthetic Feature Agreement, or is terminated by a court order or mutual agreement between OWNER, FDOT and CITY and no obligations lying thereunder survive such termination.

24. Assignment. OWNER may assign this Assumption of Liability Agreement without the prior written consent of the City to a transferee of the fee simple interest in the Property or to an owner responsible for the common areas of the Property (including a condominium association, homeowner's association or property owner's association, with

written notice of such assignment and delivery of a copy of the written assumption of responsibilities executed by the assignor and recorded in the Public Records of Broward County, Florida).

25. Police Power. Nothing herein shall be construed as a waiver of the CITY'S police power. OWNER shall comply with the CITY'S codes, ordinances and regulations with respect to painting of the mural. OWNER shall paint and maintain the mural in compliance with all health, sanitary, fire, zoning and building code requirements and any other governing authority with jurisdiction over the Property.

(SIGNATURES TO FOLLOW)

IN WITNESS WHEREOF, the undersigned does hereby warrant that they are authorized to enter into this Assumption of Liability and Hold Harmless Agreement by DIAMONDROCK FL OWNER, LLC and the CITY OF FORT LAUDERDALE.

Witnesses:

OWNER:

DIAMONDROCK FL OWNER, LLC, A Delaware limited liability company

(Witness #1 Signature)

By: _____

(Print Name)

Print: Briony R. Quinn

Title: Director

(Witness #2 Signature)

(Print Name)

ACKNOWLEDGEMENT

STATE OF _____)
)SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Briony R. Quinn, as Manager and on behalf of DIAMONDROCK FL OWNER, LLC, a Delaware limited liability company, who is known to me or who has produced _____, as identification.

My Commission Expires:

NOTARY PUBLIC
Type or Print Name: _____

WITNESSES:

[Witness type or print name]

[Witness type or print name]

(CORPORATE SEAL)

AS TO CITY:

CITY OF FORT LAUDERDALE

By _____

Christopher J. Lagerbloom, ICMA-CM
City Manager

ATTEST:

Jeffrey A. Modarelli, City Clerk

Approved as to form:
Alain Boileau, City Attorney

By: _____

Print Name: Shari C. Wallen
Title: Assistant City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by **Christopher J. Lagerbloom**, City Manager of the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

Exhibit A

Legal Description of the Property



McLAUGHLIN ENGINEERING

20928-0315
O. R. BOOK/PAGE

ENGINEERS-SURVEYORS

400 Northeast Third Avenue
FT. LAUDERDALE, FLORIDA 33301Telephone (305) 763-7611
Facsimile (305) 763-7615SKETCH AND DESCRIPTION
A-1-A/PEDESTRIAN OVERPASS

That portion of airspace lying above the finished grade or surface of the centerline of an existing roadway and right-of-way known as STATE ROAD A-1-A, and adjacent public beach, in Fort Lauderdale, Florida, and legally described as airspace above that portion of road right-of-way and public beach lying East of Lot 1, Block 8, LAUDER DEL MAR, according to the plat thereof recorded in Plat Book 7, Page 30, of the public records of Broward County, Florida, said airspace located in Broward County, Florida, and as more fully described both perimetrical and vertically as follows:

PERIMETRICAL DESCRIPTION:

Commencing at Monument R-73, as shown on COASTAL CONSTRUCTION CONTROL LINE, according to the plat thereof recorded in Miscellaneous Map Book 6, Page 10, of the public records of Broward County, Florida; thence North 85°00'00" West, a distance of 145.00 feet; thence South 02°02'45.9" West, on said COASTAL CONSTRUCTION CONTROL LINE., a distance of 470.58 feet; thence North 88°56'53" East on the North line of Lot 1 of said Block 8, a distance of 99.97 feet; thence South 01°03'07" East, on the West right-of-way line of State Road A-1-A, a distance of 6.36 feet to the Point of Beginning; thence continuing South 01°03'07" East, on the said West right-of-way line, a distance of 11.05 feet; thence South 85°45'13" East, a distance of 87.49 feet; thence North 04°14'47" East, a distance of 11.00 feet; thence North 85°45'13" West, a distance of 88.51 feet to the Point of Beginning.

VERTICAL DESCRIPTION

All that certain space lying within the confines of the above PERIMETRICAL DESCRIPTION, lying above a horizontal plane having an elevation of 25.00 feet and lying below a horizontal plane having an elevation of 45.00 feet. Both elevations refer to National Geodetic Vertical Datum (1929).

Said land situate, lying, and being in the City of Fort Lauderdale, Broward County, Florida, and containing 19,360 cubic feet more or less.

Certified correct. Dated at Fort Lauderdale, Florida, this 7th day of July, 1993.
Added Vertical Description this 14th day of July, 1993.

NOTES:

- (1) THIS IS NOT A SURVEY.
- (2) This sketch reflects all easements and rights-of-way as shown on the above referenced plat. The subject property was not abstracted for other easements, road reservations, or rights-of-way of record by McLaughlin Engineering Co.
- (3) Bearings refer to COASTAL CONSTRUCTION CONTROL LINE, Misc. M.B.6, P. 10.
- (4) Description prepared by McLaughlin Engineering Co. this 7th day of July, 1993.
- (5) THIS DRAWING IS NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYORS SEAL.

McLAUGHLIN ENGINEERING CO.

ROBERT C. McLaughlin
Registered Land Surveyor No. 3356
State of Florida

FIELD BOOK NO. _____

DRAWN BY _____

JOB ORDER NO. _____

CHECKED BY _____

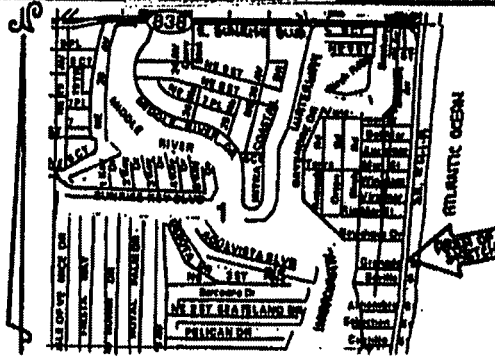
405 N.E. 3RD AVENUE
FORT LAUDERDALE, FLORIDA

McLAUGHLIN ENGINEERING CO.
ENGINEERS-SURVEYORS

20928-0316
O.R. BOOK/PAGE SHEET 2 OF 2

CENTERLINE, NO. NUMBER, MISC. MISCELLANEOUS
P.B. MAP BOOK, P. PAGE, B.C.R. BROWARD COUNTY RECORDS

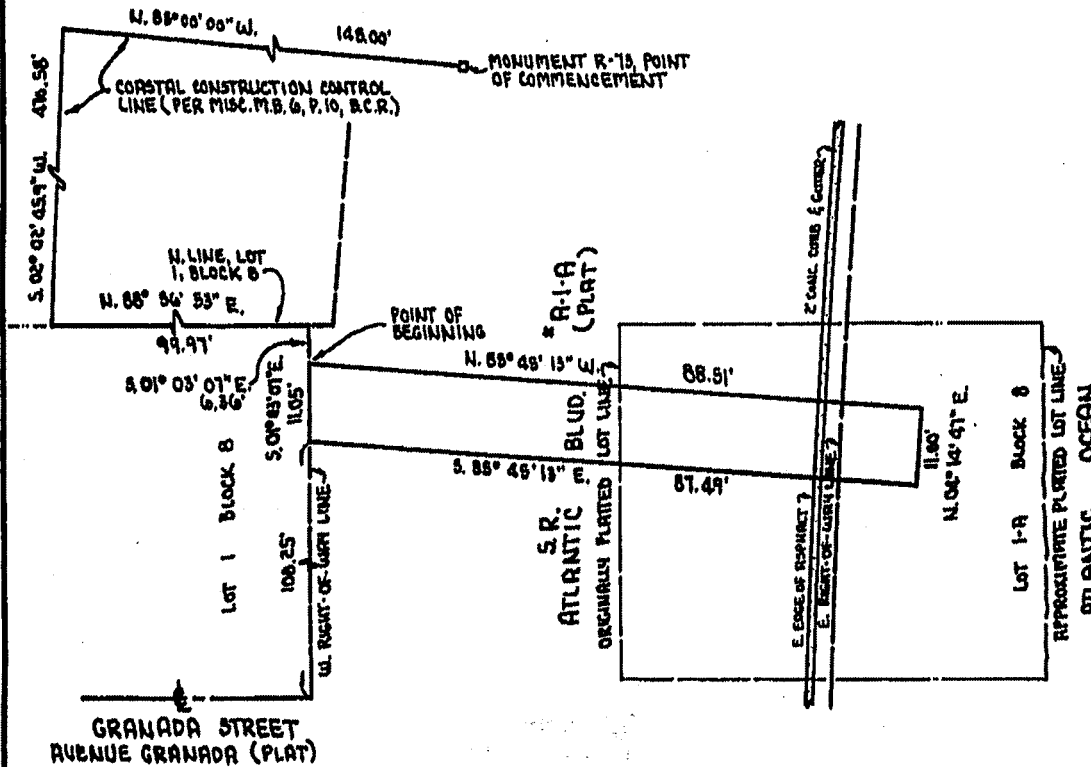
SCALE: 1" = 20'



VICINITY MAP
NOT TO SCALE

SKETCH AND DESCRIPTION
A-1-A/ PEDESTRIAN OVERPASS

That portion of airspace lying above the finished grade or surface of the centerline of an existing roadway and right-of-way known as STATE ROAD A-1-A, and being more fully described on SHEET 1 OF 2.



McLAUGHLIN ENGINEERING CO.

ROBERT C. McLAUGHLIN REGISTERED LAND SURVEYOR NO. 3356, STATE OF FLORIDA
"Not Valid Unless Sealed with an embossed Surveyors Seal"

FIELD BOOK No. _____
JOB ORDER No. R-5947

DRAWN BY _____
CHECKED BY _____



McLAUGHLIN ENGINEERING

400 Northeast Third Avenue
FT. LAUDERDALE, FLORIDA 33301

EO928-0322
O. R. BOOK/PAGE

ENGINEERS-SURVEYORS

Telephone (805) 763-7611
Facsimile (305) 763-7616

SHEET 1 OF 2

SKETCH AND DESCRIPTION
CITY PROPERTY

A portion of public beach in Government Lot 3, Section 6, Township 50 South, Range 43 East, and being a portion of Lot 1-A, Block 8, LAUDER DEL MAR, according to the plat thereof recorded in Plat Book 7, Page 30, of the public records of Broward County, Florida, more fully described as follows:

Commencing at Monument R-73, as shown on COASTAL CONSTRUCTION CONTROL LINE, according to the map thereof recorded in Miscellaneous Map Book 6, Page 10, of the public records of Broward County, Florida; thence North 85°00'00" West, a distance of 145.00 feet; thence South 02°02'45.9" West, on said COASTAL CONSTRUCTION CONTROL LINE, a distance of 470.58 feet; thence North 88°56'53" East, on the North line of Lot 1 of said Block 8, a distance of 99.97 feet; thence South 01°03'07" East, on the West right-of-way line of State Road A-1-A, a distance of 17.40 feet; thence South 85°45'13" East, a distance of 87.49 feet to the Point of Beginning; thence continuing South 85°45'13" East, a distance of 11.00 feet; thence North 04°14'47" East, a distance of 11.00 feet; thence North 85°45'13" West, a distance of 11.00 feet; thence South 04°14'47" West, a distance of 11.00 feet to the Point of Beginning.


Said land situate, lying, and being in the City of Fort Lauderdale, Broward County, Florida, and containing 121 square feet or 0.0028 Acres more or less.

Certified correct. Dated at Fort Lauderdale, Florida, this 7th day of July 1993.

NOTES:

- (1) THIS IS NOT A SURVEY.
- (2) This sketch reflects all easements and rights-of-way as shown on the above referenced plat. The subject property was not abstracted for other easements, road reservations, or rights-of-way of record by McLaughlin Engineering Co.
- (3) Bearings refer to COASTAL CONSTRUCTION CONTROL LINE, Misc. M.B.6, P. 10, B.C.R.
- (4) Description prepared by McLaughlin Engineering Co. this 7th day of July, 1993.
- (5) THIS DRAWING IS NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYORS SEAL.

McLAUGHLIN ENGINEERING CO.


ROBERT C. McLaughlin
Registered Land Surveyor No. 3356
State of Florida

FIELD BOOK NO. _____
JOB ORDER NO. R-5547

DRAWN BY DFB
CHECKED BY _____

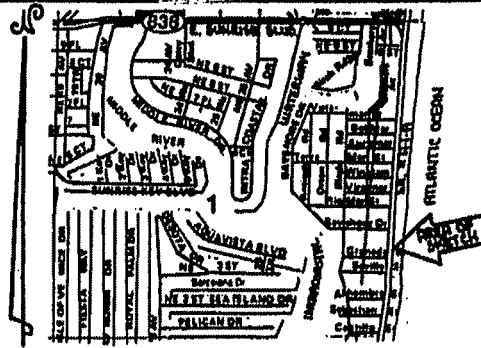
400 N. E. 3RD AVENUE
 FORT LAUDERDALE, FLORIDA

McLAUGHLIN ENGINEERING CO.
 ENGINEERS - SURVEYORS

20928-0323
 O. R. BOOK/PAGE SHEET 2 OF 2

M.B. MAP BOOK NO. NUMBER, P. PAGE
 MISC. MISCELLANEOUS, B.C.R. BROWARD
 COUNTY RECORDS, E. CENTERLINE

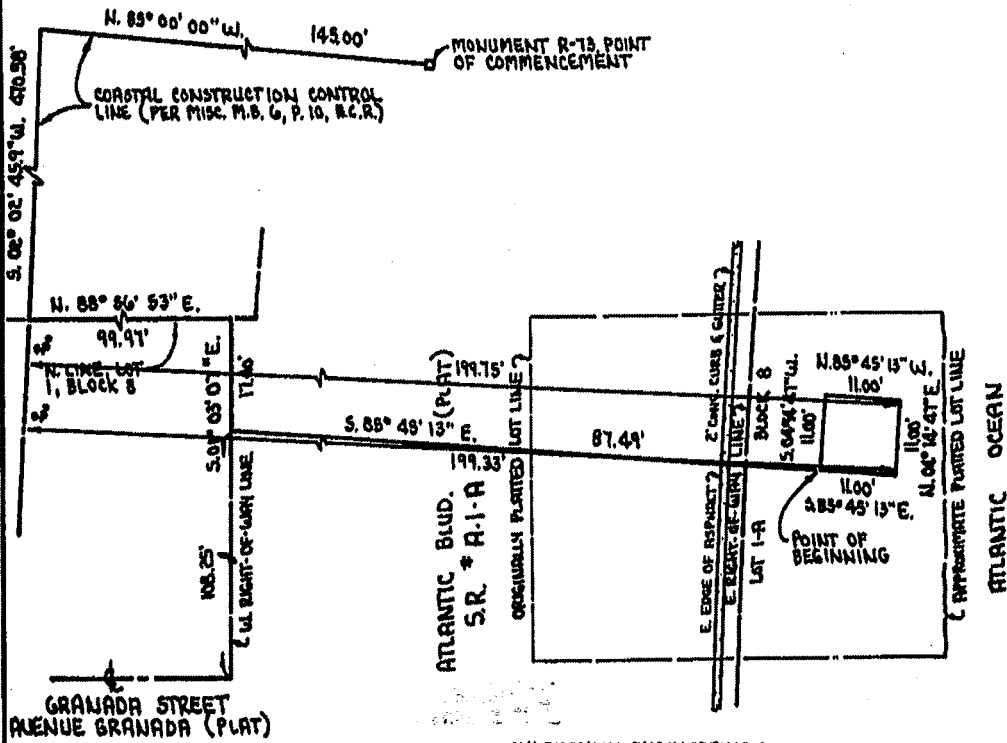
SCALE: 1" = 60'



VICINITY MAP
 NOT TO SCALE

SKETCH AND DESCRIPTION
 CITY PROPERTY

A portion of public beach in Government Lot 3, Section 6, Township 50 South, Range 43 East, and being a portion of Lot 1-A, Block 8, LAUDER DEL MAR, and being more fully described on SHEET 1 OF 2.



McLAUGHLIN ENGINEERING CO.

ROBERT C. McLAUGHLIN REGISTERED LAND
 SURVEYOR No. 3396, STATE OF FLORIDA
 "Not Valid Unless Sealed with an embossed Surveyors Seal"

FIELD BOOK No. _____
 JOB ORDER No. R-5947

DRAWN BY _____
 CHECKED BY _____

Exhibit B

**State of Florida Department of Transportation
Community Aesthetic Feature Agreement**

SUBMITTAL/APPROVAL LETTER

To: John Olsen, PE
District or Turnpike Design Engineer


Date: _____

Financial Project ID: _____ New Const. RRR
Federal Aid Number: _____
Project Name: City of Ft. Lauderdale - A1A, Pedestrian Bridge Mural
State Road Number: A1A Co./Sec./Sub. 86050
Begin Project MP: _____ End Project MP: _____
FHWA Project of Division Interest: Yes No
Request for: Design Exception Design Variation
Community Aesthetic Feature: Conceptual Final
Re-submittal: Yes No Original Ref# _____ - - _____

Requested for the following element(s):

- | | | | |
|---|--|---|--|
| <input type="checkbox"/> Design Speed | <input type="checkbox"/> Lane Width | <input type="checkbox"/> Shoulder Width | <input type="checkbox"/> Cross Slope |
| <input type="checkbox"/> Design Loading Structural Capacity | <input type="checkbox"/> Vertical Clearance | <input type="checkbox"/> Maximum Grade | <input type="checkbox"/> Stopping Sight Distance |
| <input type="checkbox"/> Superelevation | <input type="checkbox"/> Horizontal Curve Radius | <input checked="" type="checkbox"/> Other <u>Ped Bridge Mural</u> | |

The Westin Hotel with the approval of the City of Ft. Lauderdale will paint a Mural on the Pedestrian A1A Overpass at 321. N Ft. Lauderdale Beach Blvd. in Ft. Lauderdale, FL 33304

Recommended by:  Date 11-18-19
Responsible Professional Engineer or Landscape Architect (Landscape-Only Projects)

Approvals:

District or Turnpike Design Engineer

State Roadway Design Engineer

Chief Engineer

District Structures Design Engineer

State Structures Design Engineer

FHWA Division Administrator

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
COMMUNITY AESTHETIC FEATURE AGREEMENT

625-010-10
ROADWAY DESIGN
OGC - 08/17
Page 1 of 12

State Road/Local Road A1A Section No. 86050 CAFA No. 2019-M-491-00007

This Community Aesthetic Feature Agreement ("Agreement") is entered into this _____ day of _____, between the State of Florida, Department of Transportation ("Department") and The City of Ft. Lauderdale ("Agency"). The Department and the Agency are sometimes referred to in this Agreement as a "Party" and collectively as the "Parties."

RECITALS

- A. The Agency has requested permission from the Department to install a [CHOOSE ONE: Public Art, Local Identification Marker] community aesthetic feature on that certain right-of-way owned by the Department which is located on State Road/Local Road 321 N. Ft. Lauderdale Beach Blvd. (A1A), Ft. Lauderdale FL 33304 (See Attached Map) at MP 2.569 and in Broward County, Florida ("Project").
- B. The Department agrees that transportation facilities enhanced by community aesthetic features can benefit the public, result in positive economic development, and increase tourism both locally and throughout Florida.
- C. The Parties agree to the installation and maintenance of the Project, subject to the terms and conditions in this Agreement.

AGREEMENT

1. **TERM.** The term of this Agreement shall commence upon full execution of this Agreement ("Effective Date") and continue through till the expiration period of five years from the date of full execution, which is determined as the lifespan of the Project, unless terminated at an earlier date as provided in this Agreement. If the Agency does not complete the installation of the Project within one (1) Year; (365) days of the Effective Date of this Agreement, the Department may immediately terminate this Agreement. This Agreement may only be renewed for a term no longer than the original term of this Agreement upon a writing executed by both Parties to this Agreement.

2. **PROJECT DESCRIPTION.** The Project is a [CHOOSE ONE: Public Art, Local Identification Marker], as more fully described in the plans in Exhibit "A", attached and incorporated in this Agreement.

3. **FUNDING OF THE PROJECT.** The Agency has agreed by resolution to approve the Project and to fund all costs for the design, installation, and maintenance of the Project, and such resolution is attached and incorporated in this Agreement as Exhibit "D". The Department shall not be responsible for any costs associated with the Project. All improvements funded, constructed, and installed by the Agency shall remain the Agency's property. However, this permissive use of the Department's right-of-way where the Project is located does not vest any property right, title, or interest in or to the Agency for the Department's right-of-way.

4. **DESIGN AND CONSTRUCTION STANDARDS AND REQUIRED APPROVALS.**

- a. The Agency is responsible for the design, construction, and maintenance of the Project in accordance with all applicable federal, state and local statutes, rules and regulations, including the Department standards and specifications. A professional engineer, registered in Florida, shall provide the certification that all design and construction for the Project meets the minimum construction standards established by the Department and applicable Florida Building Code construction standards. The Agency shall submit all plans or related construction documents, cost estimates, project schedule, and applicable third party agreements to the Department for review and approval prior to installation of the Project. The Agency is responsible for the preparation of all design plans for the Project, suitable for reproduction on 11 inch by 17 inch sheets, together with a complete set of specifications covering all construction requirements for the Project. A copy of the design plans shall be provided to the Department's District Design Engineer, located at 3400 West Commercial Blvd, Ft Lauderdale, FL 33309. The Department will review the plans for conformance to the Department's requirements and feasibility. The Department review shall not be considered an adoption of the plans nor a substitution for the engineer's responsibility for the plans. By review of the plans, the Department signifies only that such

plans and improvements satisfies the Department's requirements, and the Department expressly disclaims all other representations and warranties in connection with the plans, including, but not limited to the integrity, suitability, or fitness for the intended purpose or whether the improvements are constructed in accordance with the plans. The Department's review of the plans does not relieve the Agency, its consultants or contractors of any professional or other liability for the plans. All changes required by the Department shall be made by the Agency and final corrected plans shall be provided to the Department within thirty (30) days.

- b. The Agency shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility. Section 337.403, Florida Statutes, shall determine whether the utility bears the costs of utility work. The Agency shall bear the costs of utility work not required to be borne by the utility by Section 337.403, Florida Statutes.
- c. The Agency shall be responsible for monitoring construction operations and the maintenance of traffic ("MOT") throughout the course of the Project in accordance with the latest edition of FDOT Standard Specifications, Section 102. The Agency is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of FDOT Design Standards, Index 600 series. Any MOT plan developed by the Agency that deviates from FDOT Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.
- d. The Agency is responsible for obtaining all permits that may be required by any federal, state, or local agency.
- e. Prior to commencing the Project, the Agency shall request a Notice to Proceed from the Department's Construction Project Manager, Otto Elmer (otto.elmer@ferrovialservices.com), at (954) 987-9558 or from an appointed designee.
- f. The Agency is authorized, subject to the conditions in this Agreement, to enter Department's right-of-way to install the Project (see attached Exhibit "B" Special Provisions). The Parties agree that this Agreement creates a permissive use only. Neither the granting of permission to use Department's right-of-way nor the placing of facilities upon Department's right-of-way shall operate to create or vest any property right in or to the Agency. The Agency shall not acquire any right, title, interest, or estate in the Department's right-of-way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Agency's use, occupancy or possession of the Department's right-of-way.
- g. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction and throughout the maintenance term of the Project. If the Department determines that a condition exists which threatens the public's safety, the Department may, at its discretion, cause the Project to cease and/or immediately have any potential hazards removed from its right-of-way at the sole cost, expense, and effort of the Agency. Should the Agency fail to remove the safety hazard within thirty (30) days, the Department may remove the safety hazard at the Agency's sole cost, expense, and effort.
- h. The Agency shall be responsible to ensure that construction of the Project is performed in accordance with the approved construction documents, and that it will meet all applicable federal, state, and local standards and that the work is performed in accord with the Terms and Conditions contained in Exhibit "C".
- i. The Agency shall notify the Department a minimum of forty eight (48) hours before beginning the Project within the Department's right-of-way. The Agency shall notify the Department should installation be suspended for more than five (5) working days.
- j. Upon completion of the Project, the Agency shall notify the Department in writing of the completion of the installation of the Project. For all design work that originally required certification by a Professional Engineer, the notification shall contain a Responsible Professional's Certification of Compliance, signed

and sealed by the responsible professional for the project, the form of which is attached to this Agreement as Exhibit "E". The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation. The Agency and its contractors shall remove their presence, including, but not limited to, all of the Agency or its contractor's/ subcontractor's/ consultant's/ subconsultant's property, machinery, and equipment from the Department's right-of-way and shall restore those portions of the Department's right-of-way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project, at Agency's sole cost and expense.

- k. If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification to the Agency. The Agency shall have thirty (30) days from the date of receipt of the Department's written notice to complete the Project and provide the Department with written notice of the same ("Notice of Completion"). If the Agency fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department may: 1) provide the Agency with written authorization granting additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Agency's sole cost and expense, without Department liability to the Agency for any resulting loss or damage to property, including but not limited to machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice within thirty (30) days of the date of the invoice.
- l. Upon completion of the Project, the Agency shall be responsible for the perpetual maintenance of the Project, including all costs. The maintenance schedule shall include initial defect, instantaneous damage and deterioration components. The initial defect maintenance inspection should be conducted, and any required repairs performed during the construction phase. The instantaneous damage maintenance inspection should be conducted sixty (60) to ninety (90) days after placement and is intended to identify short term damage that does not develop over longer time periods. The deterioration maintenance inspection shall be conducted on regular, longer term intervals and is intended to identify defects and damages that occur by naturally occurring chemical, physical or biological actions, repeated actions such as those causing fatigues, normal or severe environmental influences, abuse or damage due to other causes. Deterioration maintenance shall include, but is not limited to, the following services:
The City of Ft. Lauderdale shall be responsible for the maintenance of the paint areas as per the attached Project Plans. Inspect the artwork on regular intervals for discoloration. To keep the artwork and colors fresh, the City will pressure wash the artwork up to one (1) time each year. The City will inspect the artwork for graffiti and make corrections. Upon termination of agreement, the City of Ft. Lauderdale will, at the request of the State, repaint the wall(s) Please see attached cost estimate from the Permittee.
- m. The Agency shall, within thirty (30) days after expiration or termination of this Agreement, remove the Project and restore the right-of-way to its original condition prior to the Project. The Agency shall secure its obligation to remove the Project and restore the right-of-way by providing a removal and restoration deposit, letter of credit, or performance bond in the amount of \$ 9,975.00. The removal and restoration deposit, letter of credit, or bond shall be maintained by the Agency at all times during the term of this Agreement and evidence of the deposit, letter of credit, or bond shall be submitted to the Department on an annual basis. A waiver of the deposit, letter of credit, or bond requirement is permitted with approval from the District Maintenance Engineer for those installations with estimated

restoration/removal costs less than or equal to \$2000.00.

District Maintenance Engineer, _____ Date: _____.

- n. The Department reserves its right to cause the Agency to relocate or remove the Project, in the Department's sole discretion, and at the Agency's sole cost.

5. INDEMNITY AND INSURANCE.

- a. The Agency agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement:

"The contractor/ subcontractor/ consultant/ subconsultant shall indemnify, defend, save and hold harmless the State of Florida, Department of Transportation and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor/ subcontractor/ consultant/ subconsultant, its officers, agents or employees."

- b. The Agency shall carry or cause its contractor/ subcontractor/ consultant/ subconsultant to carry and keep in force during the period of this Agreement a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$1,000,000 per person and \$5,000,000 each occurrence, and property damage insurance of at least \$100,000 each occurrence, for the services to be rendered in accordance with this Agreement. Additionally, the Agency or its contractor/ subcontractor/ consultant/subconsultant shall cause the Department to be an additional insured party on the policy or policies, and shall provide the Department with certificates documenting that the required insurance coverage is in place and effective. In addition to any other forms of insurance or bonds required under the terms of the Agreement, when it includes construction within the limits of a railroad right-of-way, the Agency must provide or cause its contractor to obtain the appropriate rail permits and provide insurance coverage in accordance with Section 7-13 of the Department's current Standard Specifications for Road and Bridge Construction, as amended.
- c. The Agency shall also carry or cause its contractor/ subcontractor/ consultant/ subconsultant to carry and keep in force Worker's Compensation insurance as required by the State of Florida under the Worker's Compensation Law.

6. NOTICES. All notices pertaining to this Agreement are in effect upon receipt by either Party, shall be in writing, and shall be transmitted either by personal hand delivery; United States Post Office, return receipt requested; or, overnight express mail delivery. E-mail and facsimile may be used if the notice is also transmitted by one of the preceding forms of delivery. The addresses set forth below for the respective parties shall be the places where notices shall be sent, unless prior written notice of change of address is given.

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
DISTRICT FOUR (4) PROGRAM MANAGER

District Maintenance Engineer _____
3400 W. Commercial Blvd., Fort Lauderdale, FL 33309 _____
Phone: 954-486-1400 _____
Fax: 954-777-4223 _____

City of Ft. Lauderdale _____, FLORIDA
Christopher J. Lagerbloom, ICMA-CM - City Manager _____

100 N. Andrews Ave

Ft. Lauderdale, Fl 33076

Phone: 954-828-5013

Fax: 954-828-5599

7. TERMINATION OF AGREEMENT. The Department may terminate this Agreement upon no less than thirty (30) days notice in writing delivered by certified mail, return receipt requested, or in person with proof of delivery. The Agency waives any equitable claims or defenses in connection with termination of the Agreement by the Department pursuant to this Paragraph 7.

8. LEGAL REQUIREMENTS.

- a. This Agreement is executed and entered into in the State of Florida and will be construed, performed, and enforced in all respects in strict conformity with local, state, and federal laws, rules, and regulations. Any and all litigation arising under this Agreement shall be brought in a state court of appropriate jurisdiction in Leon County, Florida, applying Florida law.
- b. If any term or provision of the Agreement is found to be illegal or unenforceable, the remainder of the Agreement will remain in full force and effect and such term or provision will be deemed stricken.
- c. The Agency shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Agency in conjunction with this Agreement. Failure by the Agency to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department.
- d. The Agency and the Department agree that the Agency, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- e. The Agency shall not cause any liens or encumbrances to attach to any portion of the Department's right-of-way.

9. PUBLIC ENTITY CRIME. The Agency affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes. A person or affiliate 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 a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted vendor list. The Agency agrees that it shall not violate Section 287.133(2)(a), Florida Statutes, and further acknowledges and agrees that any conviction during the term of this Agreement may result in the termination of this Agreement.

10. UNAUTHORIZED ALIENS. The Department will consider the employment of unauthorized aliens, by any contractor or subcontractor, as described by Section 274A(e) of the Immigration and Nationalization Act, cause for termination of this Agreement.

11. NON-DISCRIMINATION. The Agency will not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. The Agency shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. The Agency shall insert similar provisions in all contracts

and subcontracts for services by this Agreement.

12. **DISCRIMINATORY VENDOR LIST.** The Agency affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity. The Agency further agrees that it shall not violate Section 287.134(2)(a), Florida Statutes, and acknowledges and agrees that placement on the list during the term of this Agreement may result in the termination of this Agreement.

13. **ATTORNEY FEES.** Each Party shall bear its own attorney's fees and costs.

14. **TRAVEL.** There shall be no reimbursement for travel expenses under this Agreement.

15. **PRESERVATION OF REMEDIES.** No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default by either Party under this Agreement, will impair any such right, power or remedy of either party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default.

16. **MODIFICATION.** This Agreement may not be modified unless done so in a writing executed by both Parties to this Agreement.

17. **NON-ASSIGNMENT.** The Agency may not assign, sublicense, or otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the Department. Any assignment, sublicense, or transfer occurring without the required prior written approval of the Department will be null and void. The Department will at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida, upon giving prior written notice to the Agency. In the event that the Department approves transfer of the Agency's obligations, the Agency remains responsible for all work performed and all expenses incurred in connection with this Agreement.

18. **BINDING AGREEMENT.** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations, or remedies upon any other person or entity except as expressly provided for in this Agreement.

19. **INTERPRETATION.** No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

20. **ENTIRE AGREEMENT.** This Agreement, together with the attached exhibits and documents made a part by reference, embodies the entire agreement of the Parties. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement. This Agreement supersedes all previous communication, representation, or agreement, either verbal or written, between the Parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of the Agency and the authorized officer of the Department or his/her delegate.

21. **DUPLICATE ORIGINALS.** This Agreement may be executed in duplicate originals.

The remainder of this page is intentionally left blank.

Section No. 86050

CAFA No. 2019-M-491-00007

AGENCY

City of Ft. Lauderdale

By: [See Attached City Signature page](#)

Print Name: Christopher J. Lagerbloom, ICMA-CM

Title: City Manager

As approved by the Council, Board, or

Commission on: _____

Attest: [See Attached City Signature page](#)

Legal Review:

[See Attached City Signature page](#)

City or County Attorney

DEPARTMENT

State of Florida, Department of Transportation

By: _____

Print Name: Steve C. Braun, PE

Title: Director of Development

Date: _____

Legal Review:

Section No. 86050 CAFA No. 2019-M-491-00007

AGENCY

ATTEST:

CITY OF FORT LAUDERDALE

Jeffrey A. Modarelli, City Clerk

By: _____
Christopher J. Lagerbloom, ICMA-CM
City Manager

_____ day of _____, 20____

Approved as to form:
Alain E. Boileau, City Attorney

By: _____
Shari C. Wallen, Esq.
Assistant City Attorney

Section No. 86050 CAFA No. 2019-M-491-00007

EXHIBIT "A"

PROJECT DESCRIPTION

I. SCOPE OF SERVICES

The Westin Hotel with the approval of the City of Ft. Lauderdale will paint a Mural on the Pedestrian A1A Overpass at 321. N Ft. Lauderdale Beach Blvd. in Ft. Lauderdale, FL 33304

II. PROJECT PLANS

The Agency is authorized to install the Project in accordance with the attached plans prepared by Ruben Ubiera & Urban Pop Soul, Inc., Architect, P.E./R.L.A./Architect and dated 4/3/2019. Any revisions to these plans must be approved by the Department in writing.

Westin Hotel

“A1A Pedestrian Bridge Mural” loose sketch concepts

A Ruben Ubiera/Urban Pop Soul presentation 4 | 3 | 19



Surreal Beauty

Contrast in color, art & design

How can we create a mural that fits in the area, creates awe, adds life and color to the atmosphere, and be seen as an opportunity for a picture? - And lets not forget: it must allow itself to grow into something bigger that can take over the bridge/walkway for what could possibly be a larger mural.

Betta fish and Hibiscus was my solution.

A bright and happy color palette will be used for the background, hinting the idea of everything that Florida – and in this case, the Westin Hotel – is all about: color, life and fun in the sun.



ART IS FPO - NOT FINAL ART

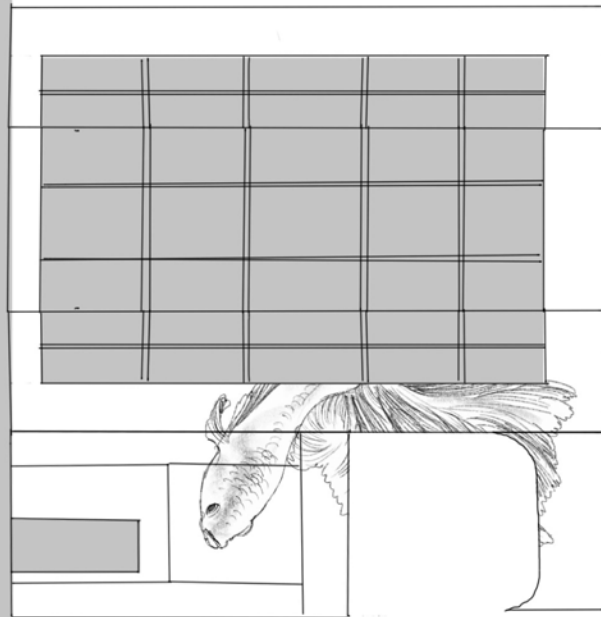
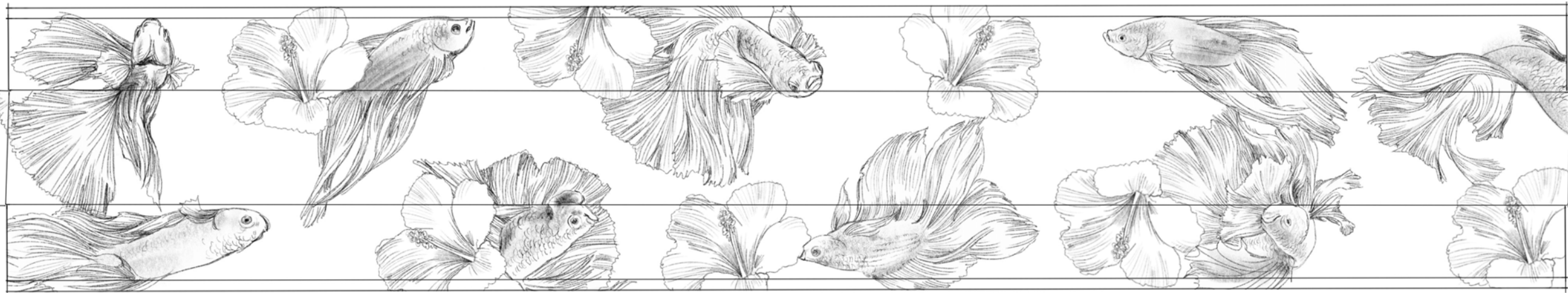
FLOWER AND FISH REFERENCES



FLOWER AND FISH REFERENCES

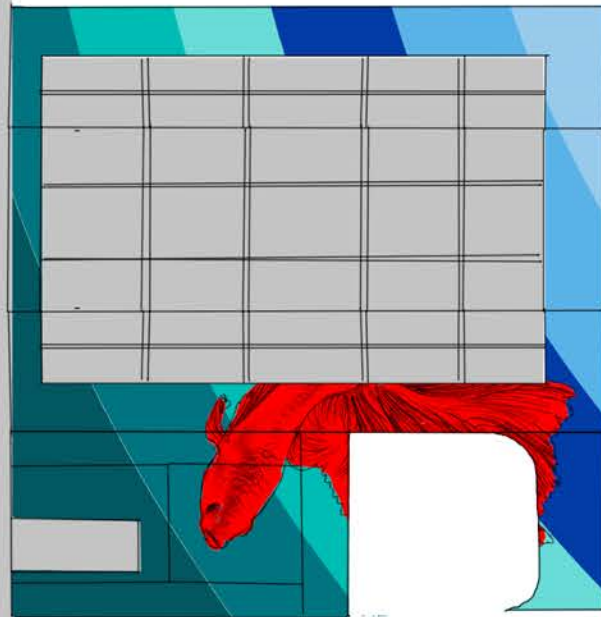
ART IS FPO - NOT FINAL ART

OPTION "A" - BLACK AND WHITE SKETCH



MAIN ARTWORK LOOSE SKETCH SAMPLE
ART IS FPO - NOT FINAL ART

OPTION "A" - COLORIZED SKETCH



MAIN ARTWORK LOOSE SKETCH SAMPLE
ART IS FPO - NOT FINAL ART

NORTH FACE



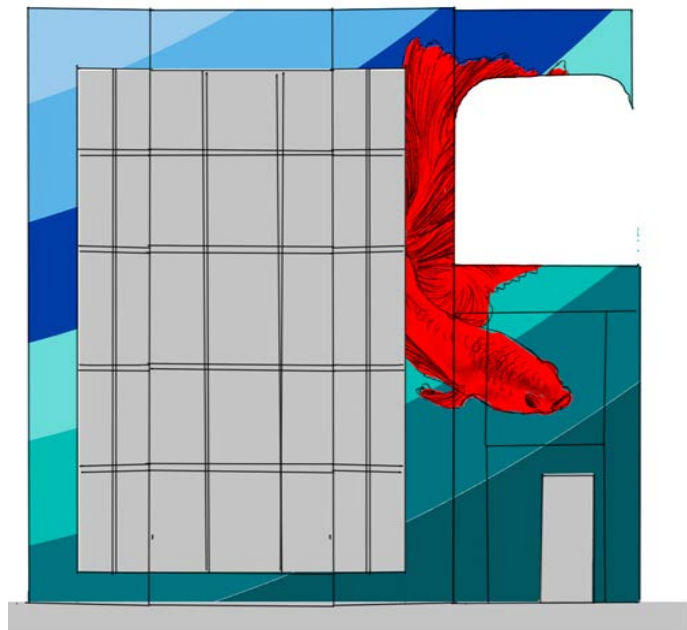
BOTTOM FACE



SOUTH FACE



TOWER



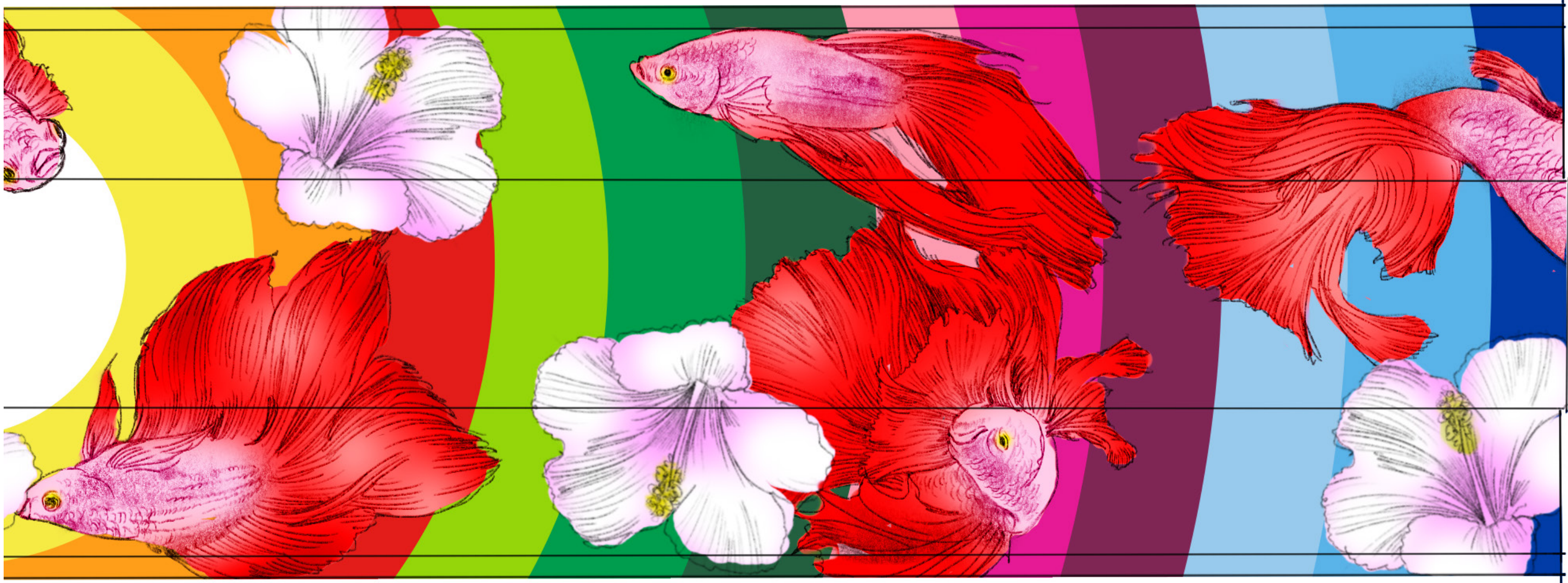
MAIN ARTWORK LOOSE SKETCH SAMPLE
ART IS FPO - NOT FINAL ART

OPTION "A" - ARTWORK CLOSE-UP



MAIN ARTWORK LOOSE SKETCH SAMPLE ART IS FPO - NOT FINAL ART

OPTION "A" - ARTWORK CLOSE-UP



MAIN ARTWORK LOOSE SKETCH SAMPLE ART IS FPO - NOT FINAL ART



PEDESTRIAN CROSSWALK



WITH THESE REFERENCES
AND CONCEPT, THE
POSSIBILITIES ARE ENDLESS.
IT WILL LEND ITSELF TO BE
AN EVEN MORE ICONIC
LANDMARK IN THE AREA.

**MAIN ARTWORK LOOSE
SKETCH SAMPLE | ART IS
FPO - NOT FINAL ART**

URBAN POP SOUL | Westin Hotel "A1A Pedestrian Bridge Mural"

ESTIMATE: Creative fee + materials

PAINT PAINT (Primer/base - Golden Brand) 18 gallons @ 150 = \$2,700

PAINT (Aerosol - Kobra & Montana 94 brand)500 cans @ \$6.50/can = \$3,250

PAINT (Acrylic - Golden Brand) 14 different colors x 2 = 28 gallons @ \$150 gallon = \$4,200

CREATIVE FEE & EXECUTION \$4,000 @ day x 24 days = \$96,000 *

This includes 4 team members in addition to the artist

TOTAL..... \$106,150

Aerial Work Platforms and Permits are not included in this price.

Required Aerial Work Platforms: Two (2) 30-35' Rough Terrain Scissor Lifts and One (1) 40' Articulating Manlift Narrow w/ Jib

*(excluding inclement weather and acts of God)

Section No. 86050

CAFA No. 2019-M-491-00007

EXHIBIT "B"

SPECIAL PROVISIONS

- During construction, highest priority should be given to ensure pedestrian safety. If permission is granted to temporarily close a sidewalk, it should be done with the express condition that an alternate route will be provided and shall continuously maintain pedestrian features to meet Americans with Disability Act (ADA) standards.
- A copy of this permit and plan will be on the job site at all times during the construction of this facility.
- No amendment will be effective unless reduced to writing and approved and executed by the City Manager of the City of Fort Lauderdale and an authorized officer of the Department or his/her designee.

Section No. 86050 CAFA No. 2019-M-491-00007

EXHIBIT "C"

TERMS AND CONDITIONS FOR INSTALLATION OF THE PROJECT

- All maintenance of traffic (MOT) will be in accordance with the Department's current edition of the Design Standards, (102-600 series). The Operations Engineer or his designee reserves the right to direct the removal/relocation/modification of any traffic device(s) at the Permittee's sole expense.

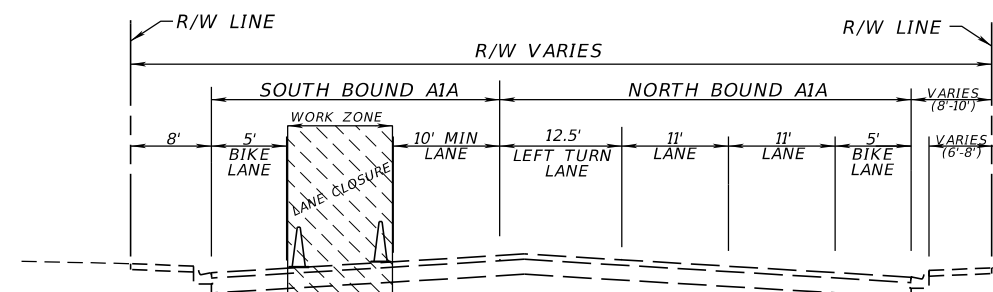
TRAFFIC CONTROL PLAN - GENERAL NOTES

1. THE MAINTENANCE OF TRAFFIC FOR THIS PROJECT SHALL BE IN ACCORDANCE WITH THE FDOT, FY 2019-2020 STANDARD PLANS (102-600 SERIES), FDOT JANUARY 2019 STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION AND THE MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (PART IV) 2009 WITH REVISIONS 1 & 2, MAY 2012 AS A MINIMUM CRITERIA.
2. WRITTEN NOTIFICATION TO THE FDOT DISTRICT 4 TRAFFIC OPERATIONS DEPARTMENT OF PROPOSED LANE CLOSURE OR TEMPORARY DETOURS SHALL BE ACCOMPLISHED 30 WORKING DAYS IN ADVANCE OF CLOSURE OR DETOUR. TWO WEEKS BEFORE LANES CLOSURES, THE CONTRACTOR SHALL THEN CONTACT

FLORIDA DEPARTMENT OF TRANSPORTATION, DISTRICT 4
3400 COMMERCIAL BLVD, FORT LAUDERDALE, FL 33309
(954) 777 4100
3. LANE CLOSING SHALL BE COORDINATED WITH SPECIAL EVENTS AND HOLIDAYS WHICH WOULD IMPACT TRAFFIC FLOW.
4. THE PROVISIONS FOR TRAFFIC DISRUPTIONS WHICH ARE NOT ANTICIPATED IN THE REFERENCED STANDARD INDEX, BUT WHICH ARE NECESSARY TO CONSTRUCT THE PROJECT, SHALL BE SUBMITTED IN WRITING TO THE ENGINEER AND APPROVAL SHALL BE OBTAINED 30 DAYS PRIOR TO THE CALCULATIONS, AND OTHER DATA REQUIRED BY THE ENGINEER.
5. THE CONTRACTOR SHALL COORDINATE ALL TEMPORARY DRIVEWAY AND SIDE STREET CLOSURE WITH BUSINESS AND PROPERTY OWNERS. ACCESS TO ADJACENT PROPERTIES SHALL BE MAINTAINED AT ALL TIMES.
6. WORK HOURS ARE FROM 9:00 PM TO 9:00 AM SUNDAY NIGHT TO THURSDAY NIGHT. THE CONTRACTOR MUST RECEIVE WRITTEN PERMISSION FROM FDOT D4 AND PROVIDE AN APPROVED MOT PLAN BEFORE ANY LANE CLOSURES OCCURRED.
7. PLACE SIGNS, BARRICADES, AND OTHER TRAFFIC CONTROL DEVICES NECESSARY TO MAINTAIN TRAFFIC IN ACCORDANCE WITH STANDARD PLANS INDEX 102-600, 102-611, 102-612, 102-613, 102-614, 102-616, AND 102-660. CLOSE LANE, PAINT BRIDGE SEGMENT ABOVE THE CLOSED LANE.
8. POSTED SPEED LIMIT 30 MPH.

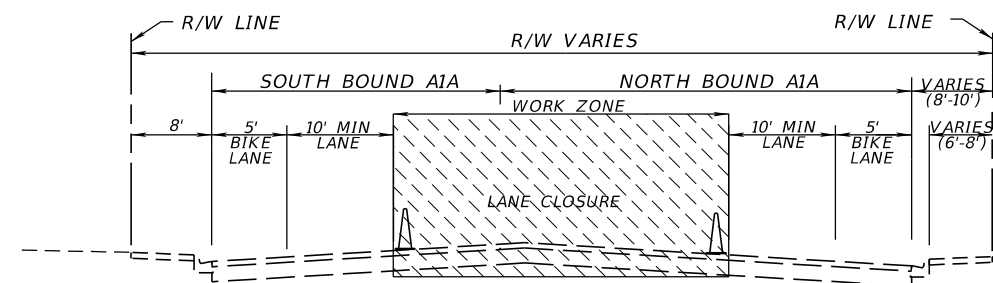
SCOPE OF WORK

PAINT EXISTING PEDESTRIAN BRIDGE ON A1A, SOUTH OF SUNRISE BLVD., NORTH OF LAS OLAS BLVD, INFRONT OF WESTING HOTEL, MP. 2.544., FORT LAUDERDALE.



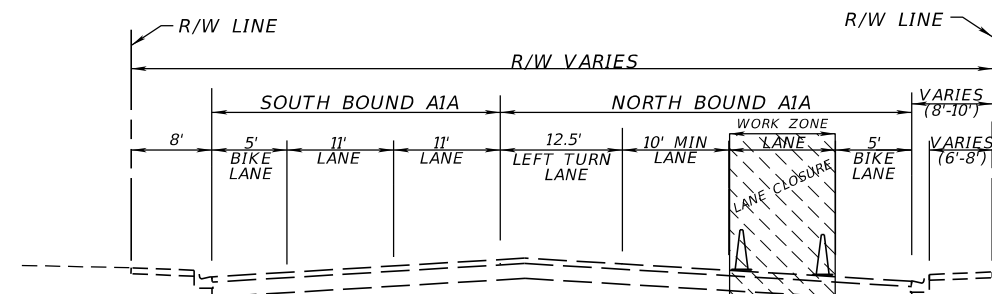
PHASE 2

1. PLACE TEMPORARY TRAFFIC CONTROL DEVICES PER INDEX 102-600, AND 102-613.
2. CLOSE SB OUTSIDE LANE.
3. PAINT BRIDGE



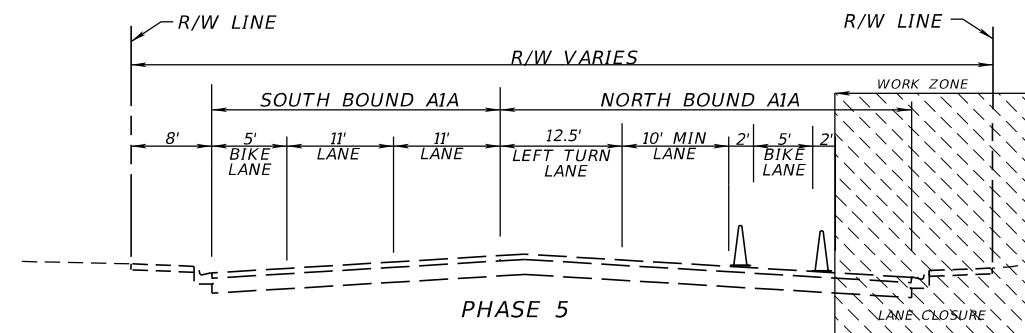
PHASE 3

1. PLACE TEMPORARY TRAFFIC CONTROL DEVICES PER INDEX 102-600, 102-613 AND 102-614.
2. CLOSE LEFT TURN LANE AND SB INSIDE LANE. SHIFT LEFT TURN LANE TO NB INSIDE LANE.
3. PAINT BRIDGE.



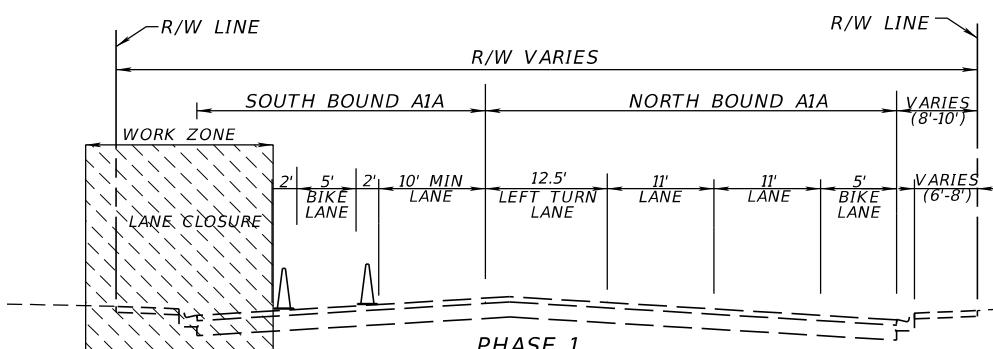
PHASE 4

1. PLACE TEMPORARY TRAFFIC CONTROL DEVICES PER INDEX 102-600, AND 102-613.
2. CLOSE NB OUTSIDE LANE.
3. PAINT BRIDGE.



PHASE 5

1. PLACE TEMPORARY TRAFFIC CONTROL DEVICES PER INDEX 102-600, 102-611, 102-612, AND 102-660.
2. CLOSE SIDEWALK AND NB OUTSIDE LANE. SHIFT BICYCLE LANE TO LEFT.
3. PAINT BRIDGE.



PHASE 1

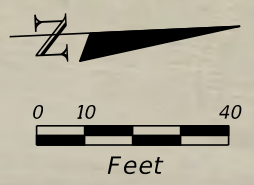
1. PLACE TEMPORARY TRAFFIC CONTROL DEVICES PER INDEX 102-600, 102-611, 102-612, AND 102-660.
2. CLOSE SIDEWALK AND SB OUTSIDE LANE. SHIFT BICYCLE LANE TO RIGHT.
3. PAINT BRIDGE

REVISIONS				ENGINEER OF RECORD: S. MARK KLINE, P.E. #44016 KCI TECHNOLOGIES, INC. 6500 NORTH ANDREWS AVENUE FORT LAUDERDALE, FLORIDA 33309-2132 (954)776-1616 CERTIFICATE OF AUTHORIZATION NO. 4898	ROAD NO. COUNTY FINANCIAL PROJECT ID			TRAFFIC CONTROL PLAN / GENERAL NOTES	SHEET NO. 1
DATE	DESCRIPTION	DATE	DESCRIPTION		SR A1A	BROWARD	NA		



PERMIT NO. 2019-C-491-00007

SCOPE OF WORK:
 PAINT EXISTING PEDESTRIAN BRIDGE ON AIA,
 SOUTH OF SUNRISE BLVD., NORTH OF LAS OLAS
 BLVD, INFRONT OF WESTING HOTEL, MP. 2.544.,
 FORT LAUDERDALE.



REVISIONS		DESCRIPTION		ENGINEER OF RECORD: S. MARK KLINE, P.E. #44016			PROJECT LOCATION	SHEET NO.
DATE	DESCRIPTION	DATE	DESCRIPTION	ROAD NO.	COUNTY	FINANCIAL PROJECT ID		
				SR AIA	BROWARD	NA	2	

KCI TECHNOLOGIES, INC.
 6500 NORTH ANDREWS AVENUE
 FORT LAUDERDALE, FLORIDA 33309-2132
 (954)776-1616
 CERTIFICATE OF AUTHORIZATION NO. 4898

Section No. 86050 CAFA No. 2019-M-491-00007

EXHIBIT "D"

AGENCY RESOLUTION

See the Attachment

RESOLUTION NO. 19-

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE A COMMUNITY AESTHETIC FEATURE AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE PAINTING OF A MURAL ON THE PEDESTRIAN BRIDGE LOCATED AT 321 N. FORT LAUDERDALE BEACH BOULEVARD AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN ASSUMPTION OF LIABILITY AND HOLD HARMLESS AGREEMENT WITH DIAMONDROCK FL OWNER, LLC, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, DiamondRock FL Owner, LLC, is the owner of the pedestrian bridge located at 321 N. Fort Lauderdale Beach Boulevard, Fort Lauderdale, Florida; and

WHEREAS, the pedestrian bridge connects the Westin Fort Lauderdale Beach Resort on the west side of State Road A1A ("A1A") to the beach on the east side of A1A; and

WHEREAS, DiamondRock FL Owner, LLC, wishes to have a mural painted on the pedestrian bridge; and

WHEREAS, because the pedestrian bridge is located over A1A, a Florida Department of Transportation ("FDOT") right-of-way, the painting of the mural must be authorized by FDOT; and

WHEREAS, FDOT requires that the City enter into a Community Aesthetic Feature Agreement to permit the design, painting, and maintenance of the mural on the pedestrian bridge; and

WHEREAS, the City Commission of the City of Fort Lauderdale, wishes to approve the Community Aesthetic Feature Agreement permitting the painting of the mural on the pedestrian bridge; and

WHEREAS, the mural will be painted in accordance with the terms of the Community Aesthetic Feature Agreement; and

WHEREAS, the City of Fort Lauderdale and DiamondRock FL Owner, LLC have agreed to enter into an Assumption of Liability and Hold Harmless Agreement which passes all of the City's responsibilities and liabilities under the Community Aesthetic Feature Agreement to DiamondRock FL Owner, LLC and DiamondRock FL Owner, LLC agrees to

assume and hold the City harmless from any obligations under the Community Aesthetic Feature Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That the City Manager of the City of Fort Lauderdale, Florida, is hereby authorized to negotiate any necessary additional terms and conditions, and execute the Community Aesthetic Feature Agreement between the City of Fort Lauderdale, Florida and the Florida Department of Transportation for the painting of a mural on the pedestrian bridge located at 321 N. Fort Lauderdale Beach Boulevard over State Road A1A in substantially the form attached hereto as Exhibit "A" and incorporated herein by reference.

SECTION 2. That the City Manager of the City of Fort Lauderdale, Florida, is hereby authorized to execute an Assumption of Liability and Hold Harmless Agreement between the City of Fort Lauderdale, Florida and DiamondRock FL Owner, LLC, wherein DiamondRock FL Owner, LLC agrees to assume all of the City's responsibilities and liabilities under the Community Aesthetic Feature Agreement and hold the City of Fort Lauderdale harmless from any obligations under the Community Aesthetic Feature Agreement.

SECTION 3. The Office of the City Attorney shall review and approve as to form all documents prior to their execution by City officials.

SECTION 4. That this Resolution shall be in full force and effect upon final passage and adoption.

ADOPTED this the ____ day of _____, 2019.

Mayor
DEAN J. TRANTALIS

ATTEST:

City Clerk
JEFFREY A. MODARELLI

Section No. 86050 CAFA No. 2019-M-491-00007

EXHIBIT "E"

NOTICE OF COMPLETION AND RESPONSIBLE PROFESSIONAL'S
CERTIFICATE OF COMPLIANCE

NOTICE OF COMPLETION

COMMUNITY AESTHETIC FEATURE AGREEMENT
Between
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and The City of Ft. Lauderdale

PROJECT DESCRIPTION: _____

In accordance with the Terms and Conditions of the Community Aesthetic Feature Agreement, the undersigned provides notification that the work authorized by this Agreement is complete as of _____, 20_____.

By: _____

Name: _____

Title: _____

RESPONSIBLE PROFESSIONAL'S CERTIFICATION OF COMPLIANCE

In accordance with the Terms and Conditions of the Community Aesthetic Feature Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification, the Agency shall furnish the Department a set of "as-built" plans certified by the Engineer of Record.

By: _____

SEAL:

Name: _____

Date: _____

JAROD CONSTRUCTION SERVICES, INC.

7305 SW 148 CT, Miami, Florida 33193
Tel: 1305 343 1164 Fax: 1305 595 9020
info@jarodconstruction.com

PROPOSAL

Date: 10/3/2019
To: MIGUEL ROVIRA Director of Engineering
Company: Westin Hotel Ft. Lauderdale
Project: EXTERIOR 3rd floor over road connecting bridge paint
Location: 321 N. Ft. Lauderdale Beach Blvd. Fort Lauderdale, Florida
Description:

Work Description

Description
Clean all surface to be painted to remove all dirt and mildew
Fill all cracks and gaps with exterior caulking where required
Paint the complete exterior walls with Sherwin Williams prime and paint
No metal frames paint included
No permit and MOT fees included
General clean up

CONTRACT AMOUNT: \$ 9,975.00

1. Scope of Work. Contractor agrees to furnish all labor, services, installation, supplies, insurance, equipment, tools and other facilities required for the prompt and efficient execution of the work described herein in a professional and workmanlike manner.

2. Quote Amount. Owner agrees to pay Contractor for the strict performance of his work, the sum as indicated above subject to additions and deductions for changes in the scope of work as may be subsequently agreed upon.

3. Payment Schedule. Owner agrees to pay Contractor in progress payments as follows:

Payment #1: Upon Contract	\$	4,987.50
Payment #2: Upon Completion	\$	4,987.50

4. Westin Hotel will provide access to working area, storage room for materials & tools, including parking access for contractors laborers.

5. Work Schedule. Contractor shall complete the work as required by the work schedule prepared by the Contractor, which is agreed to be no more than:

4 DAYS

6. Scope of work not included: Any work not described above.

7. Permit fees and/or Architectural/Engineered drawings fees if needed are the responsibility of owner. This will require a Change order.

8. Any additional scope not included in submitted plans for estimate, will require a change order.

Accepted by: Oscar Jaramillo, President
Jarod Construction Services, INC.
License No.: CGC: 151 2463
Date _____

Accepted By: MIGUEL ROVIRA Director of Engineering
Westin Hotel Ft. Lauderdale
Date _____