

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
COMMUNITY AESTHETIC FEATURE AGREEMENT

825-010-10
ROADWAY DESIGN
OSC - 12/12
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This Community Aesthetic Feature Agreement ("Agreement") is entered into this 11th day of January 2017, between the State of Florida, Department of Transportation ("FDOT") and City of Fort Lauderdale ("Agency"). FDOT 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 FDOT to install a **[CHOOSE ONE: ☐Public Art – Standalone, ☐Public Art – Add On/affixed, ☒Local Identification Marker – Standalone, ☐Local Identification Marker – Add On/affixed]** community aesthetic feature on that certain right-of-way owned by FDOT which is located in the center island medians at eleven(11)City wide locations Fort Lauderdale in Broward County, Florida ("Project").
- B. FDOT 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 the 25th anniversary of this agreement, 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, FDOT 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 – Standalone, ☐Public Art – Add On/affixed, ☒Local Identification Marker – Standalone, ☐Local Identification Marker – Add On/affixed]**, 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". FDOT 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 FDOT's right-of-way where the Project is located does not vest any property right, title, or interest in or to the Agency for FDOT'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 FDOT's 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 FDOT 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 FDOT 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. Six (6) copies of the design plans shall be provided to FDOT's District Design Engineer at 3400 West Commercial Blvd, Ft Lauderdale, FL 33309. FDOT will review the plans for conformance to FDOT's requirements and feasibility. FDOT's 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, FDOT signifies only that such plans and improvements satisfies FDOT's requirements, and FDOT 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. FDOT's review of the plans does not relieve the Agency, its consultants or

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contractors of any professional or other liability for the plans. All changes required by FDOT shall be made by the Agency and final corrected plans shall be provided to FDOT 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 FDOT 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 FDOT's Construction Project Manager, **Vikrant Srivastava**, at **(954) 776-4300** or from an appointed designee.
- f. The Agency is authorized, subject to the conditions in this Agreement, to enter FDOT'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 FDOT's right-of-way nor the placing of facilities upon FDOT'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 FDOT 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 FDOT right-of-way.
- g. FDOT 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 FDOT determines that a condition exists which threatens the public's safety, FDOT 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, FDOT 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 FDOT a minimum of forty eight (48) hours before beginning the Project within FDOT right-of-way. The Agency shall notify FDOT should installation be suspended for more than five (5) working days.
- j. Upon completion of the Project, the Agency shall notify FDOT 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

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limited to, all of the Agency or its contractor's/ subcontractor's/ consultant's/ sub-consultant's property, machinery, and equipment from FDOT right-of-way and shall restore those portions of FDOT 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 FDOT determines that the Project is not completed in accordance with the provisions of this Agreement, FDOT shall deliver written notification to the Agency. The Agency shall have thirty (30) days from the date of receipt of FDOT's written notice to complete the Project and provide FDOT 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, FDOT may: 1) provide the Agency with written authorization granting additional time as FDOT deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Agency's sole cost and expense, without FDOT liability to the Agency for any resulting loss or damage to property, including but not limited to machinery and equipment. If FDOT elects to correct the deficiency(ies), FDOT shall provide the Agency with an invoice for the costs incurred by FDOT 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:
- m. Inspect all sign surfaces every six (6) months for excessive deterioration; Inspect Structural Components yearly; Inspect Sign Lighting every six (6) months; Conduct Vegetation Control quarterly; maintenance and routine repair of structural features of the aluminum cabinets, affixed letters, and all mechanical and electrical systems including, but not limited to, periodic touchup of all steel and aluminum surfaces, replacement of damaged or missing cast stone travertine cladding and/or aluminum and steel members, graffiti removal, pressure washing and electrical/mechanical periodic inspections and repairs.
- n. 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 \$ _____.
- o. FDOT reserves its right to cause the Agency to relocate or remove the Project, in FDOT'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 sub-consultants, who perform work in connection with this Agreement:

"The contractor/ subcontractor/ consultant/ sub-consultant 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/ sub-consultant, its officers, agents or employees."

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- b. The Agency shall carry or cause its contractor/ subcontractor/ consultant/ sub-consultant 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/sub-consultant shall cause FDOT to be an additional insured party on the policy or policies, and shall provide FDOT 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 FDOT's Standard Specifications for Road and Bridge Construction (2010), as amended.
- c. The Agency shall also carry or cause its contractor/ subcontractor/ consultant/ sub-consultant 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 FORT LAUDERDALE, FLORIDA

Thomas White, ASLA-ISA, Project Manager II

100 North Andrews Avenue, 5th Floor

Fort Lauderdale, FL 33301

Phone: 954-828-5350

Fax: 954-828-5070

7. **TERMINATION OF AGREEMENT.** FDOT 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 FDOT pursuant to this Paragraph 7.

8. **LEGAL REQUIREMENTS.**

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- 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 FDOT.
- d. The Agency and FDOT agree that the Agency, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of FDOT as a result of this Agreement.
- e. The Agency shall not cause any liens or encumbrances to attach to any portion of FDOT 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. FDOT 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.

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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 FDOT. Any assignment, sublicense, or transfer occurring without the required prior written approval of FDOT will be null and void. FDOT 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 FDOT 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 FDOT or his/her delegate.

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

The remainder of this page is intentionally left blank.

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AGENCY

City of Fort Lauderdale

By: _____

Print Name: John P. "Jack" Seiler

Title: Mayor

As approved by the Council, Board, or

Commission on: _____

Attest: _____

Legal Review:

City or County Attorney

FDOT

State of Florida, Department of Transportation

By: _____

Print Name: Stacy Miller, PE

Title: Director of Development

Date: _____

Legal Review:

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EXHIBIT "A"

PROJECT DESCRIPTION

I. SCOPE OF SERVICES

This project is for the construction of entryway signs announcing welcome to Fort Lauderdale. The work includes, but is not limited to, construction of the breakaway foundation for the signs, fabrication, and installation of the signs at the locations as designated on the drawings. The contractor shall engage a professional engineer to provide the City with the shop drawings for the breakaway foundation and fabrication for both the 3' and 7' wide signs.

II. PROJECT PLANS

The Agency is authorized to install the Project in accordance with the attached plans prepared by Thomas White, RLA, and dated 1/18/2016. Any revisions to these plans must be approved by FDOT in writing.

7' WIDE SIGN LOCATIONS				
Sign S=State	Jurisdiction	Location	Median Width FC to FC (Face of Curb)	Design Speed In MPH
S7-01	State	6550 North Federal Hwy	15-8	45
S7-02	State	Oakland Park Blvd Just East of Federal Highway	15-2	35
S7-03	State	Existing Sign Location at SR 84 Due East of SW 15th Avenue	9-3' to Sign	45
3' WIDE SIGN LOCATIONS				
Sign S=State	Jurisdiction	Location	Median Width FC to FC (Face of Curb)	Design Speed In MPH
S3-01	State	Commercial Blvd at NE 17th Avenue	12-11'	35
S3-02	State	Commercial Blvd and Dupont	6 ROW to Sign	35
S3-03	State	4300 North A1A - South of Flamingo Avenue	13-10'	35
S3-04	State	Powerline in Front of Mills Pond Park - South Side of Bridge	13-6'	40
S3-05	State	Broward Blvd East of State Road 7 / SW&NW 38th Avenue	12-4'	35
S3-06	State	Davie Blvd East of State Road 7	13-2'	40
S3-07	State	Broward Blvd and SW 15th Terrace	12-9'	40
S3-08	State	Commercial Blvd East of West Prospect Road	13-9'	45

SIGN ID	STATE ROAD	SECTION	MP	ATMS Infrastructure
S7-01	US-1	86020	7.20	No
S7-02	816	86090	8.72	Yes
S7-03	84	86080	18.18	No
S3-01	870	86014	8.16	No
S3-02	870	86014	9.45	No
S3-03	A1A	86050	6.41	No
S3-04	845	86065	1.30	No
S3-05	842	86006	3.36	Yes
S3-06	736	86210	0.02	No
S3-07	842	86006	5.60	Yes
S3-08	870	86014	5.07	No

Note: Contractor please see the ATMS Note on EXHIBIT "B" the Special Provisions Page.

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EXHIBIT "B"

SPECIAL PROVISIONS

- A copy of this permit and plan will be on the job site at all times during the construction of this facility.

ATMS:

- Special care should be taken when digging within the Right-of-Way of the State Roads highlighted on Figure 1. Buried Advanced Traffic Management System (ATMS) Fiber Optic cable and/or components may be encountered.
- ATMS components include, but are not limited to: Telecommunications, Camera System, Vehicle Detection System, Fiber optic cable, Dynamic Message System, and Power Systems.
- **Restoration of any damaged ITS components must be completed within 48 hours or the Department may elect to repair the damage and bill the party responsible for the damage.**
- Damaged fiber optic cable may be temporarily fusion spliced within the allowable time to restore the communications; however, the Contractor shall replace any damaged fiber optic cable from termination point to termination point.
- When working along the highlighted State Roads please call for Locates before digging.
 - For Locates Please Contact: Chris Beaudry at 954-847-2784 or Cbeaudry@smartsunguide.com
- When working along the highlighted State Roads please call 48 hours before work begins to inform the ITS operator of your proposed location.
 - For the ITS Operator Please Contact: Shayla Khalilahmadi at 954-296-3691 or khalilahmadis@pbworld.com

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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, (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.

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EXHIBIT "D"

AGENCY RESOLUTION

N/A

