

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
JOINT PARTICIPATION AGREEMENT**

THIS Joint Participation Agreement (hereinafter referred to as "AGREEMENT"), entered into this _____ day of _____, 20____, by and between the State of Florida Department of Transportation hereinafter called the DEPARTMENT, and City of Fort Lauderdale, located at 100 N. Andrews Avenue, Fort Lauderdale, FL 33309, hereinafter referred to as the PARTICIPANT.

WITNESSETH

WHEREAS, the DEPARTMENT and the PARTICIPANT are desirous of having the PARTICIPANT to provide pedestrian lighting improvements along State Road SR-A1A in connection with Financial Management (FM) Number 424027-2-58-01 (Funded in Fiscal Year 2020/2021) for the installation of pedestrian lighting on the west side of A1A, from the north end of south beach parking lot to Sunrise Boulevard in Broward County, Florida. Refer to **Exhibit A**, Scope of Services, attached hereto and made of part hereof; and

WHEREAS, for purposes of this Agreement to provide pedestrian lighting as stated above are hereinafter referred to as the Project; and

WHEREAS, the Project is in the interest of both the PARTICIPANT and the DEPARTMENT and it would be more practical, expeditious, and economical for the PARTICIPANT to perform such activities; and

WHEREAS, the PARTICIPANT by Resolution No. _____ adopted _____ on _____, 20____, a copy of which is attached hereto and made a part hereof, authorizes the proper officials to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the Project, the parties agree to the following:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. The PARTICIPANT shall be responsible for assuring that the Project complies with all applicable Federal, State and Local laws, rules, regulations, guidelines and standards. The PARTICIPANT shall also be responsible for the administration and overall coordination required for the Project.
3. The DEPARTMENT agrees to make all previous studies, maps, drawings, surveys and other data, and information pertaining to the Project available to the PARTICIPANT at no extra cost.

4. The PARTICIPANT shall have the sole responsibility for resolving claims and requests for additional work for the Project. The PARTICIPANT will make best efforts to obtain the DEPARTMENT's input in its decisions.
5. The PARTICIPANT shall furnish Construction Engineering Inspection (CEI) Services for the Project as its sole cost and expense.

The CEI services will be provided by hiring a DEPARTMENT prequalified consultant firm including one individual that has completed the Advanced Maintenance of Traffic Advanced Level Training. The CEI staff shall be present on the Project at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida licensed Professional Engineer. The DEPARTMENT shall approve all CEI personnel in writing. The PARTICIPANT is hereby precluded from hiring the same consulting firm providing design services.
6. Except as otherwise set forth herein, this Agreement shall continue in effect and be binding to both the PARTICIPANT and the DEPARTMENT until the Project is completed as evidenced by the written acceptance of the DEPARTMENT or December 30, 2022, whichever occurs first.
7. The DEPARTMENT agrees to pay the PARTICIPANT for services related to the Project as described in **Exhibit A**. The total DEPARTMENT's share towards this Project is an amount not to exceed ONE MILLION FIVE HUNDRED SIXTY EIGHT THOUSAND SIX HUNDRED TWENTY ONE DOLLARS AND NO CENTS (\$1,568,621.00) for actual costs incurred as detailed in monthly progress reports. In the event the actual cost of the Project exceeds the DEPARTMENT's participation of ONE MILLION FIVE HUNDRED SIXTY EIGHT THOUSAND SIX HUNDRED TWENTY ONE DOLLARS AND NO CENTS (\$1,568,621.00), any additional cost shall be the sole responsibility of the PARTICIPANT.
8. The PARTICIPANT acknowledges and agrees that the DEPARTMENT'S obligation to pay the sum set forth herein is contingent upon an annual appropriation by the Florida Legislature.
9. In the event the Project costs or Project modifications increase or exceed the amount authorized in paragraph 7, the DEPARTMENT and the PARTICIPANT shall meet and attempt to mutually agree to the amount and distribution of the additional funding needed to complete the Project. Any funding increase or modifications to the Project shall be added by means of an amendment to the Agreement to be signed by both parties before work is undertaken. However, in the event the PARTICIPANT and the DEPARTMENT fail to negotiate an amendment for any reason whatsoever, then the increase in the Project costs will be the sole responsibility of the PARTICIPANT.
10. The PARTICIPANT shall provide the following quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The

deliverables for the Project No. 424027-2-58-01 are shown in **Exhibit B**. Deliverables, attached hereto and a made apart hereof. The PARTICIPANT will need written approval from the DEPARTMENT, if deviating from the Deliverables set forth in **Exhibit B**.

11. The PARTICIPANT shall be responsible for the perpetual maintenance of the Project. The PARTICIPANT shall comply with the provisions set forth in the Maintenance Memorandum of Agreement (MMOA), which is attached hereto and made a part hereof as **Exhibit C**. The terms of this paragraph shall survive the termination of this Agreement.
12. The PARTICIPANT will be reimbursed, only for actual expenses incurred during the Agreement time period that are directly related to the Project as set forth in this Agreement. The PARTICIPANT will submit written progress report by the 15th day of the Quarter attesting to the actual services performed. Upon completion, the PARTICIPANT will notify the DEPARTMENT's Project Manager or designee and CEI, who will be responsible for verifying and accepting the services contemplated in this Agreement.
13. Invoices shall be submitted by the PARTICIPANT, in detail sufficient for proper pre audit and post audit thereof, based on the quantifiable, measurable, and verifiable units of deliverables as established in **Exhibit B**. Deliverables must be received and accepted in writing by the PARTICIPANT's Project Manager prior to payments.
14. Supporting documentation must establish that the deliverables were received and accepted in writing by the PARTICIPANT and that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in **Exhibit A**, has been met.
15. There shall be no reimbursement for travel expenses under this Agreement.
16. The PARTICIPANT must submit the final invoice to the DEPARTMENT within 180 days after the final acceptance of the Project. Invoices submitted after the 180 day time period may not be paid. The final balance due under this Agreement will be paid upon the completion of all Project services and receipt of final cost documentation and proper submission of a detailed invoice and when the Project has been inspected, approved, and accepted to the satisfaction of the DEPARTMENT in writing. The final invoice shall be accompanied by a Notice of Completion/Acceptance Form, **Exhibit D**, attached hereto and made a part hereof.
17. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under **Chapters 215 and 216, F.S.** If the DEPARTMENT determines that the performance of the PARTICIPANT is unsatisfactory, the DEPARTMENT shall notify the PARTICIPANT of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the DEPARTMENT. The PARTICIPANT shall,

within five days after notice from the DEPARTMENT, provide the DEPARTMENT with a corrective action plan describing how the PARTICIPANT will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the DEPARTMENT, the PARTICIPANT shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the PARTICIPANT resolves the deficiency. If the deficiency is subsequently resolved, the PARTICIPANT may bill the DEPARTMENT for the retained amount during the next billing period. If the PARTICIPANT is unable to resolve the deficiency, the funds retained may be forfeited at the end of the Agreement's term.

18. The PARTICIPANT agrees to comply with Section **20.055(5), F.S.**, and to incorporate in all subcontracts the obligation to comply with **Section 20.055(5), F.S.**
19. The PARTICIPANT providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt of an invoice from the PARTICIPANT, the DEPARTMENT has five (5) business days to inspect and approve the goods and services where business day is defined as any day of the week excluding Saturday, Sunday and any legal holiday as designated in Section 110.117, Florida Statutes. The DEPARTMENT has twenty (20) calendar days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) calendar days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
20. If payment is not available within forty (40) calendar days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the PARTICIPANT. Interest penalties of less than one (1) dollar will not be enforced, unless the PARTICIPANT requests payment. Invoices that have to be returned to the PARTICIPANT because of PARTICIPANT preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.
21. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
22. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred includes the PARTICIPANT's general accounting records and the Project records, together with supporting documents

and records, of the contractor and all subcontractors performing work on the Project, and all other records of the contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.

23. In the event this contract is for services in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the department that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year."

24. The PARTICIPANT will comply with all Federal, State, and Local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under the Agreement.
25. The PARTICIPANT will comply that at the time of the competitive solicitation for the construction services, if 50 percent or more of the cost will be paid from state-appropriated funds, then the PARTICIPANT must comply with the requirements of Section 255.0991, Florida Statutes.
26. The PARTICIPANT warrants that it has not employed or obtained any company or person, other than bona fide employees of the PARTICIPANT, to solicit or secure this Agreement, and it has not paid or agreed to pay any company, corporation, individual or firm, other than a bona fide employee employed by the PARTICIPANT. For breach or violation of this provision, the DEPARTMENT shall have the right to terminate the Agreement without liability.
27. The PARTICIPANT agrees to include the following indemnification in all contracts with contractors/sub-contractors, and consultants/sub-consultants who perform work in connection with this Agreement:

To the fullest extent permitted by law the PARTICIPANT's contractor shall indemnify and hold harmless the PARTICIPANT, the DEPARTMENT, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to,

reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of the contractor and persons employed or utilized by contractor in performance of this Agreement.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the DEPARTMENT's and the PARTICIPANT's sovereign immunity.

To the fullest extent permitted by law the PARTICIPANT's consultant shall indemnify and hold harmless the PARTICIPANT, the DEPARTMENT, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused, in whole or in part, by the professional negligence, error or omission, recklessness, or intentional wrongful conduct of the consultant and persons employed or utilized by the consultant in performance of this Agreement.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the DEPARTMENT's and the PARTICIPANT's sovereign immunity.

28. The PARTICIPANT / Vendor/ Contractor:

- a. shall utilize the U.S. Department of Homeland Security's E-verify system to verify the employment eligibility of all new employees hired by the PARTICIPANT/Vendor/Contractor during the term of the contract; and
- b. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

29. In the event it becomes necessary for the DEPARTMENT or PARTICIPANT to institute suit for the enforcement of the provisions of this Agreement, each party shall be responsible to pay their own attorney fees and court costs. Venue with respect to any such litigation shall be in Broward County.

30. This Agreement is governed by and construed in accordance with the laws of the State of Florida.

31. This Agreement and any interest herein shall not be assigned, transferred or otherwise encumbered by the PARTICIPANT under any circumstances without the prior written consent of the DEPARTMENT. However, this Agreement shall run to the DEPARTMENT and its successors.

32. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings

concerning the subject matter of this agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

33. Any or all notices (except invoices) given or required under this Agreement shall be in writing and either personally delivered with receipt acknowledged or sent by certified mail, return receipt requested. All notices delivered shall be sent to the following addresses:

If to the DEPARTMENT:

Florida Department of Transportation - District Four
3400 West Commercial Blvd.
Fort Lauderdale, Florida 33309-3421
Attn: Anna Plegachova, Project Manager
With a second copy to: Norma Corredor, Contract Coordinator

If to the PARTICIPANT:

City of Fort Lauderdale
914 NW Sistrunk Boulevard, Suite 200
Fort Lauderdale, Florida 33311
Attn: Thomas Green
With A Copy to: City Attorney

*** *This page was left intentionally blank* ***

IN WITNESS WHEREOF, this Agreement is to be executed by the parties below for the purposes specified herein. Authorization has been given to enter into and execute this Agreement by Resolution No _____, hereto attached.

PARTICIPANT
ATTEST:

CITY OF FORT LAUDERDALE,
through its CITY COMMISSIONERS

Jeffrey A. Modarelli, City Clerk

BY: _____
Dean J. Trantalis, Mayor

_____ day of _____, 20____

Christopher J. Lagerbloom, ICMA-CM
City Manager

Approved as to form by Office of City
Attorney:

BY: _____
Shari C. Wallen, Assistant City Attorney

DEPARTMENT:
ATTEST:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Executive Secretary (SEAL)

BY: _____

Title: Director of Transportation Development

APPROVED:

FDOT LEGAL REVIEW:

District Program Management Administrator

BY: _____
Office of the General Counsel

EXHIBIT A
SCOPE OF SERVICES
FM # 424027-2-58-01

Along SR A1A from the north end of south beach parking lot to Sunrise Boulevard in
Section 12 of Township 50 S, Range 42 E and Township 49, Range 43 E

The Project shall consist of the installation of decorative twin pendant light fixtures to improve pedestrian lighting on the west side of the corridor, set at 1.5' from the back of curb, to allow for an unobstructed pedestrian sidewalk facility. New decorative fixtures north of Alhambra Street to Sunrise Boulevard will be installed at the back of existing sidewalk.

EXHIBIT B

DELIVERABLES

FM # 424027-2-58-01

**Installation of pedestrian lighting along SR-A1A from the north end
of south beach parking lot to Sunrise Boulevard**

The following items, listed below are the deliverables for the Project.

Pay item No.	Description	Unit	Estimated Quantity
630-2-12	CONDUIT, FURNISH & INTALL, DIRECTIONAL BORE	LF	7384
635-2-11	PULL & SPLICE BOX, F&I, 24" X 36" COVER SIZE	EA	154
715-1-12	LIGHTING CONDUCTORS, F&I, INSULATED, NO. 8-6	LF	86830
715-1-13	LIGHTING CONDUCTORS, F&I, INSULATED, NO 4 TO NO 2	LF	32708
715-518-315	LIGHT POLE COMPLETE-SPECIAL DESIGN, FURNISH & INSTALL DOUBLE ARM POLE TOP MOUNT, CONCRETE, 15'	EA	117
715-7-21	LOAD CENTER, REWORK, SECONDARY VOLTAGE	EA	11
715-11-216	LUMINAIRE, F&I-REPLACE EXISTING LUMINAIRE ON EXISTING POLE/ARM, ROADWAY, PENDANT	EA	0
715-500-1	POLE CABLE DISTRIBUTION SYSTEM, FURNISH & INSTALL, CONVENTIONAL	EA	117

CEI CLASSIFICATIONS
Sr. Project Engineer
Project Administrator
Sr. Inspector
Inspector
Inspector AIDE
Quality Control (QC) Manager

The Recipient will need written approval from the Department, if deviating from the Deliverables shown in Exhibit B.

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FM No.(s): 424027-2-58-01;
COUNTY: Broward
S.R. No.:SR-A1A at N. End of S Beach
Parking Lot to SR 838/Sunrise Blvd.
Agreement No: 20191021-01

EXHIBIT C

DISTRICT FOUR

MAINTENANCE MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this date _____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **City of Fort Lauderdale**, a municipal corporation existing under the Laws of Florida, hereinafter called the **AGENCY**.

WITNESSETH:

WHEREAS, the **DEPARTMENT** has jurisdiction over SR-A1A from Fort Lauderdale Beach Park to SR 838/Sunrise Boulevard; and

WHEREAS, the **DEPARTMENT** and **AGENCY** seeks to install and have maintained by the **AGENCY** certain highway **IMPROVEMENTS**; and

WHEREAS, as part of the continual updating of the State of Florida Highway System, the **DEPARTMENT**, for the purpose of safety, protection of the investment and other reasons, has constructed and does maintain SR-A1A from Fort Lauderdale Beach Park (M.P.) 2.650 to SR 838/Sunrise Boulevard (M.P.) 3.349 (within the limits of the **AGENCY**); and

WHEREAS, it is the intent of the **AGENCY** and the **DEPARTMENT** that the **AGENCY** shall construct and maintain the specific elements constructed under FM# **424027-2-58-01** to include decorative pedestrian lighting that will comply with sea turtle laws, rules, and regulations along SR-A1A from Fort Lauderdale Beach Park (M.P.) 2.650 to SR 838/Sunrise Boulevard (M.P.) 3.349, Section Number **86050/86180**; Project Number **424027-2-58-01**; hereinafter called **IMPROVEMENTS**; and

WHEREAS, the landscape and all other hardscape elements shall be maintained under the inclusive **AGREEMENT** with the **AGENCY** dated January 31, 2008; and

WHEREAS, the parties shall also enter into a Joint Participation Agreement (JPA) concerning the funding of these **IMPROVEMENTS**; and

WHEREAS, the Project involves the scope of work as described within **Exhibit A (Project Location, Description and Project Aerial)** and **Exhibit B (Construction Plans)**, which will benefit the **AGENCY**; and

WHEREAS, the parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party; and

WHEREAS, the **AGENCY** by Resolution Number _____ entered into this date _____, attached hereto and by this reference made a part hereof, desires to enter into this Agreement and authorizes its officers to do so;

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Parking Lot to SR 838/Sunrise Blvd.
Agreement No: 20191021-01

NOW THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. RECITALS

The recitals set forth above are true and correct and are deemed incorporated herein.

2. INSTALLATION OF FACILITIES

A. The **AGENCY** shall construct, under **Project Number** 424027-2-58-01, the **IMPROVEMENTS** as detailed in **Exhibit A (Project Location, Description and Project Aerial)** and **Exhibit B (Construction Plans)** that will benefit the **AGENCY**.

- 1) All lighting shall be installed in accordance with the Florida Fish and Wildlife Conservation Commission approved lighting plan included in Florida Department of Environmental Protection Coastal Construction Line Permit #BO-781 and any FWC – approved lighting plan amendments included in subsequent permit modifications.
- 2) All activities, including landscape **IMPROVEMENTS** installation and future maintenance operations performed on State highway right of way, must be in conformity with the most current edition of the *Manual on Uniform Traffic Control (MUTCD)* and *FDOT Traffic Control through Work Zones*.
- 3) The most current edition of Florida Design Manual (FDM) must be adhered to.
- 4) Lateral Offsets as specified in the *Florida Design Manual (FDM)* must be adhered to.
- 5) **IMPROVEMENTS** shall not obstruct roadside signs or permitted outdoor advertising signs, (see Florida Administrative Code [F.A.C.] Rule Chapter 14-10.)
- 6) The **AGENCY** shall provide the local FDOT Broward Operations Center located at 5548 NW 9th Ave, Fort Lauderdale, FL 33309, (954) 776-4300, a twenty-four (24) hour telephone number and the name of a responsible person that the **DEPARTMENT** may contact. The **AGENCY** shall notify the local maintenance office forty-eight (48) hours prior to the start of the landscape **IMPROVEMENTS**.
- 7) If there is a need to restrict the normal flow of traffic, it shall be done on non-holiday, weekday off-peak hours (9 AM to 3 PM), and the party performing such work shall give notice to the local law enforcement agency within whose jurisdiction such road is located prior to commencing work on the landscape **IMPROVEMENTS**. The

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- 8) **DEPARTMENT'S** Operation Center Public Information Officer (see telephone number in Paragraph (6)) shall also be notified.
 - 9) The **AGENCY** shall be responsible to clear all utilities within the landscape improvement limits before construction commences.
 - 10) The **AGENCY** shall follow the minimum level of maintenance guidelines as set forth in FDOT'S Rule Chapter 14-40 *Highway Beautification and Landscape Management*, in the FDOT *Guide to Roadside Mowing and Maintenance Management System*, and **Exhibit "C"**, the *Maintenance Plan* for maintenance activities for landscape **IMPROVEMENTS**.
- B. If there are any major changes to the plan(s), the **AGENCY** shall provide the modified plan(s) to the **DEPARTMENT** and the **DEPARTMENT** shall provide their approval or disapproval to the **AGENCY** within ten (10) business days. The **AGENCY** may elect to withdraw the **IMPROVEMENTS** if changes are not approved within the given time frame.

3. MAINTENANCE OF FACILITIES

- A. The **AGENCY** agrees to maintain the **IMPROVEMENTS** to be installed along SR-A1A at N End of S Beach Parking Lot to SR 838/Sunrise Blvd., Section Number 86180 beginning at Mayan Drive to Harbor Drive and State Road A1A/Ft. Lauderdale Beach Blvd/N Ocean Blvd., Section Number 86050 beginning from the intersection of Sebastian Street to NE 17 Street between mileposts (M.P.) 2.650 – 3.349 within the limits of construction. Maintenance by the **AGENCY** will include repair, restoration, and general maintenance of all decorative or non-standard features. **IMPROVEMENTS** include decorative pedestrian lighting.
- 1) The **AGENCY** agrees to maintain, at its sole cost and expense, the **IMPROVEMENTS** set forth in **Exhibit A** in compliance with any and all applicable laws which shall include, but not be limited to, laws and regulations relating to the Americans with Disabilities Act ("ADA") of 1990, as currently enacted or as may be amended from time to time.
 - 2) Only the long wavelength (greater than 560 nm), amber diodes in the amber lighting circuit shall be illuminated during marine turtle nesting season, March 12 through October 31, for as long as the pole fixtures remain in place. White diodes may only be energized between November 1 and March 1, outside sea turtle nesting season.
 - 3) The Agency shall install and manage an electronic control system that shall automatically switch the lights from white to amber on March 1 each year the fixtures remain in place.
 - 4) In the event the lights are not switched automatically upon March 1 each year, the

City will manually switch the lights from white to amber no later than March 5th.

- 5) The City shall submit confirmation in writing by March 5th each year that the lights have been switched from white to amber and shall indicate any issues related to switching the lights. The Florida Fish and Wildlife Conservation Commission (FWC) shall be notified immediately if the amber lights fail to illuminate during the marine turtle nesting season. All notifications shall be submitted in writing to marineturtle@myfwc.com
- 6) The **IMPROVEMENTS** shall be kept clean and free from trash and debris. The **IMPROVEMENTS** shall be kept free of graffiti. The **IMPROVEMENTS** shall be free of pests such as stinging insects, rodents and vermin, including removal of nests as needed.
- 7) As part of the maintenance responsibility, the **AGENCY** shall keep in good repair and replace, defective or worn out parts of the **IMPROVEMENTS**. The **AGENCY's** responsibility to keep the **IMPROVEMENTS** in good repair shall include all necessary maintenance, repair and replacement of any type or nature, including, but not limited to, maintenance, repair and replacement due to normal wear and tear, named storm event, acts of God, vandalism and accidents. The **AGENCY** shall take all necessary steps to maintain the **IMPROVEMENTS** in a manner to protect against injury to any person or property.
- 8) Subject to the above considerations for sea turtles, the **AGENCY** shall perform all activities necessary to keep the **IMPROVEMENTS** fully operating, properly functioning, with a minimum of 90% of the lights burning for any lighting type or roadway system at all times for their normal expected useful life in accordance with the original design thereof, whether necessitated by normal wear and tear, accidental or intentional damage, or acts of nature. Said maintenance shall include, but shall not be limited to, providing electrical power and paying all charges associated therewith, routine inspection and testing, preventative maintenance, emergency maintenance, replacement of any component parts of the **IMPROVEMENTS** (including the poles and any and all other component parts installed as part of the **IMPROVEMENTS**), and locating (both vertically and horizontally) the **IMPROVEMENTS**, as may be necessary.
- 9) Lighting assemblies and systems shall be maintained in such a manner as to prolong the life of the lighting fixture and prevent potential safety hazards. Lighting shall meet requirements for sea turtle nesting and hatching seasons. Lights may be required to be turned off if they fail to meet the requirements of the law or violate the Endangered Species Act or other law.
- 10) The above-named functions to be performed by the **AGENCY** may be subject to periodic inspections by the **DEPARTMENT** at the discretion of the **DEPARTMENT**. Such inspection findings will be shared with the **AGENCY** and shall be the basis of all decisions regarding, reworking relating to the maintenance obligation / function

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or **AGREEMENT** termination.

- 11) The **AGENCY** shall be solely responsible for any damages to surrounding property, real estate, vehicles, pedestrians, or other assets occurring as a result of maintenance and operation of the **IMPROVEMENTS** and shall repair such damage to the satisfaction of the **DEPARTMENT** at no expense to the **DEPARTMENT**, as per the requirements in **Exhibit C (Maintenance Plan Requirements)**.
 - 12) The **AGENCY** shall be responsible to maintain the light pole structures and electrical components. The **AGENCY** shall replace the structure if destroyed in an accident by third parties.
- B. The **AGENCY** shall indemnify the **DEPARTMENT** for any and all costs or expenses incurred by the **DEPARTMENT** for the **AGENCY's** failure to comply with all ADA Laws existing and as may be amended. Costs and expenses shall include the costs to make the facility ADA compliant, Attorney's fees and costs and any judgments. Adjacent sidewalk areas shall be accessible at all times. If sidewalk closures are needed, alternate routes shall be clearly identified, and missing sidewalk shall be restored either with permanent or temporary materials at the end of each work day.
- C. All **IMPROVEMENTS** shall at all times have a notification sign posted with the name and phone number of the department within the **AGENCY** responsible for maintenance of the **IMPROVEMENTS** so that members of the public may contact **AGENCY** regarding problems with the **IMPROVEMENTS**. The **AGENCY** shall promptly respond and correct all complaints regarding maintenance. The **IMPROVEMENTS** to be constructed with this project shall not contain advertising. Nor shall advertising be placed upon them by any party in the future.
- D. It is understood and agreed by the parties that upon "final acceptance" (as that term is described in the Standard Specifications for Roadway and Bridge Construction, as amended by contract documents section 5-11) by the **DEPARTMENT** of the Project and Notice thereof to the **AGENCY**, the **AGENCY** shall be responsible for maintenance of the Project in accordance with the following Federally and State accepted standards (current editions at the time of execution of this **AGREEMENT** and any amendments hereafter) and all costs related thereto: (a) FDOT Design Manual (FDM), (b) Florida Green Book, (c) Standard Specifications for Roadway and Bridge Construction, (d) FDOT Standard Plans and (e) Manual on Uniform Traffic Control Devices (MUTCD).
- E. If it becomes necessary to provide utilities (water/electricity) to these **IMPROVEMENTS**, all costs associated with the utilities, accent lighting and/or irrigation systems including, but not limited to the impact and connection fees, and the on-going cost of utility usage for water and electrical, are the maintaining **AGENCY's** responsibility.
- 1) The **AGENCY** shall be directly responsible for impact and connection fees.

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AND

- 2) The **AGENCY** shall become responsible for the above-named **IMPROVEMENTS** and ongoing utility costs upon final acceptance of the construction project by the **DEPARTMENT** and thereafter.
- F. Any work impacting traffic flow along SR-A1A/SE 17th St/Seabreeze Blvd.; A1A/Ft. Lauderdale Bch Blvd./N Ocean Blvd. must be coordinated with the **DEPARTMENT**. Lane closures must be submitted for approval in accordance with **DEPARTMENT** procedures and policies and will meet the goals established in the **DEPARTMENT's** Open Roads Policy.

4. NOTICE OF MAINTENANCE DEFICIENCIES

- A. If, at any time while the terms of this AGREEMENT are in effect, it shall come to the attention of the **DEPARTMENT** that the **AGENCY's** responsibility as established herein or a part thereof is not being properly accomplished pursuant to the terms of this AGREEMENT, the **DEPARTMENT** may issue a written notice, that a deficiency or deficiencies exist(s), by sending a certified letter to the **AGENCY**, in care of the **CITY OF FORT LAUDERDALE CITY MANAGER**, to place the **AGENCY** on notice regarding its maintenance deficiencies. Thereafter, the **AGENCY** shall have a period of sixty (60) days within which to correct the cited deficiency or deficiencies. If said deficiencies are not corrected within the time period, the **DEPARTMENT** may, at its option, proceed under one or more or a combination of the following items:
 - 1) The **DEPARTMENT** may repair any item or a number of items. Corrective actions will be performed with the **DEPARTMENT** and/or its independent contractor's materials, equipment and personnel. The actual cost for such work will be charged to the **AGENCY**.
 - 2) The **DEPARTMENT** may remove or replace any item or number of items with the standard **DEPARTMENT** item. Corrective actions will be performed with the **DEPARTMENT** and/or its independent contractor's materials, equipment and personnel. The actual cost for such work will be charged to the **AGENCY**.
 - 3) If there is no standard equivalent item or if in the **DEPARTMENT's** discretion the item is not necessary for the operations of the roadway, the **DEPARTMENT** may remove the item in its entirety and restore the area to a condition acceptable to the **DEPARTMENT**. Corrective actions will be performed with the **DEPARTMENT** and/or its independent contractor's materials, equipment and personnel. The actual cost for such work will be charged to the **AGENCY**.
 - 4) At the discretion of the **DEPARTMENT**, terminate the Agreement in accordance with Paragraph 7 of this Agreement and remove, by the **DEPARTMENT** or its

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Contractor's personnel, all of the **IMPROVEMENTS** installed under this Agreement and charge the **AGENCY** the reasonable cost of such removal.

5. FUTURE DEPARTMENT IMPROVEMENTS

It is understood between the parties hereto that the **IMPROVEMENTS** covered by this Agreement may be removed, relocated or adjusted at any time in the future as determined to be necessary by the **DEPARTMENT** in order that the adjacent state road be widened, altered or otherwise changed to meet with future criteria or planning of the **DEPARTMENT**.

6. FUTURE AGENCY IMPROVEMENTS

The **AGENCY** may construct additional **IMPROVEMENTS** within the limits of the rights of ways identified as a result of this document, subject to the following conditions:

- 1) Plans for any new **IMPROVEMENTS** shall be subject to approval by the **DEPARTMENT**. The **AGENCY** shall not change or deviate from said plans without written approval by the **DEPARTMENT**.
- 2) The **AGENCY** shall procure a permit and/ or Construction Agreement from the **DEPARTMENT**, as appropriate.
- 3) All **IMPROVEMENTS** shall be developed and implemented in accordance with appropriate state safety and roadway design standards.
- 4) The **AGENCY** agrees to comply with the requirements of this Agreement with regard to any additional **IMPROVEMENTS** installed at no cost to the **DEPARTMENT**.

7. AGREEMENT TERMINATION

This Agreement may be terminated under any one (1) of the following conditions:

- 1) By the **DEPARTMENT**, if the **AGENCY** fails to perform its duties under this Agreement, following ten (10) days written notice. The **AGENCY** shall reimburse the **DEPARTMENT** for any expenditures for the installation of said **IMPROVEMENTS** and the cost to remove and or replace said improvement with the standard improvement or remove in its entirety.
- 2) By the **DEPARTMENT**, for refusal by the **AGENCY** to 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.

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3) By the **DEPARTMENT** with a six (6) month written notice.

8. AGREEMENT TERM

The term of this Agreement commences upon execution by all parties. The term of this Agreement shall remain in effect for as long as the **IMPROVEMENTS** shall exist.

9. LIABILITY AND INSURANCE REQUIREMENTS

- A. With respect to any of the **AGENCY'S** agents, consultants, sub-consultants, contractors, and/or sub-contractors, such party in any contract for the **IMPROVEMENTS** shall agree to indemnify, defend, save and hold harmless the **DEPARTMENT** from all claims, demands, liabilities, and suits of any nature arising out of, because of or due to any intentional and/or negligent act or occurrence, omission or commission of such agents, consultants, sub consultants, contractors and/or subcontractors. The **AGENCY** shall provide to the **DEPARTMENT** written evidence of the foregoing upon the request of the **DEPARTMENT**. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the **DEPARTMENT** for its own negligence.
- B. In the event that **AGENCY** contracts with a third party to provide the services set forth herein, any contract with such third party shall include the following provisions:
- 1) **AGENCY'S** contractor shall at all times during the term of this Agreement keep and maintain in full force and effect, at contractor's sole cost and expense, Comprehensive General Liability with minimum limits of \$1,000,000.00 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and Worker's Compensation insurance with minimum limits of \$500,000.00 per Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability and Worker's Compensation policy without restrictive endorsements, as filed by the Insurance Services Office and shall name the **DEPARTMENT** as an additional insured.
 - 2) **AGENCY'S** contractor shall furnish **AGENCY** with Certificates of Insurance of Endorsements evidencing the insurance coverages specified herein prior to the beginning performance of work under this Agreement.
 - 3) Coverage is not to cease and is to remain in full force and effect (subject to cancellation notice) until all performance required of **AGENCY'S** contractor is completed. All policies must be endorsed to provide the **DEPARTMENT** with at least thirty (30) days' notice of cancellation and or/or restriction. If any of the

insurance coverages will expire prior to the completion of work, copies of renewal policies shall be furnished at least (30) days prior to the date of expiration.

10. E-VERIFY REQUIREMENTS

The **AGENCY** shall:

- 1) Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the **AGENCY** for the work performed under this AGREEMENT; and
- 2) Expressly require any contractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

11. ENTIRE AGREEMENT

This writing embodies the entire Agreement and understanding between the parties hereto and there are no other Agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby; except the Joint Participation Agreement in relationship to the funding of these services and the associated permit. The lighting under this **AGREEMENT** shall not be compensated under the State Highway Lighting Maintenance and Compensation Agreement.

12. EXPENDITURE OF MONEY

The **DEPARTMENT**, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The **DEPARTMENT** shall require a statement from the Comptroller of the **DEPARTMENT** that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the **DEPARTMENT** which are for an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than one year.

13. DISPUTES

The **DEPARTMENT'S** District Secretary shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution or fulfillment of the service hereunder and the character, quality, amount and value thereof; and his decision upon all claims, questions and disputes shall be final and conclusive upon the parties hereto.

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14. ASSIGNMENT

This Agreement may not be assigned or transferred by the **AGENCY** in whole or part without the consent of the **DEPARTMENT**.

15. LAWS GOVERNING

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The **AGENCY** agrees to waive forum and venue and the **DEPARTMENT** shall determine the forum and venue in which any dispute under this Agreement is decided.

16. NOTICES

Any and all notices given or required under this Agreement shall be in writing and either personally delivered with receipt acknowledgement or sent by certified mail, return receipt requested. All notices shall be sent to the following addresses.

If to the **DEPARTMENT**:

State of Florida Department of Transportation
Attention: District Maintenance Engineer
3400 West Commercial Blvd
Ft. Lauderdale, FL 33309-3421

If to the **AGENCY**:

City of Fort Lauderdale
Attention: Christopher J. Lagerbloom, City Manager
100 North Andrews Avenue
Fort Lauderdale, FL 33301

17. LIST OF EXHIBITS

Exhibit A: Project Location, Description and Project Aerial
Exhibit B: Lighting Plans
Exhibit C: Maintenance Plan Requirements

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IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

AGENCY

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

By: _____ Date: _____
Christopher J. Lagerbloom, City Manager

ATTEST:

Jeffrey A. Modarelli, City Clerk

Date: _____

Approved as to form:
Alian Boileau, City Attorney

By: _____ Date: _____
Print Name: Kimberly Cunningham Mosely
Title: Assistant City Attorney

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IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

DEPARTMENT:

ATTEST:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Executive Secretary
(SEAL)

Sign: _____
Howard Webb, Director of Operations

Print Name: _____

Date: _____

Approval as to Form:

Sign: _____
Dawn Raduano, District General Counsel

Print Name: _____

Date: _____

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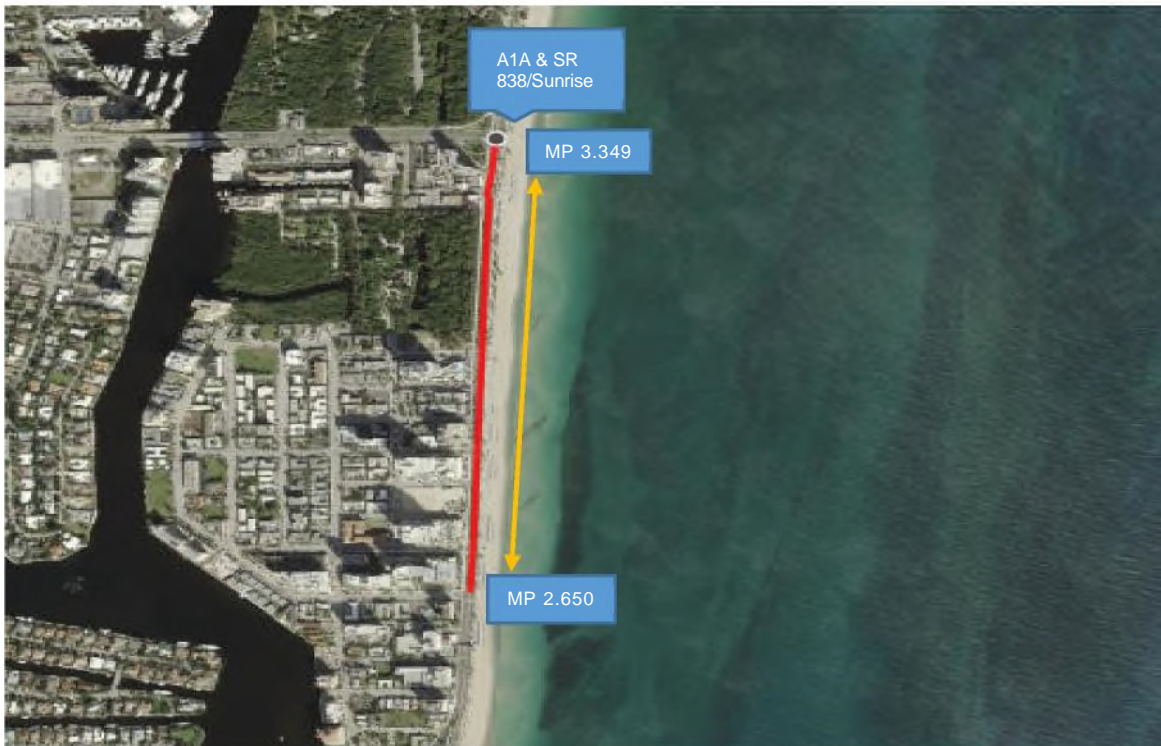
EXHIBIT A PROJECT LOCATION, AND MAP

Location:

The **IMPROVEMENTS** associated with this Agreement are located within the City of Fort Lauderdale, in Broward County, Florida along SR-A1A from Fort Lauderdale Beach Park (M.P.) 2.650 to SR 838/Sunrise Boulevard (M.P.) 3.349; Section Number 86050/86180.

LOCATION MAP:

Project Aerial:



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EXHIBIT B

LIGHTING PLANS

Lighting Plans by Matthew B. Fursetzer, P. E., Kimley-Horn & Associates dated December 17, 2019 as approved by the Department.

424027-2-58-01 LIGHTING PLANS (attached)

Sheets Included:

PDF Page Number (#)	Plan Sheet (#)	Sheet(s) Description
15	L-1	KEY SHEET
16	L-2	SIGNATURE SHEET
17-19	L-3 THUR L-5	TABULATION OF QUANTITIES
20	L-6	SUMMARY OF QUANTITIES
21	L-7	GENERAL NOTES
22	L-8	POLE DATA AND LEGEND
23-24	L-9 THUR L-10	POLE DATA
25-41	L-11 THUR L-27	LIGHTING PLAN
42-44	L-28 THUR L-30	LIGHTING DETAILS
45-48	L-31 THUR L-34	WEST SIDE LOAD CENTER DETAILS
49-51	L-35 THUR L -37	TEMPORARY TRAFFIC CONTROL PLAN

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EXHIBIT C

MAINTENANCE PLAN REQUIREMENTS

In reference to Maintenance to be performed under this Agreement, the **AGENCY** shall submit to the **DEPARTMENT** a maintenance plan detailing the means and methods for accomplishing any maintenance or repairs to the **IMPROVEMENTS** in accordance with all **DEPARTMENT** Standards, Procedures and Specifications. This plan shall be submitted and approved by the **DEPARTMENT** prior to commencing any maintenance or repair activities. The **AGENCY** shall comply with the **DEPARTMENT's** applicable Maintenance Rating Program Standards. The plan should at minimum detail how the **AGENCY** will address the following:

1. Providing for continuous traffic control and necessary traffic control devices as required for the safe movement of traffic of vehicular and pedestrian traffic past the location of the structure being repaired for the duration of the repair in accordance with **DEPARTMENT** Standards, Procedures and Specifications.
2. Protection of adjacent surrounding property, real estate, vehicles, pedestrians, attachments to the light poles, or other assets during the preparation and recoating of surfaces.
3. Containment of debris or materials used in or resulting from the repair

After the maintenance plan is approved, the **AGENCY** shall submit a work plan to the **DEPARTMENT** for approval prior to each repair to be performed detailing:

1. The proposed date of the repair
2. The location of the repair
3. The nature of the repair
4. The materials to be used for the repair
5. The methods to be used for the repair

EXHIBIT D

**NOTICE OF COMPLETION
FM # 424027-2-58-01**

PROJECT DESCRIPTION: Pedestrian lighting improvements Installation along SR-A1A from the north end of south beach parking lot to Sunrise Boulevard Financial Project Number: 424027-2-58-01

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

BY: _____

NAME: _____

TITLE: _____