

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**CONSTRUCTION AGREEMENT**

**THIS CONSTRUCTION AGREEMENT (this "Agreement")** is made and entered into by and between the State of Florida, Department of Transportation, (Address) \_\_\_\_\_  
(hereinafter referred to as the "DEPARTMENT") and Broward County Board of County Commissioners,  
115 S. Andrews Ave. #A550, Ft Lauderdale FL 33301 (hereinafter referred to as the "Construction Coordinator").

**WITNESSETH:**

**WHEREAS**, the DEPARTMENT is authorized and required by Section 334.044(13), Florida Statutes, to coordinate the planning, development, and operation of the State Highway System; and

**WHEREAS**, pursuant to Section 339.282, Florida Statutes, the DEPARTMENT may contract with a property owner to finance, construct, and improve public transportation facilities; and

**WHEREAS**, the Construction Coordinator proposes to construct certain improvements to  
SR \_\_\_\_\_ Section \_\_\_\_\_ Subsection \_\_\_\_\_ from Begin MP \_\_\_\_\_ to End MP \_\_\_\_\_  
Local Name \_\_\_\_\_ located in Broward County (hereinafter  
referred to as the "Project"); and

**WHEREAS**, the parties desire to enter into this Agreement for the Construction Coordinator to make improvements within the DEPARTMENT'S right of way to construct the Project, which will become the property of the Department upon acceptance of the work.

**NOW, THEREFORE**, based on the premises above, and in consideration of the mutual covenants contained herein, the parties hereby agree that the construction of the Project shall proceed in accordance with the following terms and conditions:

1. The recitals set forth above are specifically incorporated herein by reference and made a part of this Agreement. The Construction Coordinator is authorized, subject to the conditions set forth herein, to enter the DEPARTMENT'S right of way to perform all activities necessary for the construction of **See attached exhibit A scope of services/special provisions.**

2. The Project shall be designed and constructed in accordance with the latest edition of the DEPARTMENT'S Standard Specifications for Road and Bridge Construction and DEPARTMENT Design Standards and Manual of Uniform Traffic Control Devices ("MUTCD"). The following guidelines shall apply as deemed appropriate by the DEPARTMENT: the DEPARTMENT Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, the DEPARTMENT Plans Preparation Manual ("PPM") Manual for Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the "Florida Green Book") and the DEPARTMENT Traffic Engineering Manual. The Construction Coordinator will be required to submit any construction plans required by the DEPARTMENT for review and approval prior to any work being commenced. Should any changes to the plans be required during construction of the Project, the Construction Coordinator shall be required to notify the DEPARTMENT of the changes and receive approval from the DEPARTMENT prior to the changes being constructed. The Construction Coordinator shall maintain the area of the project at all times and coordinate any work needs of the DEPARTMENT during construction of the project.

3. The Construction Coordinator shall notify the DEPARTMENT a minimum of 48 hours before beginning construction within DEPARTMENT right of way. The Construction Coordinator shall notify the DEPARTMENT should construction be suspended for more than 5 working days.

4. Pursuant to Section 7-13 of the DEPARTMENT Standard Specifications, the Construction Coordinator is required to possess a general liability insurance naming the DEPARTMENT as an additional insured and insuring the DEPARTMENT and the Construction Coordinator against any and all claims for injury or damage to persons and property, and for the loss of life or property that may occur (directly or indirectly) by reason of the Construction Coordinator accessing DEPARTMENT right of way and the Construction Coordinator's performance of the Project. Such amount shall be carried in a minimum amount of not less than Am# and 00/100 Dollars (\$ \_\_\_\_\_) for bodily injury or death to any one person or any number of persons in any one occurrence, and not less than \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_) for property damage, or a combined coverage of not less than \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_). Additionally, the Construction Coordinator shall supply the DEPARTMENT with a payment and performance bond in the amount of the estimated cost of construction, provided by a surety authorized to do business in the State of Florida, payable to the DEPARTMENT. The bond and insurance shall remain in effect until completion of construction and acceptance by the DEPARTMENT. Prior to commencement of the Project and on such other occasions as the DEPARTMENT may reasonably require, the Construction Coordinator shall provide the

DEPARTMENT with certificates documenting that the required insurance coverage is in place and effective. If the Construction Coordinator is a local governmental entity they will be exempt from these requirements.

5. The Construction Coordinator 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 the DEPARTMENT Standard Specifications, section 102. The Construction Coordinator 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 the DEPARTMENT Design Standards, Index 600 series. Any MOT plan developed by the Construction Coordinator that deviates from the DEPARTMENT Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the DEPARTMENT prior to implementation.

6. The Construction Coordinator 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.

7. The Construction Coordinator will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.

8. It is hereby agreed by the parties that this Agreement creates a permissive use only and all improvements resulting from this agreement shall become the property of the DEPARTMENT. Neither the granting of the permission to use the DEPARTMENT right of way nor the placing of facilities upon the DEPARTMENT property shall operate to create or vest any property right to or in the Construction Coordinator, except as may otherwise be provided in separate agreements. The Construction Coordinator shall not acquire any right, title, interest or estate in DEPARTMENT 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 Construction Coordinator's use, occupancy or possession of DEPARTMENT right of way. The parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to chapter 163, Florida Statutes.

9. The Construction Coordinator shall perform all required testing associated with the design and construction of the project. Testing results shall be made available to the DEPARTMENT upon request. The DEPARTMENT shall have the right to perform its own independent testing during the course of the Project.

10. The Construction Coordinator shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the DEPARTMENT, applicable Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, the Army Corps of Engineers, the United States Coast Guard and local governmental entities.

11. If the DEPARTMENT determines a condition exists which threatens the public's safety, the DEPARTMENT may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from its right of way at the sole cost, expense, and effort of the Construction Coordinator. The Construction Coordinator shall bear all construction delay costs incurred by the DEPARTMENT.

12. All work and construction shall be completed within 150 days of the date of the last signature affixed to this agreement. If construction is not completed within this time, the DEPARTMENT may make a claim on the bond. The DEPARTMENT may terminate this Agreement at any time, with or without cause and without DEPARTMENT liability to the Construction Coordinator, by providing sixty (60) days prior written notice of termination to the Construction Coordinator.

13. The Construction Coordinator shall be responsible to maintain and restore all features that might require relocation within the DEPARTMENT right of way.

14. The Construction Coordinator will be responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.

15. Upon completion of construction, the Construction Coordinator will be required to submit to the DEPARTMENT final as-built plans and an engineering certification that construction was completed in accordance to the plans. Prior to the termination of this Agreement, the Construction Coordinator shall remove its presence, including, but not limited to, all of the Construction Coordinator's property, machinery, and equipment from DEPARTMENT right of way and shall restore those portions of DEPARTMENT 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.

16. If the DEPARTMENT determines that the Project is not completed in accordance with the provisions of this Agreement, the DEPARTMENT shall deliver written notification of such to the Construction Coordinator. The Construction Coordinator shall have thirty (30) days from the date of receipt of the DEPARTMENT'S written notice, or such other time as the Construction Coordinator and the DEPARTMENT mutually agree to in writing, to complete the Project and provide the DEPARTMENT with written notice of the same (the "Notice of Completion"). If the Construction Coordinator 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, within its discretion may: 1) provide the Construction

Coordinator with written authorization granting such additional time as the DEPARTMENT deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Construction Coordinator's sole cost and expense, without DEPARTMENT liability to the Construction Coordinator 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 Construction Coordinator with an invoice for the costs incurred by the DEPARTMENT and the Construction Coordinator shall pay the invoice within thirty (30) days of the date of the invoice.

17. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the DEPARTMENT'S sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes. The DEPARTMENT'S liability for breach of this Agreement is limited in amount and shall not exceed the limitations of liability for tort actions as set forth in Section 768.28(5), Florida Statutes.

18. All formal notices, proposed changes and determinations between the parties hereto and those required by this Agreement, including, but not limited to, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States mail, postage prepaid, to the parties at the contact information listed below.

19. The Construction Coordinator shall not cause any liens or encumbrances to attach to any portion of DEPARTMENT right of way.

20. This Agreement shall be governed by the laws of the State of Florida in terms of interpretation and performance. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

21. The Construction Coordinator may not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the DEPARTMENT'S District Secretary or his/her designee. The DEPARTMENT has the sole discretion and authority to grant or deny proposed assignments, with or without cause. Nothing herein shall prevent the Construction Coordinator from delegating its duties hereunder, but such delegation shall not release the Construction Coordinator from its obligation to perform this Agreement.

22. This Agreement shall be binding upon and inure to the benefit of the parties hereto 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 herein.

23. This instrument, together with the attached exhibits and documents made part hereof by reference, contain the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Agreement, and any part hereof, are waived, merged herein and superseded hereby.

24. By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in this Agreement and forever waive the right to object to or otherwise challenge the same.

25. The failure of either party to insist on one or more occasions on the strict performance or compliance with any term or provision of this Agreement shall not be deemed a waiver or relinquished in the future of the enforcement thereof, and it shall continue in full force and effect unless waived or relinquished in writing by the party seeking to enforce the same.

26. 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.

27. If any section, paragraph, clause or provision of this Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of this Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of this Agreement remain enforceable.

28. A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

29. The Construction Coordinator agrees to promptly indemnify, defend, save and hold harmless the DEPARTMENT and all of its officers, agents and employees from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, penalties, costs, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, or arising out of or related to the performance or breach of this Agreement by the Construction Coordinator, including, without limitation, performance of the Project within the DEPARTMENT'S right of way. The term "liabilities" shall specifically include, without limitation, any act, action, neglect or omission by the Construction Coordinator, its officers, agents, employees or representatives in any way pertaining to this Agreement, whether direct or indirect, except that neither the Construction Coordinator nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the sole negligence, intentional or wrongful acts of the DEPARTMENT or any of its officers, agents or employees. The Construction Coordinator shall notify the DEPARTMENT in writing immediately upon becoming aware of such liabilities. The Construction Coordinator's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph. The indemnities assumed by the Construction Coordinator shall survive termination of

### CONSTRUCTION COORDINATOR CONTACT INFORMATION

## CONSTRUCTION COORDINATOR

## DEPARTMENT OF TRANSPORTATION

**Legal Review:**

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY, as Construction Coordinator, through its County Administrator, authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, and DEPARTMENT, signing by and through its \_\_\_\_\_, duly authorized to execute same.

COUNTY – CONSTRUCTION COORDINATOR

WITNESSES:

BROWARD COUNTY, through its  
COUNTY ADMINISTRATOR

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Bertha Henry  
County Administrator

\_\_\_\_\_  
Print Name

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature

Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

\_\_\_\_\_  
Print Name

By \_\_\_\_\_  
Michael C. Owens (Date)  
Senior Assistant County Attorney

\_\_\_\_\_  
Maite Azcoitia (Date)  
Deputy County Attorney

## **EXHIBIT A**

### **Scope of Services/Special Provisions**

#### **I. SCOPE OF SERVICES**

Provide a description of the improvements proposed within FDOT ROW.

In February 2010, the U.S. Environmental Protection Agency (EPA) strengthened the health-based National Ambient Air Quality Standard (NAAQS) for nitrogen dioxide (NO<sub>2</sub>). The final rule included new requirements for placement of NO<sub>2</sub> monitors in urban areas. The rule requires that at least one monitor must be located near a major road in any urban area with a population greater than or equal to 500,000 people. A second monitor is required near another major road in areas with either population greater than or equal to 2.5 million people, or one or more road segment with an annual average daily traffic count greater than or equal to 250,000 vehicles. Broward County is required to have one road side monitoring site. These NO<sub>2</sub> monitors must be placed near those road segments ranked with the highest traffic levels by AADT, with consideration given to fleet mix, congestion patterns, terrain, geographic location, and meteorology in identifying locations where the peak concentrations of NO<sub>2</sub> are expected to occur. I-95 and Sunrise Boulevard is the first choice selected by Florida Department of Environmental Protection (FDEP) and EPA. Monitors must be placed no more than 50 meters (about 164 feet) away from the edge of the nearest traffic lane.

Broward County will construct an ambient air monitoring site within 50 meters from the edge of I-95 Southbound, just north of the Sunrise Blvd. exit. The air monitoring site will consist of a building (8x20 Pre-fabricated Steel Container, concrete foundations, guardrail and site work).

#### **II. PROJECT PLANS**

The Construction Coordinator is authorized to install the Project in accordance with the attached plans prepared by Synalovski Romanik Saye, Llc (Principal, Merrill Romanik, AIA, LEED AP) and dated 04/22/2014. Any revisions must be approved by the DEPARTMENT in writing.

#### **III. SPECIAL PROVISIONS FOR CONSTRUCTION**

Special conditions will be added that apply to the proposed improvements (i.e. pre-construction conference required, agreement subject to Construction Coordinator obtaining all necessary permits from other agencies, submit as-built plans, etc.)

#### **IV. MODIFICATIONS TO BASIC AGREEMENT**

- A. As used herein, "AASHTO" means the American Association of State Highway and Transportation Officials.

- B. Broward County is a local governmental entity, and, as such, paragraph 4 is not applicable.
- C. The 4<sup>th</sup> "Whereas" clause and Section 8 shall be modified as follows: The following items shall be considered property of the Construction Coordinator: ambient air quality monitor, 8'x20' pre-fabricated steel container, and concrete foundations. The DEPARTMENT shall give the Construction Coordinator sixty (60) days prior notice to remove the above referenced items should the DEPARTMENT determine that removal is necessary. If the air quality monitor, pre-fabricated steel container, and concrete foundations are removed, the Construction Coordinator shall restore the area consistent with the typical section in that vicinity at the time of removal. The DEPARTMENT shall review and approve any plans for removal. If not removed within sixty (60) days of the DEPARTMENT's notice, the property shall be considered abandoned and the DEPARTMENT shall remove the same. The Construction Coordinator shall be responsible for all expenses associated therewith.
- D. Section 12: the DEPARTMENT and Jeff Halsey, Director, Pollution Prevention, Remediation and Air Quality Division, Environmental Protection and Growth Department, may extend the completion date, if mutually agreed to in writing.
- E. Section 17: The following shall be added: Nothing in this agreement shall be interpreted as waiving the Construction Coordinator's sovereign immunity protections, including those set forth in 768.28, Florida Statutes.
- F. Section 29 shall be modified to read as follows: Nothing herein is intended to serve as a waiver of sovereign immunity by the DEPARTMENT or the Construction Coordinator, nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The DEPARTMENT and the Construction Coordinator are each a state agency or political subdivision as defined in Chapter 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of their agents or employees to the extent permitted by law.