

**AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF DANIA BEACH FOR  
TRAFFICWAY ILLUMINATION FOR BRYAN ROAD**

This agreement ("Agreement") between Broward County ("County"), a political subdivision of the State of Florida, and City of Dania Beach ("City"), a municipal corporation organized and existing under the laws of the State of Florida (collectively, the "Parties"), is entered into and effective as of the date this Agreement is fully executed by the Parties ("Effective Date").

RECITALS

A. Bryan Road from Stirling Road to Old Griffin Road is a public trafficway ("Trafficway"), functionally classified as a County road, and located within City's municipal boundaries.

B. It is of mutual benefit to the residents of County and City to illuminate the Trafficway by installing the lighting system described in Article 2.

C. City desires to undertake the installation of the lighting system and its continued operation and maintenance.

D. County agrees to allow the installation of the lighting system, on that portion of the Trafficway shown in red on Exhibit A (the "Property"), subject to the terms and conditions of this Agreement.

E. City, by motion of its governing body adopted on the 24 day of July, 2018, has accepted responsibility for the ongoing operation and maintenance of the Property under the terms of this Agreement.

F. City has authorized the appropriate City officials to execute this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Approved Plans: The construction documents with specifications depicting and defining the Project (as defined below), including all materials to be installed within the Property that must be submitted to and approved by the Contract Administrator.

1.2 Board: The Board of County Commissioners of Broward County, Florida.

1.3 Contract Administrator: The Director of the Broward County Highway Construction and Engineering Division, or designee.

1.4 County Administrator: The administrative head of County appointed by the Board.

1.5 County Attorney: The chief legal counsel for County appointed by the Board.

- 1.6 Division: The Broward County Highway Construction and Engineering Division.
- 1.7 Lighting or Lighting System: Light poles, luminaires, cable, conduit, grounding, load centers, pullboxes, conductors, and cable distribution systems as described in Article 2, the Approved Plans, and Exhibit B.
- 1.8 Property: That portion of the Trafficway shown in red and shown in Exhibit A.

## ARTICLE 2. SCOPE OF PARTICIPATION

### 2.1 City shall:

2.1.1 Apply, or cause application to be made, to the Division for a permit to install the Lighting System as set forth in the Approved Plans. City must not proceed with installation of the Lighting System until the Division permit(s) has/have been issued and permit conditions for commencement of construction have been satisfied.

2.1.2 In accordance with the Approved Plans, install or cause to be installed the Lighting System on the Property to the Contract Administrator's satisfaction.

2.1.3 Following completion of the installation of the Lighting System, provide the County with signed and sealed certified as-built drawings and warranties for any work performed on the Lighting System.

2.1.4 Once installed, properly operate and maintain the Lighting System in accordance with the Approved Plans. As part of such maintenance responsibility, City shall keep the Lighting System in good repair and replace all defective or worn out Lighting System parts and equipment including but not limited to, poles, luminaires, and circuitry. City's responsibility to keep or cause to keep the system in good repair includes 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, acts of God, vandalism, and accidents.

2.1.5 Ensure City's use of the Property and Trafficway causes no damage thereto.

2.1.6 Provide the Contract Administrator, or designee, with prompt written notice as set forth in Article 5 of any occurrence, incident, or accident occurring on the Property.

### 2.2 County shall:

2.2.1 After receipt of a completed application for permit including proposed plans and specifications, review the application for completeness and either reject the application, or process the application for issuance of the permit.

2.2.2. Upon City's request for a final inspection, and after receiving signed and sealed certified as-built drawings detailing the pertinent information regarding the installation, and verifying its conformance with the Approved Plans, perform a final inspection.

2.2.3 Inspect the installation of the Lighting System and reject work that does not meet the requirements of the Approved Plans.

2.2.4 Have no further obligation except as otherwise specifically set forth herein.

2.3 Any relocation, replacement, modification, or alteration of the Lighting System by City requires the prior submittal of plans by City to the Division for approval, consistent with the requirements above.

2.4 All Lighting placed upon the Property will remain the property of City, and will be placed upon the Property at City's sole risk.

2.5 This Agreement does not change the functional classification of the Trafficway.

2.6 City's obligations under this Agreement may be performed by City through the use of its employees, or City may enter into a contract with a third party to perform the services. If City contracts with a third party, City will remain fully responsible hereunder and must ensure that the third party complies at all times with each and every term, condition, duty, and obligation set forth herein.

2.7 In the administration of this Agreement, as contrasted with matters of policy, City may rely on the instructions or determinations made by the Contract Administrator, provided, however, that such instructions and determinations do not change the requirements of this Article 2.

### ARTICLE 3. COSTS

City shall pay for all costs associated with the design, installation, continued operation, maintenance, repair, and replacement of the Lighting System, including all electrical, energy, and other utility charges, at no cost to County.

### ARTICLE 4. TERM AND TERMINATION

4.1 This Agreement starts on the Effective Date and continues in perpetuity unless terminated as provided below.

4.2 This Agreement may be terminated for cause by County, through action of the Board, upon thirty (30) days' written notice given by the Contract Administrator to City setting forth the breach. If City cures the breach within thirty (30) days after written notice, to the Contract Administrator's satisfaction, this Agreement will remain in full force and effect. If such breach is not cured within

thirty (30) days after written notice, County may terminate this Agreement. If City fails to maintain the Lighting System, County, at the option of the Contract Administrator, may cause such breach to be cured and invoice City for the costs of the cure or terminate this Agreement. If County opts to cure the breach and invoice City for the costs, City shall remit to County the amount invoiced within thirty (30) days of City's receipt of the invoice.

4.3 Cause to terminate this Agreement includes, but is not limited to, City's failure to suitably perform the services required by Article 2, or City's failure to maintain the Lighting System, notwithstanding whether any such breach was previously waived or cured.

4.4 If this Agreement is terminated, City must remove from the Property, at City's sole expense, any Lighting System placed upon it unless the Contract Administrator, in writing, authorizes City to leave the Lighting System on the Property. If the Lighting System must be removed:

4.4.1 County will have no obligation to remove, relocate, reinstall, or replace any part of the Lighting System, or in any way compensate City for any loss resulting from or arising out of the termination of this Agreement.

4.4.2 City must obtain a permit from the Division to remove the Lighting System and return the Property to a safe condition following said removal.

4.4.3 City will be obligated to repair or pay for any damage to the Property resulting from the removal of the Lighting System.

#### ARTICLE 5. NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand-delivery with a request for a written receipt of acknowledgement of delivery, together with a contemporaneous email, addressed to the party for whom it is intended at the place last specified. The place for giving notice will remain the same as set forth herein until changed in writing in the manner provided in this article. For the present, the Parties designate the following:

FOR COUNTY:

Director, Broward County Highway Construction and Engineering Division  
1North University Drive, Box B300  
Plantation, Florida 33324

FOR CITY:

City Manager, City of Dania Beach  
100 W. Dania Beach Boulevard  
Dania Beach, Florida 33004

#### ARTICLE 6. INDEMNIFICATION

6.1 City and County are entities subject to Section 768.28, Florida Statutes, as may be amended from time to time, and agrees to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein can be construed as consent by City or County to be sued by third parties in any matter arising out of this Agreement or any other contract.

6.2 If City contracts with a third party to provide the services set forth herein, any contract with such third party must include the following provisions:

6.2.1 Indemnification: City's contractor shall indemnify and hold harmless County, its officers, agents, 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 intentionally wrongful conduct of City's contractor and other persons employed or utilized by City's contractor in the performance of this Agreement. These indemnifications shall survive the term of this Agreement. If any action or proceeding is brought against County by reason of any such claim or demand, City's contractor shall, upon written notice from County, resist and defend such action or proceeding by counsel satisfactory to County.

6.3 The provisions of this article will survive the termination of this Agreement.

#### ARTICLE 7. INSURANCE

7.1 City shall provide the Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of this Agreement. Additionally, if City elects to purchase excess liability coverage, City agrees that County will be furnished with a certificate of insurance listing "Broward County" as a certificate holder and an additional insured.

7.2 If City contracts with a third party to provide the services set forth herein, any contract with such third party must include, at a minimum, the following provisions:

7.2.1 Insurance: City's contractor shall keep and maintain, at the contractor's sole cost and expense, insurance of the types and minimum amounts as set forth on Exhibit C, and specifically protect County by naming "Broward County" as an additional insured under the Commercial General Liability Insurance policy as well as any Excess Liability policy.

7.2.2 City's contractor, shall furnish to the Contract Administrator, certificates of insurance and endorsements evidencing the insurance coverage specified above prior to beginning the performance of work under this Agreement.

7.2.3 Coverage is not to cease and is to remain in full force and effect until all performance required of City's contractor is completed.

#### ARTICLE 8. MISCELLANEOUS

8.1 Documents. Copies of any and all reports, photographs, surveys, plans, and other data and documents provided or created in connection with this Agreement must be provided to County at no cost upon request.

8.2 Independent Contractor. City is an independent contractor under this Agreement. In performing under this Agreement, neither City nor its agents shall act as officers, employees, or agents of County. City does not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

8.3 Third Party Beneficiaries. Neither City nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party will be entitled to assert a right or claim against either of them based upon this Agreement.

8.4 Assignment and Performance. Neither this Agreement nor any right or interest herein may be assigned, transferred, or encumbered by City without the prior written consent of County. If City violates this provision, County will have the right to immediately terminate this Agreement. City represents that each person and entity that will perform services under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. City agrees that all services under this Agreement will be performed in a skillful and respectful manner, and that the quality of all such services must equal or exceed prevailing industry standards for the provision of such services.

8.5 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof. County's failure to enforce any provision of this Agreement will not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement will not be deemed a waiver of any subsequent breach and will not be construed to be a modification of the terms of this Agreement.

8.6 Compliance with Laws. City shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

8.7 Severability. If a portion of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part will be deemed severed from this Agreement and the balance of this Agreement will remain in full force and effect.

8.8 Joint Preparation. This Agreement has been jointly prepared by the Parties hereto, and will not be construed more strictly against either Party.

8.9 Interpretation. The headings contained in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement include the other gender, and the singular includes the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

8.10 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 8 of this Agreement, the provisions contained in Articles 1 through 8 will prevail and be given effect.

8.11 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement will be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree that the exclusive venue for litigation arising from, related to, or in connection with this Agreement will be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, CITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS WILL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

8.12 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein will be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and City or others delegated authority or otherwise authorized to execute same on their behalf.

8.13 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

8.14 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated by reference. The attached Exhibits A, B, and C are incorporated into and made a part of this Agreement.

8.15 Representation of Authority. Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

8.16 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

8.17 Nondiscrimination. No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: Broward County, through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, and City of Dania Beach, signing by and through its Mayor, duly authorized to execute same.

COUNTY

ATTEST:

Broward County, by and through  
its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
Ex-Officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Insurance requirements  
approved by Broward County  
Risk Management Division

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

By CPounall 08/01/18  
Signature (Date)  
Colleen Pounall Risk Analyst  
Print Name and Title above

By MA Moore 7/30/18  
Maya A. Moore (Date)  
Assistant County Attorney  
Angela F Benjamin 8/1/18  
Angela F. Benjamin (Date)  
Senior Assistant County Attorney

HCED - Illumination (City installs and maintains)

CITY

ATTEST:

Thomas Schneider  
Municipal Clerk

Thomas Schneider

(SEAL)



City of Dania Beach

By Tamara James  
Mayor-

Tamara James  
(Print or Type Name)

24 day of July, 2018.

Robert Baldwin  
Municipal Manager

Robert Baldwin  
(Print or Type Name)

APPROVED AS TO FORM:

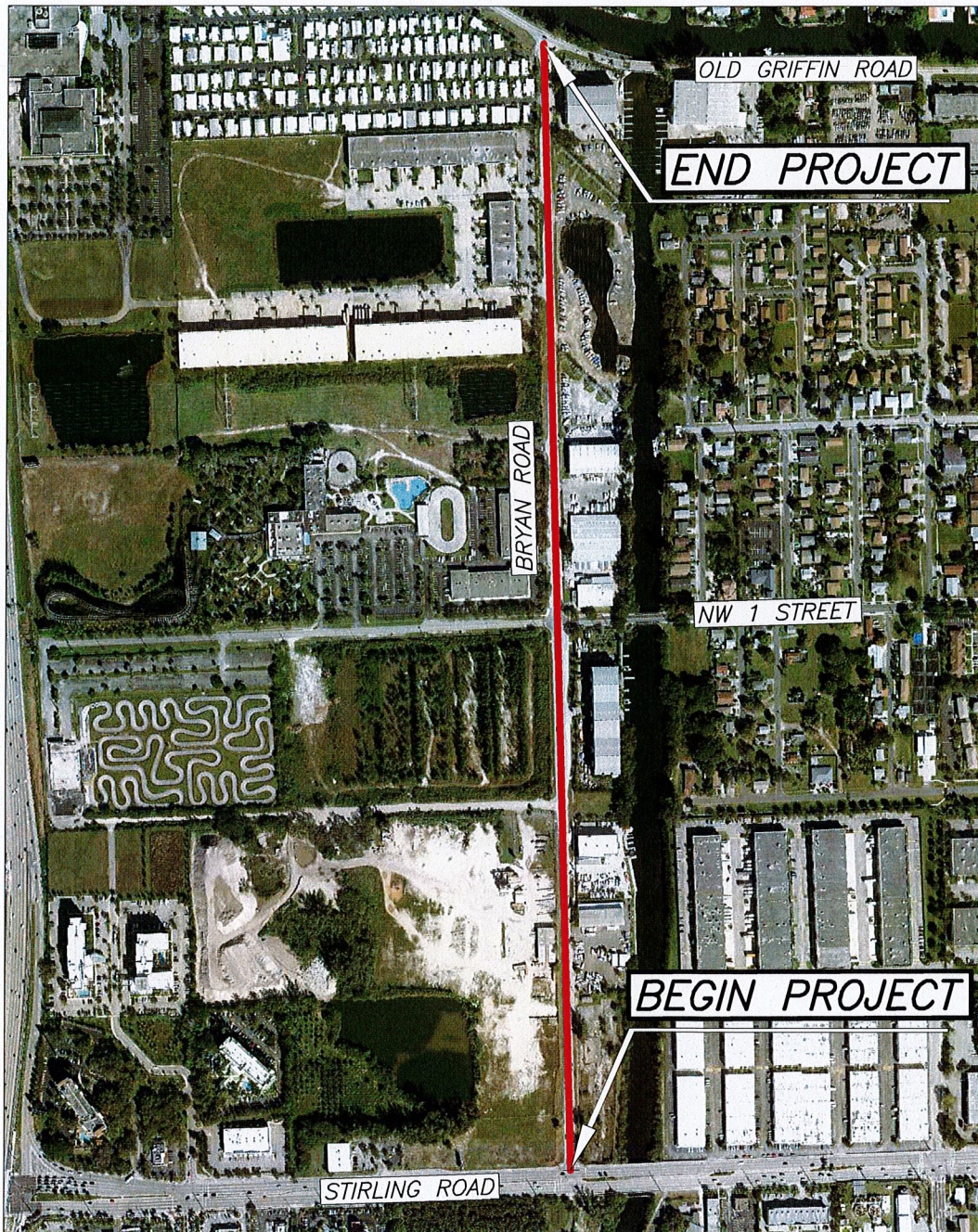
By Thomas Ansbro  
Municipal Attorney Thomas Ansbro

EXHIBIT "A"

# LOCATION SKETCH

PROJECT: TRAFFICWAY ILLUMINATION FOR BRYAN ROAD  
BETWEEN: BROWARD COUNTY AND CITY OF DANIA BEACH  
MUNICIPALITY: DANIA BEACH  
COMMISSION DISTRICT: 7

SECTION 33, TOWNSHIP 50 SOUTH, RANGE 42 EAST



SHEET 1 OF 1

Scale: Not To Scale	Drawn by: JAT	Date: 12-15-15	Checked by: DBW	Date: 12-15-15	File Location: E:\RW\Location Maps\DEEDS and EASEMENTS\BRYAN ROAD-DANIA.dwg
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BROWARD COUNTY HIGHWAY CONSTRUCTION & ENGINEERING DIVISION

## EXHIBIT "B"

LICENSEE: City of Dania Beach

Subject: Illumination Agreement

### **SCOPE OF IMPROVEMENTS:**

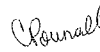
This Illumination Agreement authorizes the installation of proposed lighting for Bryan Road to be constructed on the west side of Bryan Road beginning just North of Stirling Road and continuing north for approximately 2,900 feet. The proposed lighting is designed to replace the existing lighting arms attached to the existing utility poles which will be removed during construction. The lighting system must substantially conform to the Standard Specifications for Highway Lighting established by the Florida Department of Transportation. A full size set of plans are on file with the Broward County Highway Construction and Engineering Division under Project Reference Number 171016001.

**INSURANCE REQUIREMENTS  
EXHIBIT C**

Project: Trafficway Illumination Agreement  
Agency: Highway Construction and Engineering Division

TYPE OF INSURANCE	ADDL INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
<b>GENERAL LIABILITY - Broad form</b> <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input checked="" type="checkbox"/> XCU Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <b>Per Occurrence or Claims-Made:</b> <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <b>Gen'l Aggregate Limit Applies per:</b> <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loc. <input type="checkbox"/> Other _____	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$1,000,000	\$2,000,000
			Personal Injury		
			Products & Completed Operations		
<b>AUTO LIABILITY</b> <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury (each person)		
			Bodily Injury (each accident)		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$1,000,000	
<input type="checkbox"/> <b>EXCESS LIABILITY / UMBRELLA</b> <b>Per Occurrence or Claims-Made:</b> <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
<input checked="" type="checkbox"/> <b>WORKER'S COMPENSATION</b> <i>Note: U.S. Longshoremen &amp; Harbor Workers' Act &amp; Jones Act is required for any activities on or about navigable water.</i>	N/A	<input checked="" type="checkbox"/>	Each Accident	STATUTORY LIMITS	
<input checked="" type="checkbox"/> <b>EMPLOYER'S LIABILITY</b>			Each Accident	\$500,000	
<input type="checkbox"/> <b>PROFESSIONAL LIABILITY (ERRORS &amp; OMISSIONS)</b> All engineering, surveying and design professionals.	N/A	<input checked="" type="checkbox"/>	If claims-made form:		
			Extended Reporting Period of:		
			*Maximum Deductible:		
<input type="checkbox"/> Installation floater is required if Builder's Risk or Property are not carried. <i>Note: Coverage must be "All Risk", Completed Value.</i>			*Maximum Deductible (Wind and/or Flood):	Not to exceed 5% of completed value	<b>Completed Value</b>
			*Maximum Deductible:	\$10 k	
<b>Description of Operations:</b> "Broward County" and City shall be listed as Certificate Holder and endorsed as an additional insured for liability, except as to Professional Liability. County shall be provided 30 days written notice of cancellation, 10 days' notice of cancellation for non-payment. Contractors insurance shall provide primary coverage and shall not require contribution from the County, self-insurance or otherwise. Any self-insured retention (SIR) higher than the amount permitted in this Agreement must be declared to and approved by County and may require proof of financial ability to meet losses. Contractor is responsible for all coverage deductibles unless otherwise specified in the agreement.					

**CERTIFICATE HOLDER:**  
  
Broward County  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301

Digitally signed by COLLEEN A. POUNALL  
DN: cn=colleen.a.pounall, o=COLLEEN A. POUNALL, email=COLLEEN.A.POUNALL@FLHHS.com, c=US  
  
 Risk Management Division