



CITY ATTORNEY USE ONLY

Date Received:	01/04/2018
Assigned To:	Tracy Telle
File:	
Due Date:	
Hours:	0.0

**RECEIVED
TIME** _____

JAN - 4 2018

CITY OF FT. PIERCE
CITY MANAGER'S OFFICE

REQUEST FOR LEGAL SERVICES

TO: JAMES M. MESSER, CITY ATTORNEY

SUBMITTED BY: TRACY TELLE, ASSISTANT CITY ENGINEER

THROUGH: JOHN R. ANDREWS, P.E., CITY ENGINEER

CITY MANAGER AUTHORIZATION: NICHOLAS C. MIMMS, P.E., CITY MANAGER

RE: REVIEW OF JOINT PARTICIPATION AGREEMENT (JPA) BETWEEN THE CITY OF FORT PIERCE AND THE FLORIDA DEPARTMENT OF TRANSPORTATION RELATING TO THE INTERSECTION IMPROVEMENTS OF OHIO AVENUE AND U.S. HIGHWAY 1 (SR 5)

DATE: JANUARY 4, 2018

Handwritten initials and signatures:
 [Signature]
 [Signature]
 NCM

Service Required: (please circle or underline)

<u>Review Documents</u>	Draft Document	Written Opinion Requested
Attend Meetings	Advise	Other: _____

Upon review and/or "Approval as to Form and Correctness," the Department submitting the RLS is responsible for placement of any related item on a Commission or Board Agenda.

- Brief statement of the nature of the request or problem:** Request review and approval of the attached Resolution (3 copies) and the JPA (5 copies) which will provide partial funding to the City for proposed intersection improvements located at U.S. Highway One and Ohio Avenue.
- Discussion of the implications and the possible impact if not apparent from preceding information:** None
- Time considerations and their significance:** None
- Are City funds required? If so, list approvals obtained for expenditure of funds:** Yes, if the City Commission approves entering into this Agreement then City funds in the amount of \$199,434.00 will be required for completion of the intersection improvements. This funding along

with funding for improvements not located within the FDOT right-of-way will be presented to the Commission for approval.

5. **Factual background:** City staff has repetitively contacted FDOT to request they complete improvements to the Ohio Avenue and U.S. Highway One intersection. As you may know the current configuration is a public hazard due to the misalignment of the Ohio Avenue roadways. FDOT has agreed to provide funding in the amount of \$150,000 for improvements located within their right-of-way.
6. **List and/or attach all related documents and known authorities (e.g., statute, ordinance, resolution, administrative code, legal case, RFP, bidder's response, contract, lease, letter, memorandum, prior legal opinion, deed, etc.):** N/A
7. **Identify prior legal assistance on this or a related matter and the attorney who handled it:**
None
8. **If this is a request for review of a contract, provide the following:**
 - a. **List of individuals who have read and approved the business terms and conditions of the contract and confirmed the ability to carry out the terms of the contract as they apply to the City:** John R. Andrews, P.E.
 - b. **Insurance requirements that differ from the City's template insurance terms:** N/A

CITY ATTORNEY USE ONLY			
Routed for Review	Date	Response Deadline	Response

Contract No.: _____
FM Nos.: 441862-1-58-01
FEID No.: VF-596-000-322

**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 Pierce located at 100 North U.S. 1, Fort Pierce, FL 34950, hereinafter called the PARTICIPANT.

WITNESSETH

WHEREAS, the DEPARTMENT and the PARTICIPANT are desirous of having the PARTICIPANT perform services in connection with Financial Management (FM) Number(s): 441862-1-58-01, (Funded in Fiscal Year 2017/2018) for intersection improvements at Ohio Avenue and US-1 in St. Lucie County, Florida. Refer to **Exhibit A**, Scope of Services, attached hereto and made of part hereof; and

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

WHEREAS, the improvements are 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 services; and,

WHEREAS, the PARTICIPANT by Resolution No.: _____ on the _____ day of _____, 20____, a copy of which is attached hereto and made a part hereof, has authorized the Mayor of its Board of Commissioners or designee 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 input in its decisions.
5. The DEPARTMENT agrees to pay the PARTICIPANT for the work described in **Exhibit A** of this Agreement. The cost of the work is estimated to be THREE HUNDRED FORTY NINE THOUSAND FOUR HUNDRED THIRTY FOUR DOLLARS AND NO CENTS (\$349,434.00). The DEPARTMENT will pay the PARTICIPANT an amount not to exceed ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00) for actual costs incurred, as

detailed in monthly progress reports. Any Project cost in excess of ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00) shall be the sole responsibility of and shall be paid by the PARTICIPANT.

6. The PARTICIPANT acknowledges and agrees that the DEPARTMENT's obligation to pay any sum set forth in this Agreement is contingent upon an annual appropriation by the Florida Legislature.
7. In the event the Project's costs or Project's modifications increase or exceed the amount authorized in paragraph 6, 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's costs will be the sole responsibility of the PARTICIPANT.
8. The PARTICIPANT shall provide 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 are shown in **Exhibit B**, Deliverables attached hereto and a made apart hereof. The PARTICIPANT will need written approval from the DEPARTMENT's Director of Transportation Development or Designee, if deviating from the Deliverables set forth in **Exhibit B**.
9. This Agreement and compliance with the requirements of **Exhibit C**, attached hereto and made a part hereof shall act to supersede the normal requirements of PARTICIPANT to secure separate DEPARTMENT permits for drive-way connection, right-of-way utilization, storm-water discharge and utilities and this Agreement, when executed by the PARTICIPANT and the DEPARTMENT, shall be deemed to constitute those permits.
10. The PARTICIPANT must certify that the consultant has been selected in accordance with the Consultants Competitive Negotiation Act (Section 287.055, Florida Statutes). Consultants must be prequalified by the DEPARTMENT for design and construction engineering and inspection services, respectively.
11. Contractors must be prequalified by the DEPARTMENT, unless requested in writing and approved by the DEPARTMENT, as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2018), as amended.
12. 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 COUNTY is hereby precluded from hiring the same consulting firm providing design services.

The DEPARTMENT pre-qualified CEI services requirements may be waived, if a written request from the PARTICIPANT is received and approved by either the DEPARTMENT's Director of Transportation Operations, District Program Management Administrator, or designee.

13. The PARTICIPANT shall furnish Construction Engineering Inspection (CEI) Services for the Project at its sole cost and expense.
14. 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 a written progress report by the 15th day of each month attesting to the actual services performed. Upon completion, the PARTICIPANT will notify the DEPARTMENT's Operations Engineer or designee, who will be responsible for verifying and accepting the services contemplated in this Agreement.
15. Invoices shall be submitted by the PARTICIPANT, on a quarterly basis, in detail sufficient for proper preaudit and postaudit 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.

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 Paragraph 9 has been met.

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 days time period may not be paid. The final balance due under this Agreement will be reimbursed upon the completion of all Project services, receipt of final cost documentation, proper submission of a detailed invoice and when the Project has been inspected, approved, and accepted to the satisfaction of the DEPARTMENT in writing.
17. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Department of Financial Services under Section 215.422(14), Florida Statutes, or by the Department's Comptroller under Section 334.044(29), Florida Statutes.
18. 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.
19. 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.
20. 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.

21. 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 and for five (5) years after final payment is made. 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.
22. 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 TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than one year."
23. The PARTICIPANT shall comply with all federal, state, and local laws and ordinances applicable to the work or payment of 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 this Agreement.
24. 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.
25. The PARTICIPANT agrees to include the following indemnification in all contracts with contractors/subcontractors, and consultants/sub consultants who perform work in connection with this Agreement.
26. 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 misconduct of contractor and persons employed or utilized by contract in performance of this contract.

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, 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 misconduct 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.

27. 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.
28. In the event it becomes necessary for the DEPARTMENT or the 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.
29. This Agreement is governed by and construed in accordance with laws of the State of Florida.
30. 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.
31. 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.
32. 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: Leos A. Kennedy, Jr.

With a copy to: Fernando Morales

A second copy to: Office of the General Counsel

If to the PARTICIPANT:

City of Fort Pierce

100 North U.S. 1

Fort Pierce, Florida 34950

Attn: Tracy S. Telle, Asst. City Engineer

With a copy to: City Attorney

The remainder of this page is intentionally left 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.

CITY OF FORT PIERCE

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: _____
NAME: _____
TITLE: MAYOR
_____ day of _____, 20_____

BY: _____
STACY L. MILLER, P.E.
DIRECTOR OF TRANSPORTATION DEVELOPMENT

ATTEST:

LEGAL REVIEW:

CLERK (SEAL)

BY: _____
OFFICE OF THE GENERAL COUNSEL

LEGAL REVIEW

APPROVED:

BY:  _____
CITY ATTORNEY

BY: _____
DISTRICT PROGRAM MANAGEMENT ADMINISTRATOR

EXHIBIT A

SCOPE OF SERVICES

FM# 441862-1-58-01

The Project shall include but not be limited to the following services:

1. Construction (installation) of three (3) mast arm signal poles [2-single, 1- double] complete with applicable traffic signals, video detection, conduit, fiber optics, pull boxes, and electrical supply.
2. Construction (installation) of Type F curb and gutter, sidewalks, curb ramps, pedestrian signals, and sod
3. Asphalt pavement, signing, and striping with the US-1 right of way.

Exhibit B DELIVERABLES

The Department's total contribution for the Project is an amount not to exceed ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) in accordance with this Agreement. The deliverables for this project are:

PAY ITEM NO.	DESCRIPTION	UNIT	PROJECT QUANTITY
ROADWAY PAY ITEMS			
101-1	MOBILIZATION	LS	1
102-1	MAINTENANCE OF TRAFFIC	LS	1
104-10-3	SEDIMENT BARRIER (SILT FENCE TYPE III)	LF	200
104-18	INLET PROTECTION SYSTEM	EA	1
110-1-1	CLEARING & GRUBBING	LS	1
108-1	AS-BUILTS/RECORD DRAWINGS	LS	1
120-1	REGULAR ESCAVATION	CY	23
120-6	ENBANKMENT	CY	10
160-4	TYPE "B" STABILIZATION	SY	253
285-706	CEMENTED COQUINA LBR 100 (8')	SY	225
334-1-13A	SUPERPAVE ASPHALT CONCRETE (TYPE SP-9.5) (TRAFFIC C) (1.0')	TN	13
334-1-13B	SUPERPAVE ASPHALT CONCRETE (TYPE SP-12.5) (TRAFFIC C) (1.5')	TN	19
425-6	VALVE BOX (ADJUST)	EA	3
520-1-10	CONCRETE CURB & GUTTER (TYPE F)	LF	71
522-1	CONCRETE SIDEWALK 4" THICK (FIBER, 1.0 LB/CY)	SY	118
527-2	DETECTABLE WARNINGS	SF	35
570-1-2A	PERFORMANCE TURF, SOD (BAHIA)	SY	100
SIGNING AND PAVEMENT MARKING PAY ITEMS			
706-3	RETRO-REFLECTIVE PAVEMENT MARKERS	EA	10
711-11-121	THERMOPLASTIC PAVEMENT MARKINGS (6" SOLID) (WHITE)	LF	36
711-11-125	THERMOPLASTIC PAVEMENT MARKINGS (24" SOLID) (WHITE)	LF	195
711-11-221	THERMOPLASTIC PAVEMENT MARKINGS (6" SOLID) (YELLOW)	LF	89
711-11-224	THERMOPLASTIC PAVEMENT MARKINGS (18" SOLID) (YELLOW)	LF	21
SIGNALIZATION PAY ITEMS			
630-2-11	CONDUIT (SIGNAL) (F & I) (OPEN TRENCH)	LF	170
630-2-12	CONDUIT (SIGNAL) (F & I) (DIRECTIONAL BORE)	LF	1,185
632-7-1	CABLE (SIGNAL) (F & I)	PL	1
632-7-6	SIGNAL CABLE (REMOVE) (INTERSECTION)	PL	1
635-2-11	PULL BOX (F & I) (TRAFFIC SIGNAL)	EA	19
639-1-112	ELECTRICAL POWER SERVICE (SIGNALS) (ABOVE GROUND) (METER PURCHASED BY CONTRACTOR)	AS	1
639-1-610	ELECTRICAL POWER SERVICE (REMOVE) (OVERHEAD)	AS	1
639-2-1	ELECTRICAL SERVICE WIRE (F & I)	LS	1
639-3-11	ELECTRICAL SERVICE DISCONNECT (F & I) (POLE MOUNTED)	EA	1
641-2-12	PRESTRESSED CONC. POLE (TYPE P-II SERVICE POLE)	EA	1
641-2-80	PRESTRESSED CONCRETE POLE (COMPLETE POLE REMOVAL)	EA	4
646-1-11	ALUMINUM SIGNALS POLE (PEDESTAL)	EA	5
646-1-60	ALUMINUM SIGNALS POLE (REMOVE)	EA	1
649-21-1	STEEL MAST ARM ASSEMBLY (F & I) (SINGLE ARM) (30")	EA	1
649-21-9	STEEL MAST ARM ASSEMBLY (F & I) (SINGLE ARM) (50"-50")	EA	1
649-21-10	STEEL MAST ARM ASSEMBLY (F & I) (SINGLE ARM) (60")	EA	1
650-1-24	TRAFFIC SIGNAL (F & I) (POLYCARBONATE W/ ALUM TOP) (3-SECTION) (1-WAY)	AS	4
650-1-29	TRAFFIC SIGNAL (F & I) (POLYCARBONATE W/ ALUM TOP) (5-SECTION) (1-WAY) (CLUSTER)	AS	4
653-1-11	PEDESTRIAN SIGNAL (F & I) (LED-COUNTDOWN) (1-WAY)	AS	8
660-4-11	VEHICLE DETECTION SYSTEM (F & I) (VIDEO) (CABINET EQUIPMENT)	EA	1
660-4-12	VEHICLE DETECTION SYSTEM (F & I) (VIDEO) (ABOVE GROUND EQUIPMENT)	EA	4
663-1-111	SIGNAL PRIORITY AND PREEMPTION (F & I) (OPTICAL) (CABINET ELECTRONICS)	EA	1
663-1-112	SIGNAL PRIORITY AND PREEMPTION (F & I) (OPTICAL) (DETECTOR)	EA	4
665-1-11	PEDESTRIAN DETECTOR (F & I) (STANDARD)	EA	8
670-5-111	TRAFFIC CONTROLLER ASSEMBLY (F & I) (ONE PREEMPTION PLAN)	AS	1
670-5-600	TRAFFIC CONTROLLER ASSEMBLY (REMOVE CONTROLLER WITH CABINET)	AS	1
684-1-1	MANGED FIELD ETHERNET SWITCH (F & I)	EA	1
685-1-11	UNINTERRUPTIBLE POWER SUPPLY (F & I) (LINE INTERACTIVE)	EA	1
700-5-21	INTERNALLY ILLUMINATED SIGN (F & I) (OVERHEAD MOUNT, UP TO 12 SF)	EA	2
700-5-22	INTERNALLY ILLUMINATED SIGN (F & I) (OVERHEAD MOUNT, 12 - 18 SF)	EA	2
715-1-11	LIGHTING CONDUCTORS (F & I) (INSULATED, No. 10 OR <)	LF	1,149
715-5-11	LUMINAIRE & BRACKET ARM (F & I) (ALUMINUM)	EA	3

Exhibit C

1. 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 PARTICIPANT 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 PARTICIPANT shall be required to notify the DEPARTMENT of the changes and receive approval from the DEPARTMENT prior to the changes being constructed. The PARTICIPANT shall maintain the area of the project at all times and coordinate any work needs of the DEPARTMENT during construction of the project.
2. The PARTICIPANT shall notify the DEPARTMENT a minimum of 48 hours before beginning construction within DEPARTMENT right of way. The PARTICIPANT shall notify the DEPARTMENT should construction be suspended for more than 5 working days. The DEPARTMENT contact person for construction is **Mr. Daniel Hiden** located at **3601 Oleander Avenue, Fort Pierce, Florida 34982-6594**, Telephone number **772-465-7396**, Email address **daniel.hiden@dot.state.fl.us**.
3. The PARTICIPANT 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 PARTICIPANT 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 PARTICIPANT 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.
4. The PARTICIPANT 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.
5. The PARTICIPANT will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.
6. 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 PARTICIPANT, except as may otherwise be provided in separate agreements. The

PARTICIPANT 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 PARTICIPANT 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.

7. The PARTICIPANT 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.
8. The PARTICIPANT 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.
9. 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 PARTICIPANT. The PARTICIPANT shall be solely responsible for all construction delay costs as a result of the DEPARTMENT's action.
10. The PARTICIPANT shall be responsible to maintain and restore all features that might require relocation within the DEPARTMENT right of way.
11. The PARTICIPANT will be responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.
12. The PARTICIPANT will be required to maintain the Project at its sole cost and expense. The obligation of the PARTICIPANT to maintain the Project shall survive the termination of this Agreement. The acceptance procedure will include a final "walk-through" by PARTICIPANT and DEPARTMENT personnel. Upon completion of construction, the PARTICIPANT 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. Submittal of the final as-built plans shall include one complete set of the signed and sealed plans on 11" X 17" plan sheets and an electronic copy prepared in Portable Document Format (PDF). Prior to the termination of this Agreement, the PARTICIPANT shall remove its presence, including, but not limited to, all of the PARTICIPANT'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. In the event the above requirements are not met, upon completion of the Project, the DEPARTMENT will not accept and sign the final approval of the Project.

13. 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 PARTICIPANT. The PARTICIPANT shall have thirty (30) days from the date of receipt of the DEPARTMENT's written notice, or such other time as the PARTICIPANT 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 PARTICIPANT fails to timely deliver the Notice of Completion, or if it is determined that the Project is not completed in accordance with the terms of this Agreement, after receipt of the Notice of Completion, the DEPARTMENT, within its discretion may: 1) provide the PARTICIPANT 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 PARTICIPANT's sole cost and expense, without DEPARTMENT liability to the PARTICIPANT 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 PARTICIPANT with an invoice for the costs incurred by the DEPARTMENT and the PARTICIPANT shall pay the invoice within thirty (30) days of the date of the invoice.
14. The PARTICIPANT shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. The PARTICIPANT shall be responsible for the correction of any erosion, shoaling, or water quality problems that result from the construction of the Project.
15. Portable Traffic Monitoring Site (PTMS) or a Telemetry Traffic Monitoring Site (TTMS) may exist within the vicinity of your proposed work. It is the responsibility of the PARTICIPANT to locate and avoid damage to these sites. If a PTMS or TTMS is encountered during construction, the Planning and Environmental Management Office (PL&EM) must be contacted immediately at 954-777-4601.
16. During construction, highest priority must be given to pedestrian safety. If permission is granted to temporarily close a sidewalk, it should be done with the express condition that an alternate route will be provided, and shall continuously maintain pedestrian features to meet Americans with Disability Act (ADA) standards.
17. Restricted hours of operation will be from 9:00am to 3:30 pm, (Monday-Friday), unless otherwise approved by the Operations Engineer, or designee.
18. Lane closures on the state road system must be coordinated with the Public Information Office at least two weeks prior to the closure. The contact information for the public information office is as follows:

Barbara Kelleher
Florida Department of Transportation
Public Information Office
3400 West Commercial Blvd.
Fort Lauderdale, Florida 33309
954-777-4090
Barbara.kelleher@dot.state.fl.us