

INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY OF RIVIERA BEACH FOR THE OWNERSHIP, OPERATION, AND MAINTENANCE OF A DECORATIVE STREET LIGHTING SYSTEM ALONG AUSTRALIAN AVENUE

THIS INTERLOCAL AGREEMENT FOR THE OWNERSHIP, OPERATION, AND MAINTENANCE OF A DECORATIVE STREET LIGHTING SYSTEM ALONG AUSTRALIAN AVENUE (AGREEMENT) is made and entered into this _____ day of _____, 20__ by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners (COUNTY), and the City of Riviera Beach (CITY), a municipal corporation of the State of Florida (individually Party and collectively Parties).

WITNESSETH:

WHEREAS, COUNTY and the CITY are authorized to enter into this AGREEMENT pursuant to Section 163.01, Florida Statutes, as amended, which permits local governmental units to make the most efficient use of their powers by enabling them to cooperate on the basis of mutual advantage; and

WHEREAS, the CITY desires the Florida Department of Transportation (FDOT) to construct certain improvements more particularly described as Financial Project ID 438384-1-52-01, which involves decorative street lighting along Australian Avenue from W 1st Street to W Blue Heron Boulevard (PROJECT); and

WHEREAS, the CITY is responsible for installing and maintaining all street lighting within its municipal limits; and

WHEREAS, Australian Avenue from W 1st Street to W Blue Heron Boulevard is within the municipal limits of the CITY and is a COUNTY maintained right-of-way; and

WHEREAS, the FDOT requires COUNTY to enter into a Highway Maintenance Memorandum of Agreement (HMMOA) outlining the responsibilities of the FDOT and COUNTY with respect to the PROJECT, which HMMOA is incorporated by reference herein as **Exhibit "A"**; and

WHEREAS, the FDOT will be responsible for the funding and construction of the PROJECT pursuant to the HMMOA; and

WHEREAS, after completion of the PROJECT, the CITY shall be responsible for maintaining the decorative street lighting as required by the HMMOA; and

WHEREAS, pursuant to this AGREEMENT, COUNTY has agreed to assign and deliver to the CITY, and the CITY has agreed to accept and assume from COUNTY, those portions of the HMMOA related solely to the maintenance of the decorative street lighting component of the PROJECT (Street Lighting), including all rights, claims, interests, and obligations with respect thereto.

NOW, THEREFORE, in consideration of the mutual representations, terms, and covenants contained herein, the Parties hereto agree as follows:

1. The above recitations are true and correct and incorporated herein by this reference.
2. COUNTY hereby conveys, transfers, and assigns its rights, duties and obligations in, to, and under the HMMOA pertaining to the maintenance of the Street Lighting and the CITY hereby assumes all rights, duties and obligations required of COUNTY in, to, and under the HMMOA, including all required payments, related to the maintenance of the Street Lighting.
3. The CITY shall be responsible for any and all additional costs associated with the PROJECT, such as any and all costs determined to be Federal Aid Non-Participating.
4. COUNTY, under no circumstances, shall incur any cost as a result of or related to the PROJECT.
5. The CITY shall apply for both a right-of-way Permit and construction Permit from COUNTY before performing any and all maintenance and operations related to the PROJECT.

6. Upon “final acceptance” by the FDOT (as “final acceptance” is described in the FDOT Standard Specifications for Roadway and Bridge Construction dated 2019, as amended) the CITY shall own the Street Lighting and shall have the duty to maintain, repair, and replace, at CITY’S own cost, the Street Lighting in perpetuity and in accordance with the following Federally and State accepted (a) FDOT Design Manual (FDM), current edition (b) Florida Green Book dated 2016, as amended (c) Governing standards and specifications: FDOT Design Standards dated FY 2017-18, as amended (d) Standard Specifications for Roadway and Bridge Construction dated 2019, as amended by contract documents, and (e) Manual on Uniform Traffic Control Devices (MUTCD), current edition, or as amended. Maintenance of said Project includes, maintaining pedestrian crosswalks and curb ramps, roadway decorative lighting, and incidental sidewalk replacement. The Department shall give the AGENCY ten (10) days notice before final acceptance. In the event the CITY fails to maintain, repair or replace, at its own cost, the Street Lighting, COUNTY shall have the right to remove or request the CITY to remove, Street Lighting or any part thereof, and the CITY shall be responsible for all costs related to the removal.

7. This AGREEMENT may be amended in writing by the mutual consent of the Parties to this AGREEMENT and executed with the same formality as the original AGREEMENT.

8. **Insurance.** Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes (STATUTE), the CITY represents that it is self-insured with coverage subject to the limitations of the STATUTE, as may be amended. If the CITY is not self-insured, the CITY shall, at its sole expense, purchase and maintain in full force and effect at all times during the life of this contract, insurance coverage at limits not less than those contained in the STATUTE. Should the CITY purchase excess liability coverage, the CITY agrees to include COUNTY as an Additional Insured. The CITY agrees to maintain or to be self-insured for Workers’ Compensation insurance in accordance with Chapter 440, Florida Statutes. Should the CITY contract with a third-party (CONTRACTOR) to perform any service related to the AGREEMENT, the CITY shall require the CONTRACTOR to provide the following minimum insurance:

- a. Commercial General Liability insurance with minimum limits of \$1,000,000 combined single limit for property damage and bodily injury per occurrence and \$2,000,000 per aggregate. Such policy shall be endorsed to include the CITY and COUNTY as Additional Insureds. The CITY shall also require that the CONTRACTOR include a Waiver of Subrogation against COUNTY.
- b. Business Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits for property damage and bodily injury per occurrence.
- c. Workers’ Compensation insurance in compliance with Chapter 440, Florida Statutes, and which shall include coverage for Employer’s Liability with minimum limits of \$1,000,000 each accident.

When requested, the CITY shall provide an affidavit or Certificate of Insurance evidencing insurance or self-insurance. Compliance with the foregoing requirement shall not relieve the CITY of its liability and obligations under this AGREEMENT.

9. **Notices.** All notices or inquiries required or allowed by this AGREEMENT shall be delivered in person or mailed by Certified Mail, Return Receipt Requested, with sufficient postage affixed, to the Party to whom such notice is to be given. Notices are to be sent to the following locations:

As to the activities of COUNTY and the CITY:

PALM BEACH COUNTY: Palm Beach County Engineering and Public Works Department
Attn: Motasem A. Al-Turk, Ph.D., P.E.
Traffic Division Director
P.O. Box 21229
West Palm Beach, FL 33416-1229

With a copy to:

Palm Beach County Attorney's Office
Attn: Yelizaveta B. Herman
Assistant County Attorney
P.O. Box 1989
West Palm Beach, FL 33416-1229

CITY:

Attn: _____

10. **Severability.** In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this AGREEMENT and the same shall remain in full force and effect.

11. **Entire Agreement.** This AGREEMENT and any required COUNTY permit represents the entire understanding between the Parties, and supersedes all other negotiations, representations, or agreements, written or oral, relating to this AGREEMENT.

12. **Legal Fees.** Any costs or expenses including reasonable attorney's fees associated with the enforcement of the terms or conditions of this AGREEMENT shall be borne by the respective Parties.

13. **Venue.** This AGREEMENT shall be governed by and in accordance with the laws of the State of Florida. Any legal action necessary to enforce this AGREEMENT shall be held in Palm Beach County. No remedy herein conferred upon any Party is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity by statute or otherwise. No single or partial exercise by any Party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

14. **Records.** The CITY shall maintain books, records and documents to justify all charges, expenses and costs incurred under this AGREEMENT.

15. **Indemnification.** The CITY shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers free and harmless from and against any and all claims, liability, expenses, losses, costs, fines and damages or causes of action of every kind or character including attorney's fees, whether at trial or appellate levels or otherwise arising out of or related to implementation or use of LPR, arising during or as a result of the CITY's performance of the terms of this AGREEMENT, or due to the acts or omissions of the CITY. The CITY's aforesaid indemnity and hold harmless obligations shall apply to the fullest extent permitted by law. Notwithstanding the foregoing, nothing set forth in this paragraph shall constitute a waiver of sovereign immunity beyond the limits set forth at Section 768.28, Florida Statutes. This paragraph shall survive the expiration or termination of this AGREEMENT.

16. **Non-Discrimination.** The Parties agree that no person shall be excluded on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this AGREEMENT, as provided in R-2017-1770, as amended.

17. **Contractual Relationship.** The CITY is, and shall be, in the performance of all work, services and activities under this AGREEMENT, an independent contractor and not an employee, agent or servant of COUNTY. All persons engaged in any of the work or services performed pursuant to the AGREEMENT shall at all times in all places be subject to the CITY's sole direction, supervision, and control. The CITY shall exercise control over the means and manner in which its employees, agents or contractors perform the work in all respects. The CITY's relationship and the relationship of its employees, agents or contractors to COUNTY shall be that of an independent contractor and not as employees or agents of COUNTY.

18. **Counterparts.** This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original.

19. **Legal Compliance.** The CITY shall abide by all applicable federal, state and local laws, orders, rules and regulations when performing under this AGREEMENT. The CITY further agrees to include this provision in all contracts issued as a result of this AGREEMENT.

20. **Convicted Vendor List.** As provided in Section 287.132-133, Florida Statutes, as may be amended from time to time, by entering into this AGREEMENT or performing any work in furtherance hereof, the CITY shall have its contractors certify that their affiliates, suppliers, subcontractors, and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date hereof.

21. **Preparation of the Agreement.** The preparation of this AGREEMENT has been a joint effort of the Parties, and the resulting document shall not, solely as a matter of judicial constraint, be construed more severely against one of the Parties than the other.

22. **Assignment.** Neither COUNTY nor the CITY shall assign, sublet, convey or transfer its interest in this AGREEMENT without the prior written consent of the other.

23. **Amendment.** Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith. Except that either Party may from time to time change the address to which notice under this AGREEMENT shall be given upon three (3) days prior written notice to the other Party.

24. **Inspector General.** COUNTY has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 – 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CITY, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of COUNTY Code, Section 2-421 – 2-440 and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

25. **Third-Party Beneficiary.** No provision of this AGREEMENT is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a Party to this AGREEMENT, including, but not limited to, any citizen or employees of COUNTY and/or the CITY.

26. **Effective Date.** This AGREEMENT shall become effective immediately upon the execution by both Parties and upon filing with the Clerk of the Circuit Court of Palm Beach County, Florida.

IN WITNESS WHEREOF, the undersigned Parties have executed this **AGREEMENT** on the day and year first written above.

EXECUTED by CITY this _____ day of _____, 20_____.

(CITY's Seal)

ATTEST:

CITY OF RIVIERA BEACH, FLORIDA

By: _____

By: _____

(Print Name and Title)

(Print Name and Title)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____

(Print Name and Title)

EXECUTED by COUNTY this _____ day of _____, 20 ____.

(COUNTY Seal)

ATTEST:

Sharon R. Bock
Clerk & Comptroller

Palm Beach County, A POLITICAL
SUBDIVISION OF THE STATE OF
FLORIDA, by and through its BOARD OF
COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Dave Kerner, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Yelizaveta B. Herman
Assistant County Attorney

By: _____
Motasem A. Al-Turk, Ph.D., P.E.
Traffic Division Director