

DUNS No.: 80-939-7102
CSFA No.: N/A

Contract No.: _____
FM No: 437894-2-78-01
FEID No: VF-596-000-338-040

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 Hollywood, located at 2600 Hollywood Boulevard, Hollywood, Florida 33021, hereinafter referred to as the PARTICIPANT.

WITNESSETH

WHEREAS, the DEPARTMENT and the PARTICIPANT are desirous of having the PARTICIPANT provide certain improvements in connection with Financial Management (FM) Number 437894-2-78-01 (Funded in Fiscal Year 2015/2016) for the Construction of a Tidal Control Structure with Flap Gate @ NorthLake/ICCW Outfall Pipe, in Broward County, Florida. Refer to **Exhibit A**, Scope of Services, attached hereto and made of part hereof; and

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

WHEREAS, the location of the Project is 1400 feet north of SR-820/Hollywood Blvd and N 13th Avenue (MP 18.890) as depicted in **Figure 1**, attached hereto and made a part hereof; and

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

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

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

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. The PARTICIPANT shall be responsible for assuring that the Project complies with all applicable Federal, State and Local laws, rules, regulations, guidelines and standards. The PARTICIPANT shall also be responsible for the administration and overall coordination required for the Project.

The PARTICIPANT shall be responsible for applying and obtaining all necessary environmental and construction permits for the construction of the Project (i.e. SFWMD, USACOE, DEP, etc.). The PARTICIPANT may have to submit an Agent Authorization Letter to any of the permitting agencies in order to apply on behalf of the DEPARTMENT. The PARTICIPANT shall be responsible for obtaining any other permits necessary to complete the Project. If a permit was issued for the Project, then a letter of permit completion compliance issued by the permitting agency must be submitted to the DEPARTMENT's District Drainage Office to show conformance and acceptance.

The PARTICIPANT will be responsible for verifying the accuracy of the Project related plans prepared on the PARTICIPANT's behalf, and shall revise them as necessary to reflect "as-built" conditions upon completion of construction. Project plans that have been modified to reflect "as-built" conditions shall be provided to the DEPARTMENT. As-built plans must be signed and sealed by the PARTICIPANT to show conformance to the plans.

3. The DEPARTMENT agrees to make all previous studies, maps, drawings, surveys and other data, and information pertaining to the Project available to the PARTICIPANT at no extra cost.
4. The PARTICIPANT shall have the sole responsibility for resolving claims and requests for additional work for the Project. The PARTICIPANT will make best efforts to obtain the DEPARTMENT's input in its decisions.
5. Except as otherwise set forth herein, this Agreement shall continue in effect and be binding to both the PARTICIPANT and the DEPARTMENT until the Project is completed as evidenced by the written acceptance of the DEPARTMENT or June 30, 2017, whichever occurs first.
6. The DEPARTMENT agrees to pay the PARTICIPANT for services described in **Exhibit A** of this Agreement. The total funding allocated for the Project is estimated to be ONE HUNDRED SEVENTY SIX THOUSAND FOUR HUNDRED THIRTY FOUR DOLLARS AND NO CENTS (\$176,434.00). The DEPARTMENT will pay the PARTICIPANT an amount not to exceed ONE HUNDRED FORTY SEVEN THOUSAND SEVEN HUNDRED THIRTY FOUR DOLLARS AND NO CENTS (\$147,734.00) for actual cost incurred as detailed in progress reports. The PARTICIPANT shall invoice the DEPARTMENT on a quarterly basis. In the event the actual cost of the Project, without modifications, exceeds the DEPARTMENT's participation of ONE HUNDRED FORTY SEVEN THOUSAND SEVEN HUNDRED THIRTY FOUR DOLLARS AND NO CENT (\$147,734.00), any additional cost shall be the sole responsibility of the PARTICIPANT.

The remaining funding of TWENTY EIGHT THOUSAND SEVEN HUNDRED DOLLARS AND NO CENTS (\$28,700.00) is allocated for the reimbursement of actual cost incurred for Contingency Services. Contingency Services is hereinafter defined to mean possible work, not stated in **Exhibit A**, which is required to satisfactorily complete the Project within its intended scope of services. Upon determination that Contingency Services are needed in order to complete the Project, the PARTICIPANT shall prepare and submit a scope of services for the Contingency Services and a written cost estimate proposal for all related work required by the DEPARTMENT, for written approval. Upon approval by either the DEPARTMENT's District Four Director of Transportation Operations or the DEPARTMENT's District Four District Maintenance Engineer, a Letter of Authorization (LOA) will be issued by the DEPARTMENT setting forth the Contingency Services to be performed and the maximum limiting amount associated with those services. The PARTICIPANT shall only perform Contingency Services as designated in a LOA. Any Contingency Services performed prior to receiving written authorization from the DEPARTMENT, will not be eligible for reimbursement.

7. The PARTICIPANT acknowledges and agrees that the DEPARTMENT'S obligation to pay the sum set forth herein is contingent upon an annual appropriation by the Florida Legislature.
8. In the event the Project costs or Project 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 costs will be the sole responsibility of the PARTICIPANT.
9. The PARTICIPANT shall provide the following quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The deliverables for the Project are shown in **Exhibit B**, Deliverables, attached hereto and a made apart hereof. The PARTICIPANT will need written approval from the DEPARTMENT, if deviating from the Deliverables set forth in **Exhibit B**.
10. The PARTICIPANT will be paid upon the DEPARTMENT receiving the deliverables as set forth in this Agreement. The PARTICIPANT will submit monthly written progress report by the 15th day of the month, attesting to the actual services performed.
11. Invoices shall be submitted by the PARTICIPANT 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 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.

12. There shall be no reimbursement for travel expenses under this Agreement.
13. The PARTICIPANT must submit the final invoice to the DEPARTMENT within 180 days after the final acceptance of the Project. Invoices submitted after the 180 day time period may not be paid. The final balance due under this Agreement will be reimbursed upon the completion of all Project services and receipt of final cost documentation and proper submission of a detailed invoice and when the Project has been inspected, approved, and accepted to the satisfaction of the DEPARTMENT in writing.

The PARTICIPANT shall coordinate with the DEPARTMENT's District Drainage Office and District Maintenance Office for a final inspection visit for Project Completion acceptance.

14. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes. If the DEPARTMENT determines that the performance of the RECIPIENT is unsatisfactory, the DEPARTMENT shall notify the RECIPIENT of the deficiency to be corrected, which correction shall be made within a time frame to be specified by the DEPARTMENT. The RECIPIENT shall, within five days after notice from the DEPARTMENT, provide the DEPARTMENT with a corrective action plans describing how the RECIPIENT will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverables deficiencies, or contract non-compliance. If the corrective action plans is unacceptable to the DEPARTMENT, the RECIPIENT shall be assessed a non-performance retainage equivalent to 10% of the total invoices amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until RECIPIENT resolves the deficiency. If the deficiency is subsequently resolved, the RECIPIENT may bill the DEPARTMENT for the retained amount during the next period. If the RECIPIENT is unable to resolve the deficiency, the funds retained may be forfeited at the end of the Agreement's term.
15. The PARTICIPANT agrees to comply with Section 20.55(5), F.S., and to incorporate in all subcontracts the obligation to comply with Section 20.55(5), F.S.
16. The PARTICIPANT providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt, the DEPARTMENT has five (5)

- business days to inspect and approve the goods and/or services unless the bid specifications, purchase order, or contract specifies otherwise. 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.
17. If a payment is not available within forty (40) calendar days of an invoice being received and stamped with an official date and time of receipt by the DEPARTMENT, a separate interest penalty at a rate as established pursuant to Section 55.03(1), F.S., 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 completed invoice, as approved by the DEPARTMENT, is provided to the DEPARTMENT.
 18. 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 payments(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
 19. Records of costs incurred under 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 PARTICIPANT and all subcontractors performing work on the Project, and all other records of the PARTICIPANT and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.
 20. In the event this contract is for services in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the department that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent

the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year."

21. The PARTICIPANT will comply with all Federal, State, and Local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under the Agreement.
22. 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.
23. The PARTICIPANT agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants who perform with in connection with this Agreement.

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

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

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

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

24. 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.
25. In the event it becomes necessary for the DEPARTMENT 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.
26. This Agreement is governed by and construed in accordance with the laws of the State of Florida.
27. 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.
28. 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.
29. 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: Ruben Rodriguez, Project Manager
A second copy to: Office of the General Counsel

If to the PARTICIPANT:

City of Hollywood
1621 N. 14th Avenue
Hollywood, Florida 33020
Attn: Jitendra Patel
With A Copy to: City Attorney

The remainder of this page 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 HOLLYWOOD
CITY COMMISSION

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: _____
NAME: _____
TITLE: _____
_____ day of _____, 2016

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

ATTEST:

LEGAL REVIEW:

CITY CLERK (SEAL)

BY: _____
OFFICE OF THE GENERAL COUNSEL

APPROVED TO FORM:

APPROVED:

BY: _____
CITY ATTORNEY

BY: _____
DISTRICT PROGRAM MGMT ADMINISTRATOR

EXHIBIT “A”
SCOPE OF SERVICES
FM# 437894-2-72-01

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

- 1) Cap and seal connection between existing structure, S-38 and 96 inches diameter concrete pipe.
- 2) Construct tidal control structure, CS-59 with an 84-inches flap gate as per City of Hollywood’s Plans 15-11035.



FIGURE 1

Exhibit B
Deliverables
FM# 437894-2-72-01

CAPPING 96" DIAMETER PIPE			
Item No.	Description	Unit	Estimated Qty.
102-1	MOT	LS	1
160-4	STABILIZED MATERIAL	SY	56
285-709	BASE MATERIAL	SY	30
334-1-13	SUPERPAVE ASPHALTIC CONCRETE	TN	6
430-830 #	PLUG AND SEAL 96" PIPE	CY	4
520-1-10	TYPE F CURB & GUTTER	LF	40
520-1-2	SOD	SY	275
530-74	STONE BEDDING	TN	44

TIDAL CONTROL STRUCTURE			
Item No.	Description	Unit	Estimated Qty.
160-4	STABILIZED MATERIAL	SY	20
285-709	BASE MATERIAL	SY	20
334-1-13	SUPERPAVE ASPHALTIC CONCRETE	TN	2
425-2-92 *	STRUCTURE CS-59	EA	1
430-175-184	84" RCP PIPE	LF	32
430-880-05	84" FLAP GATE	EA	1
520-1-10	TYPE F CURB & GUTTER	LF	30
520-1-2	SOD	SY	200
530-74	STONE BEDDING	TN	60

- INCLUDES EXCAVATION, SHORING , AND PRECAST CONCRETE WALL (PLUG)

* - TURBIDITY BARRIER IS INCLUDED UNDER THIS ITEM