

**ILLUMINATION AGREEMENT BETWEEN BROWARD COUNTY AND
CITY OF COCONUT CREEK FOR COCONUT CREEK PARKWAY**

This Illumination Agreement ("Agreement") between Broward County ("County"), a political subdivision of the State of Florida, and City of Coconut Creek ("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. City desires to install a Lighting System (as defined below) within City's municipal boundaries, on Coconut Creek Parkway from Lyons Road to Coconut Creek Boulevard ("Trafficway"), more specifically described in the Approved Plans ("Project").

B. The Trafficway is functionally classified as a County road and under County's control.

C. It is of mutual benefit to the residents of County and City to illuminate the Trafficway.

D. City desires to undertake the installation of the Lighting System and its continued operation and maintenance.

E. County is amenable to the installation of the Lighting System, on that portion of the Trafficway shown on Exhibit A, subject to the terms and conditions of this Agreement.

F. City, through formal action of its governing body taken on the ___ day of _____, 2019, has accepted responsibility for the ongoing operation and maintenance of the Property under the terms of this Agreement.

G. City has authorized the appropriate municipal officers to execute this Agreement.

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

ARTICLE 1. DEFINITIONS

1.1 Approved Plans: The construction documents and specifications describing the Project, including all materials to be installed within the Property as referenced in the plans submitted to and approved by the Contract Administrator and filed under Project Reference Number 180918001.

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 System: Light poles, luminaires, cable, conduit, grounding, load centers, pullboxes, conductors, and cable distribution systems, as described in the Approved Plans.
- 1.8 Property: That portion of the Trafficway described 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 all permits have been issued and all 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 the Lighting System.

2.1.4 Once installed, properly operate and maintain the Lighting System. As part of such maintenance responsibility, City shall keep the Lighting System in good repair including all necessary maintenance, repair, and replacement of any type or nature of all defective, dilapidated, or nonfunctioning parts and equipment including poles, luminaires, or circuitry, whether due to normal wear and tear, acts of God, defect, vandalism, or accident.

2.1.5 Provide County 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, 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 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 conform to the Approved Plans.

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

2.3 City shall not relocate, replace, modify, or alter all or any part of the Lighting System without submitting plans to the Division and obtaining a permit from the Division.

2.4 The Lighting System will remain the property of City, and will be installed, operated, and maintained by City at its sole risk and expense.

2.5 County Trafficway Improvements. County agrees that if County elects to conduct improvements within the Trafficway that may impact, or result in damage to, the Lighting System, County will, during the planning phase, submit the County plans to the City. City will then have forty-five (45) calendar days after receipt of County plans to review and evaluate the impacts of the improvements on the Lighting System and provide comments and recommendations that will, as applicable, preserve the Lighting System, reduce any negative impacts on the Lighting System, or improve the City's ability to replace or relocate any impacted components of the Lighting System. City will have ninety (90) calendar days before the commencement date of the construction of any improvements to remove or relocate all components of the Lighting System that will be impacted by the County improvements, at City's sole cost.

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

2.7 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.

ARTICLE 3. COSTS

County shall bear no costs under this Agreement. 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.

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 either party if the other party fails to perform any of its obligations and has not corrected the breach within thirty (30) calendar days after receipt of written notice identifying the breach. If an identified breach is not remedied within thirty (30) calendar days after receipt of written notice, or if such breach cannot be cured within thirty (30) calendar days after receipt of notice, and the breaching party fails to begin correction of the breach or fails to diligently prosecute correction of the breach to completion within an additional agreed upon time frame, the non-breaching party may, at its option, cause such breach to be corrected and invoice the breaching party for the costs of the correction, or may instead terminate this Agreement. If the non-breaching party opts to correct the breach and invoice the breaching party for the costs, the breaching party shall remit to the non-breaching party the amount invoiced within thirty (30) calendar days of receipt of the invoice. If either party erroneously, improperly, or unjustifiably terminates for cause, such termination shall, at that party's sole election, be deemed a termination for convenience, which shall be effective thirty (30) calendar days after such termination for cause is provided.

4.3 This Agreement may be terminated for convenience by action of either party's governing body. Except as provided in the last sentence of the preceding paragraph, termination for convenience by either party's governing body shall be effective on the termination date stated in the written notice provided by that governing body, which termination date must not be less than thirty (30) calendar days after the date of such written notice.

4.4 This Agreement may also be terminated by City or the County Administrator upon such notice as the City or County Administrator deems appropriate under the circumstances if the City or County Administrator determines that termination is necessary to protect the public health or safety.

4.5 If this Agreement is terminated for any reason, City shall remove from the Property, at City's sole expense, the Lighting System unless the Contract Administrator, in writing, authorizes City to leave the Lighting System in place. If the Lighting System must be removed:

4.5.1 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.

4.5.2 City must obtain a permit from the Division to remove the Lighting System and return the Property to its original condition, or a condition acceptable to the Contract Administrator following removal.

4.5.3 City is obligated to repair or pay for any damage to the Property resulting from the removal of the Lighting System.

4.6 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement, except that notice of termination based on the need to protect the public health or safety may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

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 acknowledgment of delivery, together with a contemporaneous email, addressed to the party for whom it is intended at the place last specified. The manner in which and persons to whom notice may be provided will remain the same unless and until changed in writing in accordance with this article. The Parties respectively designate the following persons for receipt and issuance of notice:

FOR COUNTY:

Director, Broward County Highway Construction and Engineering Division
1 North University Drive, Box B300
Plantation, Florida 33324
Email: rtornese@broward.org

FOR CITY:

City Manager, City of Coconut Creek
4800 West Copans Road
Coconut Creek, Florida 33063
Email: mblasi@coconutcreek.net

ARTICLE 6. INDEMNIFICATION

6.1 County and City are entities subject to Section 768.28, Florida Statutes, as may be amended from time to time, and each agree to be fully responsible for the acts and omissions of their respective 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: Third party shall indemnify and hold harmless County, and all of County's current and former officers, agents, servants and employees (collectively, "Indemnified Party"), from and against any and all causes of action, demands, claims, losses, liabilities, damages, and expenditures of any kind, including, attorney's fees, court costs, and expenses (collectively, a "Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused in whole or in part, by any intentional, reckless, or negligent act or omission of third party, its current or former officers, employees, agents, servants or assigns, arising from or relating to, or in connection with this Agreement. If any Claim is brought against Indemnified Party, third party shall upon written notice from County, at its own expense, defend each Indemnified

Party against each such Claim by counsel satisfactory to County, or, at County Attorney's option, pay for an attorney selected by County Attorney to defend Indemnified Party.

6.3 The provisions of paragraph 6 will survive the expiration or earlier 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 perform the work 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 B, 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 Insurance policy.

7.2.2 City's contractor shall furnish the Contract Administrator with Certificates of Insurance and Endorsements evidencing the insurance coverage specified above at least fifteen (15) calendar days 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. If any of the insurance coverage will expire prior to the completion and final acceptance of the Project, proof of insurance renewal shall be provided to County prior to the policy's expiration.

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. 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 under this Agreement.

8.7 Entire Agreement. This Agreement embodies the entire agreement between the Parties. It may not be modified or terminated except as provided in this Agreement. If a portion of this Agreement is found to be invalid, it will be considered deleted from this Agreement and such deletion will not invalidate the remaining provisions.

8.8 Joint Preparation. This Agreement has been jointly prepared by the Parties, 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.**

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

8.14 Representation of Authority. Each individual executing this Agreement on behalf of a party 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.

8.15 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.

8.16 Non-Discrimination. 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.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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 Coconut Creek, signing by and through its _____, 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 _____
Signature (Date)

By _____
Maya A. Moore (Date)
Assistant County Attorney

Print Name and Title above

Michael J. Kerr (Date)
Deputy County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF COCONUT CREEK FOR
TRAFFICWAY ILLUMINATION OF COCONUT CREEK PARKWAY

CITY

ATTEST:

City of Coconut Creek

Leslie Wallace May, City Clerk

By _____
Sandra L. Welch, Mayor

____ day of _____, 20____.

(SEAL)

Mary C. Blasi, City Manager

APPROVED AS TO FORM:

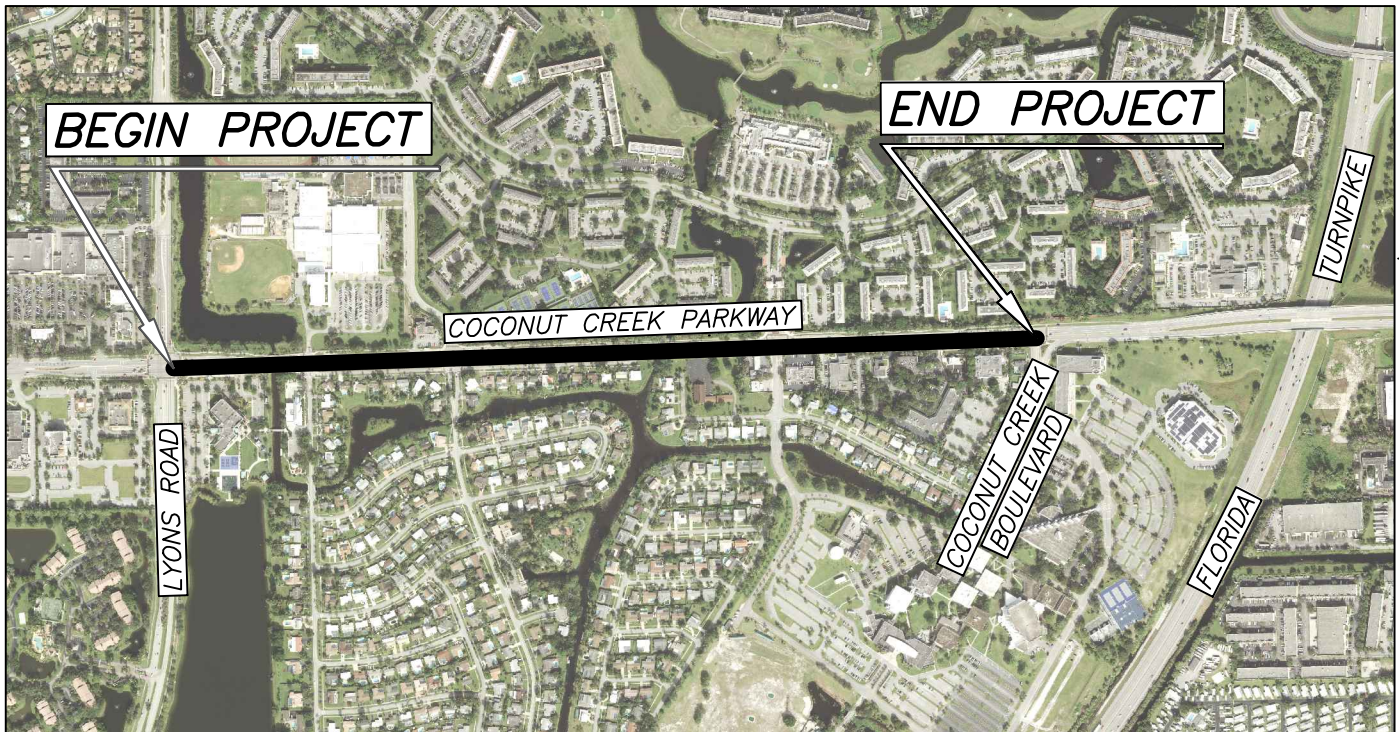
By _____
Terrill C. Pyburn, City Attorney

LOCATION MAP

PROJECT: TRAFFICWAY ILLUMINATION AGREEMENT FOR
COCONUT CREEK PARKWAY
BETWEEN: BROWARD COUNTY AND CITY OF COCONUT CREEK
MUNICIPALITY: CITY OF COCONUT CREEK
COMMISSION DISTRICT: 2



EXHIBIT "A"



SHEET 1 OF 1

Scale:	Drawn by:	Date:	Checked by:	Date:	File Location:
Not To Scale	JAT	12-7-18	GWD	12-7-18	E:\RW\Location Maps\Agreements\Traffwy Illum Agree for C. Crk. Pkwy.dwg

BROWARD COUNTY HIGHWAY CONSTRUCTION & ENGINEERING DIVISION

EXHIBIT "B"

INSURANCE REQUIREMENTS


Project: Trafficway Illumination Agreement with City of Coconut Creek
Agency: Highway Construction and Engineering Division

TYPE OF INSURANCE	ADDL INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
GENERAL LIABILITY - Broad form <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 Per Occurrence or Claims-Made: <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made Gen'l Aggregate Limit Applies per: <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		
AUTO LIABILITY <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"/> EXCESS LIABILITY / UMBRELLA Per Occurrence or Claims-Made: <input 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"/> WORKER'S COMPENSATION <i>Note: U.S. Longshoremen & Harbor Workers' Act & 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"/> EMPLOYER'S LIABILITY			Each Accident	\$500,000	
<input type="checkbox"/> POLLUTION / ENVIRONMENTAL LIABILITY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	If claims-made form:		
			Extended Reporting Period of:		
			*Maximum Deductible:		
<input type="checkbox"/> PROFESSIONAL LIABILITY (ERRORS & OMISSIONS)	N/A	<input checked="" type="checkbox"/>	If claims-made form:		
			Extended Reporting Period of:	Years	
			*Maximum Deductible:	\$100,000	
<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	Completed Value
			*Maximum Deductible:	\$10 k	

Description of Operations: "Broward County" 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



COLLEEN A. POUNALL
 dc=city, dc=broward, dc=bc,
 ou=Organization, ou=BCCC,
 ou=RM, ou=Users, cn=COLLEEN
 A. POUNALL
 2019.02.01 16:25:08 -05'00'

 Risk Management Division