LIGHTING AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF PARKLAND FOR HILLSBORO BOULEVARD FROM PARKLAND BAY TRAIL TO UNIVERSITY DRIVE

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

RECITALS

A. City desires to install a Lighting System (as defined below) within City's municipal boundaries, along Hillsboro Boulevard from Parkland Bay Trail to University Drive (the "Trafficway"), and as more specifically described in the Approved Plans (the "Project").

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

C. City seeks to undertake the installation of the Lighting System and be responsible for the continued and ongoing operation, repair, and maintenance of the Lighting System.

D. 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 detailed in this Agreement.

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

F. 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** means the construction documents and specifications depicting and defining the Project, including all materials to be installed within the Property as referenced in the plans submitted to and approved in writing by the Contract Administrator, and filed under Project Reference Number 240417001.

1.2 **Board** means the Board of County Commissioners of Broward County, Florida.

1.3 **Contract Administrator** means the Director of the Broward County Highway Construction and Engineering Division, or written designee.

1.4 **Division** means the Broward County Highway Construction and Engineering Division.

1.5 **Lighting System** means the light poles, luminaires, cable, conduit, grounding, load centers, pullboxes, conductors, and cable distribution systems, as described in the Approved Plans.

1.6 **Property** means that portion of the Trafficway described in Exhibit A.

ARTICLE 2. SCOPE OF PARTICIPATION

2.1 City shall:

2.1.1 Make application to the Division for a permit to install the Lighting System as set forth in the Approved Plans. City must not proceed with the Project until all permits have been issued and all permit conditions for commencement of the Project have been satisfied. The Project must meet County's Minimum Standards Applicable to Public Right-of-Way Under Broward County Jurisdiction as described in Section 25.1, Exhibit 25.A, of the Broward County Administrative Code.

2.1.2 Install the Lighting System at its own expense and in full accordance with the Approved Plans and to the Contract Administrator's satisfaction.

2.1.3 Following City's installation of the Lighting System and County's approval of same (as set forth in Section 2.2), provide County with signed and sealed certified as-built drawings and warranties for all work performed as set forth in the Approved Plans.

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 the Contract Administrator with immediate verbal notice, followed by prompt written notice (in the manner set forth in Article 5 of this Agreement), of any condition on the Property related to the Lighting System that might present a risk of damage to the Property or adjacent property, or might pose a risk of injury to any person. City shall contact the appropriate emergency services (fire-rescue, police, Florida Power & Light) immediately upon identification of any potential risk or injury to any person, and shall keep a written record of all contact made including the person(s) with whom City has communicated.

2.1.6 Provide the Contract Administrator with immediate verbal notice, followed by

prompt written notice (in the manner set forth in Article 5 of this Agreement), of any damage to the Property or any injury to any person on the Property.

2.2 County shall:

2.2.1 Review the Approved Plans to determine whether to issue a permit for the Approved Plans and shall issue a permit only if the Approved Plans comply with all applicable County permitting requirements.

2.2.2 Inspect the Project and may reject work that does not conform to the Approved Plans, as determined by County in its sole discretion.

2.2.3 After receiving signed and sealed certified as-built drawings that the Project is in conformance with the Approved Plans, and receiving a request for a final inspection, County shall perform a final inspection of the Project and notify City of County's final approval or rejection of the Project.

2.2.4 Have no further obligations under this Agreement other than those stated in this Section 2.2 but may exercise any and all rights it has under this Agreement.

2.3 City shall not relocate, replace, modify, or alter any part of the Lighting System without the Contract Administrator's written consent and any required permitting.

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

2.5 If City takes any action or makes any omission related to the Property or Lighting System that causes or results in alterations or damage to County property, City shall, at its own expense, restore such property to its condition before the alterations or damages. If City fails to make such restoration within thirty (30) days after County's request, County may make the restoration or exercise its rights as provided in Article 4 of this Agreement. If County elects to make the restoration, it will invoice the City for the costs thereof. City shall pay such invoice within thirty (30) days after receipt.

2.6 If City takes any action or makes any omission that causes or results in alterations to the Property (or any materials on the Property), which alterations are not specified in the Approved Plans and were not approved by County pursuant to Section 2.3, City shall, at its own expense, restore the Property to its condition before the alterations were made, or to such condition as approved in writing by the Contract Administrator. If City fails to make such restoration within thirty (30) days after County's request, County may make the restoration or exercise its rights as provided in Article 4 of this Agreement. If County elects to make the restoration, it will invoice the City for the costs thereof. City shall pay such invoice within thirty (30) days after receipt.

2.7 If City takes any action or makes any omission that causes or results in damage to the Property (or any materials on the Property), City shall, at its own expense, repair such damage. If City fails to make such repair within thirty (30) days after County's request, County may make the repair or exercise its rights as provided in Article 4 of this Agreement. If County elects to make the repair, it will invoice City for the costs thereof. City shall pay such invoice within thirty (30) days after receipt.

2.8 If the Lighting System in the Property is serviced by any utilities (including but not limited to electricity, water, sewage, or gas), City shall be solely responsible for the cost of such utilities and shall establish its own billing account directly with each utility company.

2.9 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) 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 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) 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.

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

2.11 City may retain a third party to perform any of its obligations under this Agreement. If City retains a third party for such purpose, City shall enter into a written contract with the third party under which the third party must agree to perform City's obligations in accordance with the requirements of this Agreement. City shall provide the Contract Administrator with a copy of any such contract(s) upon request of the Contract Administrator. Notwithstanding City's use of any third party, City shall remain obligated and responsible to complete its obligations under this Agreement if the third party does not. City may not relieve itself of any of its obligations under this Agreement by contracting with a third party.

ARTICLE 3. COSTS

County shall bear no costs under this Agreement. City shall pay for all costs associated with the design, installation, and 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 shall begin on the Effective Date and continue in perpetuity unless terminated as provided in this article.

4.2 This Agreement may be terminated for cause by County if City breaches any of its obligations under this Agreement and has not corrected the breach within thirty (30) days after receipt of written notice identifying the breach. County may, at the option of the Contract Administrator, cause such breach to be corrected and invoice City for the costs of the correction or may terminate this Agreement. If County opts to correct the breach and invoice City for the costs of correction, City shall pay such invoice within thirty (30) days after receipt.

4.3 This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate if the County Administrator determines that termination is necessary to protect the public health or safety. Termination under this section shall be effective on the date County provides notice to City of such termination.

4.4 Upon termination of this Agreement, 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. In addition, City shall be obligated to repair any damage to the Property resulting from the removal of the Lighting System. If City fails to comply with these removal and/or repair obligations within thirty (30) days after termination, County may perform them and then invoice City for the cost thereof. City shall pay such invoice within thirty (30) days after receipt. Any personal property remaining on the Property after the termination of this Agreement shall be deemed to have been abandoned by City and shall become the property of County.

4.5 Upon termination of this Agreement, City shall restore the Property to its condition before the installation of the Lighting System or to such condition as approved in writing by the Contract Administrator. If City fails to make such restorations within thirty (30) days after termination, County may make them and then invoice City for the costs thereof. City shall pay such invoice within thirty (30) days after receipt.

4.6 County shall 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 this Agreement including any resulting from or arising out of the termination of this Agreement.

4.7 Notice of termination shall be provided in accordance with Article 5 of this Agreement, except that notice of termination by the County Administrator, pursuant to Section 4.3 of this Agreement, may be verbal notice that shall be promptly confirmed in writing in accordance with Article 5 of this Agreement.

ARTICLE 5. NOTICES

Unless otherwise stated herein, for notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon

mailing or hand delivery (provided the contemporaneous email is also sent). Addresses may be changed by the applicable Party giving notice of such change in accordance with this article.

FOR COUNTY:

Broward County Highway Construction and Engineering Division
Attn: Director
1 N University Drive, Suite 300B, Plantation, FL 33324-2038
Email address: rtornese@broward.org

FOR CITY:

City of Parkland
Attn: Nancy Morando, ICMA-CM, City Manager
6600 University Drive, Parkland, FL 33067
Email address: nmorando@cityofparkland.org

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 agree to be fully responsible for the negligent or wrongful acts and omissions of their respective agents or employees, to the extent and within the limitations specified in Section 768.28. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by any Party to which sovereign immunity may be applicable nor shall anything included herein be construed as consent by either Party 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 perform any of City's obligations under this Agreement, City shall enter into a contract with such third party, which contract shall include the following provision:

> Indemnification: Contractor shall indemnify and hold harmless Broward County, and all of Broward County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any breach of this Agreement by contractor, or any intentional, reckless, or negligent act or omission of contractor, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, contractor shall, upon written notice from Broward County, defend each Indemnified Party with counsel satisfactory to Broward County or, at Broward County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The

obligations of this paragraph shall survive the expiration or earlier termination of this Agreement.

6.3 The obligations of this article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 7. INSURANCE

7.1 Within five (5) days after request by County, City must provide County with written verification of liability protection that meets or exceeds any requirements of Florida law. If City holds any excess liability coverage, City must ensure that Broward County is named as an additional insured and certificate holder under such excess liability policy and provide evidence of same to County.

7.2 If City maintains broader coverage or higher limits than the minimum coverage required under Florida law, County shall be entitled to such broader coverage and higher limits on a primary and non-contributory basis.

7.3 The foregoing requirements shall apply to City's self-insurance, if any.

7.4 If City contracts with one or more third parties to perform any of City's obligations set forth herein, City shall require that each third party procure and maintain insurance coverage that adequately covers the third party's exposure based on the services provided by that third party (and any subcontractors retained by the third party). City must ensure that all such third parties name "Broward County, Florida" as an additional insured and certificate holder under the applicable insurance policies. City shall not permit any third party to provide services required by this Agreement until the insurance requirements of the third party under this section are met. If requested by County, City shall furnish evidence of all insurance required by this section.

7.5 County reserves the right, but not the obligation, to periodically review any and all insurance coverages required by this Agreement and to reasonably adjust the limits and/or types of coverage required herein, from time to time throughout the term of this Agreement.

ARTICLE 8. MISCELLANEOUS

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

8.2 Independent Contractor. City is an independent contractor under this Agreement, and nothing in this Agreement shall constitute or create a partnership, joint venture, or other relationship between the Parties. In performing under this Agreement, neither City nor its agents

shall act as officers, employees, or agents of County. City has no power or right to bind County to any obligation not expressly undertaken by County under this Agreement.

8.3 Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a Party to this Agreement and not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a Party to this Agreement.

8.4 Third-Party Beneficiaries. Neither City nor County intends to primarily or directly 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 shall be entitled to assert a right or claim against either of them based upon this Agreement.

8.5 Assignment and Performance. Neither this Agreement nor any right or interest in it may be assigned, transferred, or encumbered by City without the prior written consent of County, which consent may be withheld in County's sole discretion. Any assignment, transfer, or encumbrance in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity.

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 will equal or exceed prevailing industry standards for the provision of such services.

8.6 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term. 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 will not be deemed a waiver of any subsequent breach and will not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

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

8.8 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter. It may not be modified or terminated except as provided in this Agreement. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

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

8.10 Interpretation. The titles and 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 shall include the other gender, and the singular shall include 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 thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated. Any reference to approval by County shall require approval in writing, unless otherwise expressly stated.

8.11 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision within an article or section of this Agreement, the article or section shall prevail and be given effect.

8.12 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 exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall 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 exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

8.13 Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of the Parties.

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

8.15 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.

8.16 Multiple Originals and Counterparts. This Agreement may be executed in multiple originals or in counterparts, whether signed physically or electronically; each of which will be deemed to be an original, and all of which, taken together, will constitute one and the same agreement.

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

8.18 Time of the Essence. Time is of the essence for City's performance of all obligations under 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 Parkland, signing by and through its duly authorized representative.

County

ATTEST:

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

Broward County, by and through
its Board of County Commissioners

By_____
Mayor

____ day of _____, 20__

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

Al A DiCalvo
Digitally signed by Al A DiCalvo
Date: 2024.10.18 16:44:29 -04'00'

By_____
Al A DiCalvo (Date)
Senior Assistant County Attorney

Michael Kerr
Digitally signed by Michael Kerr
Date: 2024.10.18 17:16:04 -04'00'

By_____
Michael J. Kerr (Date)
Chief Counsel

AAD
LA-Parkland (Hillsboro Blvd-LA-2024-01)_v3Final-2024-0916
9/16/24

LIGHTING AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF PARKLAND FOR HILLSBORO BOULEVARD FROM PARKLAND BAY TRAIL TO UNIVERSITY DRIVE

City

ATTEST:

Alyson Morales
City Clerk

Alyson Morales
(Print Name)

(SEAL)

City of Parkland
SEAL
Broward County Florida

City of Parkland

By _____
Mayor-Commissioner

Richard W. Walker
(Print Name and Title)

16th day of October, 2024.

_____
City Manager

Nancy Morando
(Print Name)

I HEREBY CERTIFY that I have approved this Agreement as to form and legal sufficiency subject to execution by the parties:

By _____
City Attorney

EXHIBIT A

LOCATION MAP

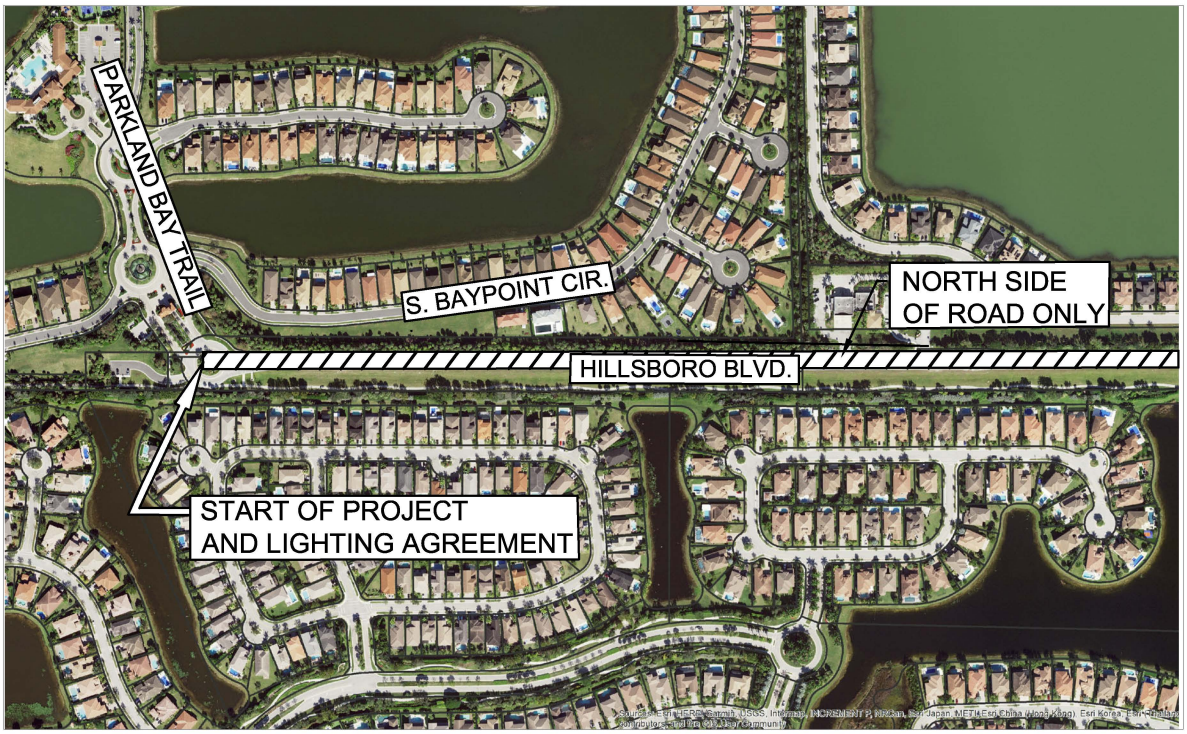
SHEET 1 OF 4

SECTION 31 & 32, TOWNSHIP 47 SOUTH, RANGE 41 EAST

LIGHTING AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF PARKLAND FOR HILLSBORO BOULEVARD FROM PARKLAND BAY TRAIL TO UNIVERSITY DRIVE

NORTH

BROWARD COUNTY FLORIDA



MATCH LINE
SEE SHEET 2 OF 4

LEGEND:

= PROPERTY: HILLSBORO BOULEVARD, FROM PARKLAND BAY TRAIL TO UNIVERSITY DRIVE

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BROWARD COUNTY HIGHWAY CONSTRUCTION & ENGINEERING DIVISION

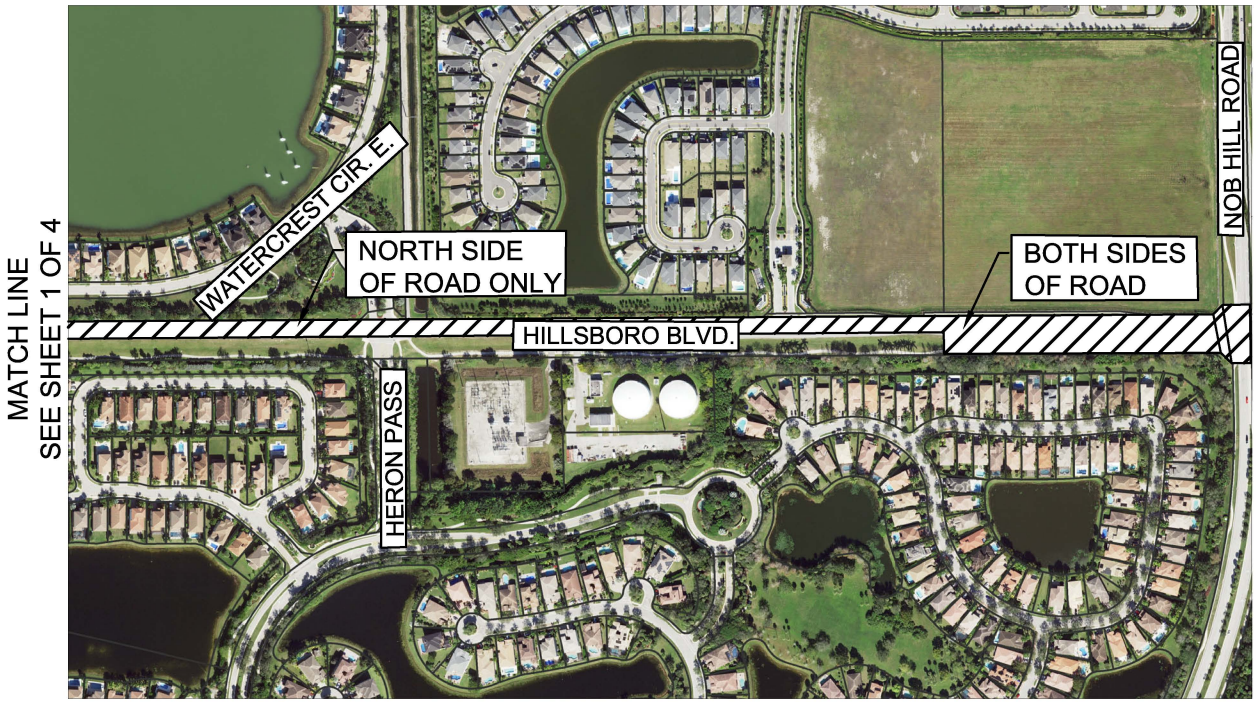
EXHIBIT A

LOCATION MAP

SHEET 2 OF 4

SECTION 32, TOWNSHIP 47 SOUTH, RANGE 41 EAST

LIGHTING AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF PARKLAND FOR HILLSBORO BOULEVARD FROM PARKLAND BAY TRAIL TO UNIVERSITY DRIVE



LEGEND:

= PROPERTY: HILLSBORO BOULEVARD, FROM PARKLAND BAY TRAIL TO UNIVERSITY DRIVE

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BROWARD COUNTY HIGHWAY CONSTRUCTION & ENGINEERING DIVISION

EXHIBIT A

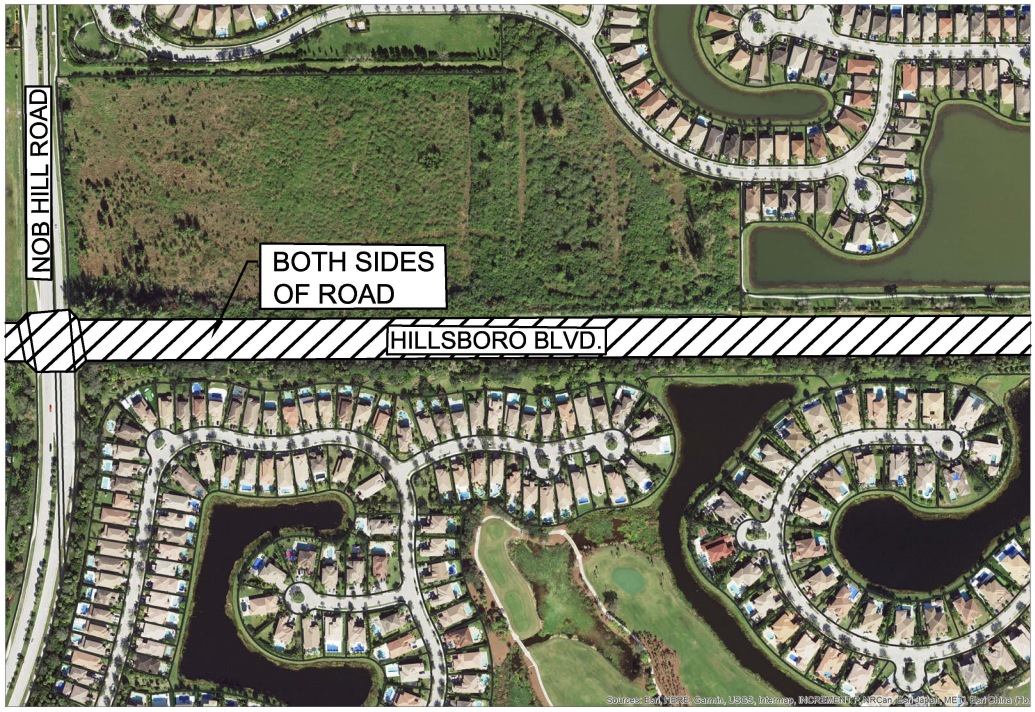
LOCATION MAP

SHEET 3 OF 4

SECTION 33, TOWNSHIP 47 SOUTH, RANGE 41 EAST

LIGHTING AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF PARKLAND FOR HILLSBORO BOULEVARD FROM PARKLAND BAY TRAIL TO UNIVERSITY DRIVE

NORTH BROWARD COUNTY FLORIDA



LEGEND:

= PROPERTY: HILLSBORO BOULEVARD, FROM PARKLAND BAY TRAIL TO UNIVERSITY DRIVE

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BROWARD COUNTY HIGHWAY CONSTRUCTION & ENGINEERING DIVISION

EXHIBIT A

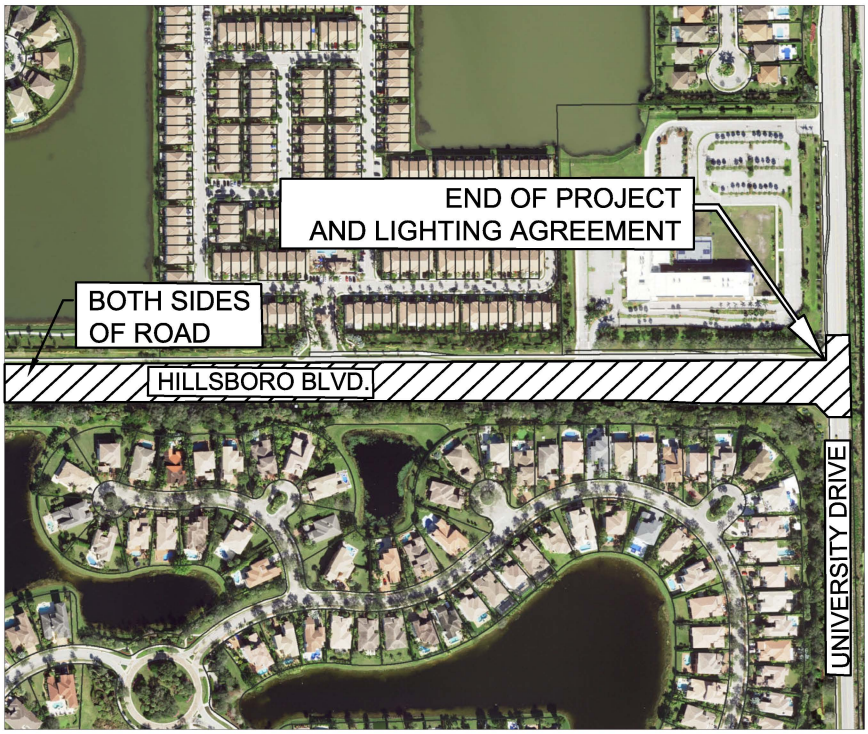
LOCATION MAP

SHEET 4 OF 4

SECTION 33, TOWNSHIP 47 SOUTH, RANGE 41 EAST

LIGHTING AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF PARKLAND FOR HILLSBORO BOULEVARD FROM PARKLAND BAY TRAIL TO UNIVERSITY DRIVE

NORTH BROWARD COUNTY FLORIDA



LEGEND:

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BROWARD COUNTY HIGHWAY CONSTRUCTION & ENGINEERING DIVISION