

This instrument prepared by and
record and return to:

City Attorney's Office
200 N.W. 1st Avenue
Delray Beach, Florida 33444

SEA TURTLE LIGHTING MAINTENANCE AGREEMENT

THIS AGREEMENT is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 N.W. 1st Avenue, Delray Beach, Florida 33444 and the Florida Department of Environmental Protection (hereinafter referred to as "Department"), whose address is _____, this _____ day of _____, 201__.

WHEREAS, pursuant to Section 161.163, Florida Statutes, the Department designated coastal areas contained within the incorporated city limits of Delray Beach as an area which is, or likely will be, utilized by sea turtles for nesting; and

WHEREAS, pursuant to Section 161.163, Florida Statutes, the Department adopted guidelines for local government regulations to control beachfront lighting to protect hatching sea turtles in such designated areas; and

WHEREAS the City submitted an application to the Department for Permit Number PB-1209 MI (hereinafter referred to as "Permit") for the installation of pedestrian scale turtle-friendly lighting along the beach promenade adjacent to A-1-A (hereinafter referred to as "Project"), which includes lighting along the designated coastal area; and

WHEREAS, the City, concerned about the health, safety, and welfare of pedestrians in and around the beach promenade located on the East side of A-1-A (Ocean Blvd.), desires to operate lighting contrary to the local government regulations promulgated by the Department; and

WHEREAS, the City agrees to maintain an operation schedule of dusk to no later than 10:00 p.m. for Ninety-Five (95) of the One Hundred and Twenty-Four (124) lights; and

WHEREAS, the Department agrees the remaining Twenty-Nine (29) fixtures, identified and submitted to the Department, will operate from dusk until a time adopted by the City Commission based upon the health, safety, and welfare of pedestrians in this commercial area located on the East side of A1A; and

WHEREAS, the Department's issuance of Permit Number PB-1209 MI, authorizing construction of the Project, is pending; and

WHEREAS, the Project and pending Permit concern property as more particularly described in the site survey attached hereto as Exhibit "A"; and

WHEREAS, the Permit would authorize the construction of sea turtle approved pedestrian scale lighting with 270-degree beach side shields, mounted at no more than a 10' height along the beach promenade located on the East side of A-1-A; and

WHEREAS, pursuant to Section 161.053(4)(c), the Department can place conditions upon the nature, timing, and sequence of construction of permitted activities to provide protection to nesting sea turtles and hatchlings and their habitat; and

WHEREAS, the Department, as a special condition to the Permit, requires the City to enter into a contractual agreement with the Department requiring the City to maintain an operation schedule of the sea turtle lighting to minimize any disorientation of marine turtles and their nesting practices.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration of which the parties hereto acknowledge, the parties agree:

1. The above recitals are true and correct and are incorporated herein by reference.
2. City shall, for the term of this Agreement, commencing the beginning of March through the end of October annually, maintain an operational schedule of dusk to 10:00 p.m. for 97 of the 126 lights depicted in the approved landscape plans in Permit PB1209-MI, a copy of which is attached hereto as Exhibit "B". The remaining 29 lights depicted in the approved landscape plans in Permit PB1209-MI will operate from dusk until a time adopted by the City Commission based upon the health, safety, and welfare of pedestrians in this commercial area, not to be later than 2:00 a.m.
3. This Agreement shall be recorded by the City in the public records of Palm Beach County.
4. This Agreement shall become effective upon execution by all parties.
5. This Agreement shall run with the land and shall be in effect for the lifetime of the structure(s) built or modified pursuant to the Permit. The Department shall release the City from the terms of this Agreement upon notification to the Department that the permitted structure(s) has been removed or upon a showing by the City that more effective methods have been adopted to prevent the entrapment of sea turtles or that long-term beach conditions have changed such that compliance with this Agreement is no longer necessary as determined by the Department. Upon the occurrence of any of the events listed in this Paragraph, the Department shall issue to the City a letter effectuating release from this Agreement, which shall be recorded in the public records of

Palm Beach County.

6. This Agreement shall automatically terminate upon the City Commission passing, by resolution, the abandonment of its right to operate the 29 lights identified and submitted to the Department from dusk until a time adopted by the City Commission based upon the health, safety, and welfare of pedestrians in this commercial area or if the Department determines the area subject to the Permit no longer is an area which is, or likely will be, utilized by sea turtles for nesting.
7. In order to ensure the perpetual nature of this Agreement, City shall reference these restrictions in any subsequent lease or deed of conveyance, including the recording book and page of record of this Agreement. In the event of any sale or conveyance of the City's property, as more fully described in Exhibit "A", in whole or in part, prior to the expiration of this Agreement, City shall, at least 30 days prior to the sale or conveyance: (1) notify the Department of the pendency of such sale or conveyance (2) provide the Department with the name and address of the purchaser, operator, and person(s) to be in control of the property, and (3) provide a copy of this Agreement with all attachments and amendments to the new owner.
8. 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, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For CITY:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager

With copy to:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Attorney

For Department:

Office of General Counsel
Department of Environmental Protection
3900 Commonwealth Blvd, MS 35
Tallahassee, Florida 32399-3000

With Copy to:
Division of Water Resources Management Florida Department of Environmental
Protection
2600 Blairstone Road, MS 3522
Tallahassee, Florida 32399-3000
Or via e-mail at:
Department.Clerk@dep.state.fl.us

9. This Agreement is solely for the benefit of the parties hereto and their respective successors and assigns and shall not be deemed to confer upon third parties any remedy, claim, liability, or reimbursement, claim of action or other right.
10. It is the intention of City that this Agreement shall touch and concern the property described in Exhibit "A", run with the land and with the title to the property described in Exhibit "A", and shall apply to and be binding upon and inure to the benefit of City and Department, and to any and all parties hereafter having any right, title or interest in the property described in Exhibit "A" or any part thereof.
11. Either party may enforce the terms and conditions of this Agreement by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of either party to exercise its right in the event of failure by the other party to comply with the provisions of this Agreement shall not be deemed or construed to be a waiver of any rights hereunder. This Agreement shall be construed in accordance with the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.
12. This Agreement may be modified in writing only. Any subsequent amendment must be executed by both City and Department and be recorded by City as an amendment hereto.
13. If any provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provisions of the Agreement. All such other provisions shall continue unimpaired in full force and effect.
14. City covenants and represents that on the date of execution of this Agreement it is seized of the Property in fee simple and has good right to create, establish, and impose this Agreement on the property described in Exhibit "A". City also covenants and warrants that the property described in Exhibit "A" is free and clear

of any and all liens, mortgages, or encumbrances that could impair City's right to impose the terms described in this Agreement. Upon request the City shall provide written evidence documenting City's clear title to the property.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

FOR CITY:

IN WITNESS WHEREOF, the Florida Department of Environmental Protection and the City of Delray Beach have hereunto set their hands this ____ day of _____, 2019.

Witness 1:

CITY OF DELRAY BEACH, FLORIDA

Print Name: _____

By: _____
Shelly Petrolia, Mayor

Witness 2:

Print Name: _____

ATTEST:
By: _____
City Clerk

Approved as to Form:

By: _____
City Attorney

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Shelly Petrolia, Mayor for the City of Delray Beach, a Florida corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.

Signature of Notary Public - State
of Florida

FOR DEPARTMENT:

Approved as to form by the Florida Department of Environmental Protection, Office of General Counsel.

FLORIDA DEPARTMENT OF
ENVIROMENTAL PROTECTION

By: _____
Name _____
Position _____
Address _____

Signed, sealed and delivered in the presence of:

Witness Signature
Print: _____

Date: _____

Witness Signature
Print: _____

Date: _____

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, representative for the Florida Department of Environmental Protection. She/He is personally known to me or has produced _____ as identification.

Signature of Notary Public - State
of Florida

Attachments:

Attachment A – Site Survey related to Permit Number PB-1209 MI

Attachment B - Application for Permit Number PB-1209 MI