

Condensed Title:

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Approving And Authorizing The City Manager To Execute Various Locally Funded Agreements And Memoranda Of Agreements, In Substantially The Attached Form, With The Florida Department Of Transportation, For Construction And Maintenance Of Off-System Drainage Improvements; And For Construction And Maintenance Of Landscape, Irrigation And Bonded Aggregate Paving, As Part Of FDOT's State Road 907/Alton Road Project From 5th Street To Michigan Ave With Funding In The Amount Of \$ 125,000.00.

Key Intended Outcome Supported:

Enhance mobility throughout the City.

Supporting Data (Surveys, Environmental Scan, etc.): According to the 2009 Customer Satisfaction Survey, traffic appears as one of the most important areas affecting residents quality of life; 37% of residents rated traffic flow as poor; traffic is ranked number 2 by residents as one of the changes that will make Miami Beach a better place to live; traffic flow is a key driver for recommending Miami Beach as a place to live.

Issue:

Shall the Mayor and City Commission approve the Resolution?

Item Summary/Recommendation:

FDOT is planning to construct improvements on Alton Road/SR 907 from 5th Street to Michigan Avenue. Construction is scheduled to begin in April 2013 and is anticipated to be completed in April 2014. The Project will include roadway, sidewalk, and curb and gutter reconstruction, significant drainage improvements including construction of three (3) stormwater pump stations, decorative roadway and pedestrian lighting, landscaping, irrigation, and bonded aggregate improvements. These improvements require the execution of several Agreements listed below and attached herewith between FDOT and the City:

- A. Locally Funded Agreement (LFA)
- B. Memorandum of Agreement (MOA)
- C. Landscape, Irrigation, and Boded Aggregate Paving Maintenance Memorandum of Agreement (MMA)
- D. Memorandum of Agreement (MOA) for Off-System Construction and Maintenance of Improvements

THE ADMINISTRATION RECOMMENDS APPROVAL OF THE RESOLUTION.

Advisory Board Recommendation:

N/A

Financial Information:




Source of Funds:		Amount	Account
OBPI	1		
	2		
	3		
	Total		

Financial Impact Summary: This is a future FDOT project (FY 13/14); City's contributions are unfunded at this time and will be requested prior to FDOT project completion.

City Clerk's Office Legislative Tracking:

Richard W. Saltrick, Acting City Engineer, x. 6565

Sign-Offs:

Department Director	Assistant City Manager	City Manager
FHB 	JGG 	JMG 


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COMMISSION MEMORANDUM

TO: Mayor Matti Herrera-Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager 

DATE: May 9, 2012

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE VARIOUS LOCALLY FUNDED AGREEMENTS AND MEMORANDA OF AGREEMENTS, IN SUBSTANTIALLY THE ATTACHED FORM, WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION, FOR CONSTRUCTION AND MAINTENANCE OF OFF-SYSTEM DRAINAGE IMPROVEMENTS; AND FOR CONSTRUCTION AND MAINTENANCE OF LANDSCAPE, IRRIGATION AND BONDED AGGREGATE PAVING, AS PART OF FDOT'S STATE ROAD 907/ALTON ROAD PROJECT FROM 5TH STREET TO MICHIGAN AVE WITH FUNDING IN THE AMOUNT OF \$125,000.00.**

FUNDING

This is a future FDOT project with construction beginning in FY 12/13. The City's contribution in the amount of \$125,000.00 for the capital cost of the irrigation system has been requested through the FY 2013 capital budget process.

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

BACKGROUND

The Florida Department of Transportation (FDOT) is planning to construct improvements on Alton Road/SR 907 from 5th Street to Michigan Avenue (Project). Construction is scheduled to begin in April 2013, and construction duration is estimated to be (12) months. The Project will include roadway, sidewalk, and curb and gutter reconstruction, significant drainage improvements including construction of three (3) stormwater pump stations, decorative roadway and pedestrian lighting, landscaping, irrigation, and tree wells bonded aggregate improvements. These improvements require the execution of several Agreements listed below and attached herewith between the FDOT and the City of Miami Beach:

- A. Locally Funded Agreement (LFA)
- B. Memorandum of Agreement (MOA)
- C. Landscape, Irrigation, and Bonded Aggregate Paving Maintenance Memorandum of Agreement (MMA)
- D. Memorandum of Agreement (MOA) for Off-System Construction and Maintenance of Improvements

Two (2) additional FDOT Agreements related to the construction of the City-owned utilities and maintenance of the three (3) proposed stormwater pump stations to be constructed as part of the future Alton Road project will be presented to the Miami Beach City Commission for consideration at a future date.

May 9, 2012

ANALYSIS

The City of Miami Beach considers Alton Road to be a primary north-south arterial and important gateway corridor serving the mobility needs of residents and visitors. As such, the City has requested FDOT to include enhancements in the Project scope, which are considered over and above the standard FDOT improvements.

It is important to note that FDOT typically does not include non-standard improvements and enhancements such as landscaping, irrigation, and tree wells bonded aggregate improvements in the scope of its roadway projects unless specifically requested by the municipality wherein the project is located. When such request is made, the municipality is typically responsible for the capital and maintenance costs associated with the implementation of the non-standard project improvements and enhancements as part of the FDOT project. Further, Memoranda of Agreements (MOA) and Locally Funded Agreements (LFA) are required in order to implement the non-standard improvements as part of an FDOT project.

Execution of the Agreements (Attachments A – D) between FDOT and the City is required in order to implement the drainage, landscaping, irrigation, and tree wells bonded aggregate improvements along Alton Road/S.R. 907 from 5th Street to Michigan Avenue, as well as drainage improvements along the side streets.

Below is a description of the purpose and need for each Agreement:

Locally Funded Agreement (LFA). The City requested that landscaping and an irrigation system be installed as part of the Project. This Agreement stipulates that the City will fund the cost for installation of an irrigation system and all associated elements and that FDOT, through its contractor, will install the irrigation system along Alton Road from 5th Street to Michigan Avenue as part of the Project.

Memorandum of Agreement (MOA). This Agreement creates an escrow account established by FDOT with an initial deposit in the amount of \$125,000.00 funded by the City for the purpose of constructing an irrigation system on Alton Road from 5th Street to Michigan Avenue as part of the Project.

Landscape, Irrigation, and Bonded Aggregate Paving Maintenance Memorandum of Agreement (MMOA). FDOT requires that the City enter into a Memorandum of Agreement (MOA) for the maintenance of the proposed landscaping, irrigation, and tree wells bonded aggregate improvements constructed as part of the Project. FDOT will install landscaping, an irrigation system, and bonded aggregate paving in accordance with the design plans, and the City will be responsible for the maintenance of said improvements.

Memorandum of Agreement (MOA) for Off-System Construction and Maintenance of Improvements. This Agreement is necessary for the design, construction, construction inspection, utility work, permits, easements, and other tasks associated with improvements on roads not on the State Highway System (e.g., Alton Road side streets under the jurisdiction of City of Miami Beach). This Agreement allows FDOT to relocate City-owned utilities located on City right-of-way and to construct drainage improvements along the side streets of Alton Road, as specified in the design plans, including construction of three (3) proposed stormwater pump stations as part of the Project at the following locations: Alton Road/10th Street, Alton Road/14th Street, and West Avenue/5th Street.

City Commission Memorandum – FDOT Agreements for Alton Road/S.R. 907 from 5th Street to Michigan Avenue

May 9, 2012

CONCLUSION

The Administration has determined that the Alton Road Improvement Project is in the best interest of the City as it will address severe drainage deficiencies along Alton Road, as well as improve the aesthetics of this primary north-south arterial roadway in the City. As such, the Administration recommends that the Mayor and City Commission approve and authorize the City Manager to execute the required Agreements with FDOT.

Attachments:

- A. Locally Funded Agreement (LFA)
- B. Memorandum of Agreement (MOA)
- C. Landscape, Irrigation, and Boded Aggregate Paving Maintenance Memorandum of Agreement (MMA)
- D. Memorandum of Agreement (MOA) for Off-System Construction and Maintenance of Improvements

JGG/FHB/RWS/JRG

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE VARIOUS LOCALLY FUNDED AGREEMENTS AND MEMORANDA OF AGREEMENTS, IN SUBSTANTIALLY THE ATTACHED FORM, WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION, FOR CONSTRUCTION AND MAINTENANCE OF OFF-SYSTEM DRAINAGE IMPROVEMENTS; AND FOR CONSTRUCTION AND MAINTENANCE OF LANDSCAPE, IRRIGATION AND BONDED AGGREGATE PAVING, AS PART OF FDOT'S STATE ROAD 907/ALTON ROAD PROJECT FROM 5TH STREET TO MICHIGAN AVENUE WITH FUNDING IN THE AMOUNT OF \$125,000.00.

WHEREAS, the Florida Department of Transportation (FDOT) is planning to construct certain infrastructure improvements on Alton Road/ State Road (S.R.) 907 from 5th Street to Michigan Avenue (the FDOT Project); and

WHEREAS, the City has requested that FDOT include irrigation and bonded aggregate paving for tree-wells as part of the FDOT Project; and

WHEREAS, FDOT is willing to design and construct an irrigation system and the bonded aggregate pavement tree-wells provided the City funds the increased costs associated with these elements; and

WHEREAS, FDOT requires the City to maintain the landscaping, irrigation system, and bonded aggregate paving installed as part of the Project; and

WHEREAS, the FDOT Project requires the design and construction of drainage improvements and relocation of City-owned facilities impacted by the Project and located off the State Highway System and on adjacent City streets; and

WHEREAS, FDOT is requiring the City to approve and execute various Agreements, including a Locally Funded Agreement (LFA), Memoranda of Agreement (MOA), Maintenance Memorandum of Agreement (MMA), and Utility Design Agreement which are necessary for the design and construction of said improvements as part of the FDOT Project,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, hereby approve and authorize the City Manager to execute various locally funded agreements and memoranda of agreements, in substantially the attached form, with the Florida Department Of Transportation, for construction and Maintenance of off-system drainage improvements; and for construction and maintenance of landscape, irrigation and bonded aggregate paving, as part of FDOT's State Road 907/Alton Road Project from 5th Street to Michigan Avenue with funding in the amount of \$125,000.00.

PASSED AND ADOPTED THIS _____ DAY OF _____ 2012.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

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[Signature]

City Attorney
Date 5-2-12

LOCALLY FUNDED AGREEMENT

THIS LOCALLY FUNDED AGREEMENT (hereinafter 'Agreement') is made and entered into this ___ day of _____, 20__, between the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida, hereinafter referred to as the 'CITY', and the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION** a component agency of the State of Florida, hereinafter referred to as the 'DEPARTMENT'.

RECITALS:

WHEREAS, the DEPARTMENT has jurisdiction over and maintains State Road (S.R.) 907/Alton Road corridor within the corporate limits of the CITY; and

WHEREAS, the CITY has requested the DEPARTMENT to install or cause to be installed an irrigation system and all associated elements along S.R. 907/Alton Road from 5th Street to Michigan Avenue; and

WHEREAS, the DEPARTMENT has agreed to install or cause to be installed an irrigation system and all associated elements along S.R. 907/Alton Road from 5th Street to Michigan Avenue, subject to the terms and conditions detailed in this Agreement; and

WHEREAS, the CITY shall fund the increased costs, under financial project numbers 249911-1-52-02 and 249911-3-52-02, associated with the installation of the irrigation system and associated elements on S.R. 907/Alton Road, from 5th Street to Michigan Avenue, hereinafter collectively called the 'PROJECT', and as detailed in the attached Exhibit "A", "Scope of Services", which is herein incorporated by reference; and

WHEREAS, the parties are authorized to enter into this Agreement pursuant to **Sections 334.044(7) and 339.12 (2006), Florida Statutes**, and authorize its officers to do so.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and other valuable considerations contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The Recitals to this Agreement are true and correct and are incorporated herein by reference and made a part hereof.

2. General Requirements

(a) A true and correct copy of the Resolution of the CITY Commission approving this Agreement is attached hereto as Exhibit "C", 'CITY OF MIAMI BEACH RESOLUTION', and is incorporated herein by reference.

(b) The CITY shall:

i. utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the CITY during the term of the Agreement; and

ii. 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 Agreement term.

(c) The DEPARTMENT will administer and construct the PROJECT in accordance with the signed and sealed PROJECT plans and as detailed in the attached Exhibit "A", 'Scope of Services'. The DEPARTMENT will complete the PROJECT utilizing the funds provided by the CITY.

- (d) The CITY will provide funding to the DEPARTMENT, in the aggregate amount of ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$125,000.00), for the PROJECT, subject further to the provisions in Section 3 of this Agreement and as outlined in the attachment Exhibit "B", "Financial Summary", which is herein incorporated by reference.
- (e) The DEPARTMENT Contractor will not commence work on the PROJECT until CITY funding for the PROJECT is on deposit with the DEPARTMENT.
- (f) Upon the receipt, authorization and encumbrance of funding received from the CITY as a result of this Agreement, the DEPARTMENT Contractor will commence work on the PROJECT.

3. Financial Provisions.

- (a) The CITY agrees that it will, no later than the 7th of October 2012, furnish the DEPARTMENT an advance deposit in the amount of ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$125,000.00) for full payment of the estimated PROJECT cost for Locally Funded project numbers 249911-1-52-02 and 249911-3-52-02. The advance deposit shall be the total estimated PROJECT cost plus allowances. The DEPARTMENT may utilize this deposit for payment of the costs of the PROJECT.
- (b) If the accepted bid amount plus allowances is in excess of the advance deposit amount, the CITY will provide an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT or prior to posting of the accepted bid, whichever is earlier, so that the total deposit is equal to the bid amount plus allowances. The DEPARTMENT will notify the CITY as soon as it becomes apparent

the accepted bid amount, plus allowances, is in excess of the advance deposit amount. However, failure of the DEPARTMENT to so notify the CITY shall not relieve the CITY from its obligation to pay for its full participation on final accounting as provided herein below. If **the CITY** cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT's project manager indicating when the deposit will be made. The CITY understands the request and approval of the additional time could delay the PROJECT, and additional costs may be incurred due to a delay of the PROJECT.

- (c) If accepted bid amount plus allowances is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the bid amount plus allowances if such refund is requested by the CITY in writing.
- (d) Should PROJECT modifications or changes to bid items occur that increase the CITY's share of total PROJECT costs, the CITY will be notified by the DEPARTMENT accordingly. The CITY agrees to provide, without delay, in advance of additional work being performed, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund its share of the PROJECT. The DEPARTMENT shall notify the CITY as soon as it becomes apparent the actual costs will overrun the award amount. However, failure of the DEPARTMENT to so notify the CITY shall not relieve the CITY from its obligation to pay for its full participation during the PROJECT and on final accounting as provided herein below. Funds due from the CITY during the PROJECT not paid within forty (40) calendar days from the date of the invoice are subject to an interest charge at a rate established pursuant to **Section 55.03, Florida Statutes (F.S.)**.

- (e) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred and sixty (360) days of final payment to the Contractor. The DEPARTMENT considers the PROJECT complete when final payment has been made to the Contractor, not when the construction work is complete. All PROJECT cost records and accounts shall be subject to audit by a representative of the CITY for a period of three (3) years after final close out of the PROJECT. The CITY will be notified of the final cost. Both parties agree that in the event final accounting of total PROJECT costs pursuant to the terms of this agreement is less than the total deposit to date, a refund of the excess will be made by the DEPARTMENT to the CITY. If the final accounting is not performed within three hundred and sixty (360) days, the CITY is not relieved from its obligation to pay.
- (f) In the event the final accounting of total PROJECT costs is greater than the total deposits to date, the CITY will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The CITY agrees to pay interest at a rate as established pursuant to **Section 55.03, F.S.**, on any invoice not paid within forty (40) calendar days until the invoice is paid.
- (g) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached Memorandum of Agreement (**MOA**) between the CITY, Department and the State of Florida, Department of Financial Services, Division of Treasury.

- (h) Nothing in this Agreement shall be construed to violate the provisions of Section 339.135(6)(a), Florida Statutes, which provides as follows:

“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 TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than one year.”

4. **Effective Date of this Agreement.** This Agreement shall become effective upon execution by the CITY and the DEPARTMENT and as of the date set forth on page one (1) hereof.
5. **Provisions Separable.** The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.
6. **Amendment of Agreement.** This Agreement may only be amended by mutual agreement of the DEPARTMENT and the CITY, expressed in writing and executed and delivered by each.

7. **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when delivered (personally, by courier service such as Federal Express, or by other messenger) against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below:

- (a) If to the CITY: City of Miami Beach
 1700 Convention Center Drive
 Miami Beach, Florida 33139
 Attention: Richard Saltrick, P.E.

- (b) If to the DEPARTMENT: Florida Department of Transportation
 1000 NW 111 Avenue, Room 6202B
 Miami, Florida 33172
 Attention: Michelle L. Meaux, JPA Coordinator

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

8. **Entire Agreement.** This Agreement, including its attached Exhibits, contain the sole and entire Agreement between the parties with respect to such subject matter and supersede any and all other prior written or oral agreements between them with respect to such subject matter.

9. **Binding Effect.** This Agreement shall be binding upon the parties and their respective representatives, successors and assigns.

10. **Waiver.** Waiver by either party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

11. **Captions.** The captions contained in this Agreement are inserted only as a matter of convenience or reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.
12. **Absence of Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to (a) confer upon any entity or person other than the parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third party beneficiary or otherwise except as specifically provided in this Agreement; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement.
13. **Other Documents.** The parties shall take all such actions and execute all such documents which may be reasonably necessary to carry out the purposes of this Agreement, whether or not specifically provided for in this Agreement; provided that the parties further acknowledge that certain additional actions by the CITY may require approval by the CITY Commission, and, to the extent such approval is required by applicable law, obtaining such approval shall be a condition to the obligations of the CITY under this Section.
14. **Governing Law.** This Agreement and the interpretation of its terms shall be governed by the laws of the State of Florida, without application of conflicts of law principles. Venue for any judicial, administrative or other action to enforce or construe any term of this Agreement or arising from or relating to this Agreement shall lie exclusively in Miami-Dade County, Florida.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year first above written, the CITY, signing by and through its CITY Manager, and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, signing by and through its District Secretary, each duly authorized to execute same.

CITY OF MIAMI BEACH:

**STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION:**

BY: _____
CITY MAYOR

BY: _____
DISTRICT SECRETARY

ATTEST: _____
(SEAL) CITY CLERK


ATTEST: _____
(SEAL) EXECUTIVE SECRETARY

LEGAL REVIEW:

CITY ATTORNEY

DISTRICT CHIEF COUNSEL

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney

2-14-12

Date

EXHIBIT 'A'

SCOPE OF SERVICES

The PROJECT work consists of constructing an irrigation system and all associated elements. This shall include water taps, water meters, conduit/sleeving and backflow preventers; additionally it will include backflow preventers and lateral lines, spray heads and emitters. In addition to materials and installation, the CITY is responsible for the impact fees and water costs during construction, warranty period and beyond for irrigation within the CITY's right-of-way.

The PROJECT is further defined in Attachment "A1", PROJECT plans (incorporated herein by reference).

Irrigation System Locations:

- From 5th Street 10th Street (MP. 0.028 to MP 0.402)
- From 10th Street to 14th Street (MP. 0.474 to MP 0.721)
- From 14th Street to Michigan Ave. (MP. 0.784 to MP 1.539)
- At 5th Street (MP. 0.000 to MP. 0.063)
- At 10th Street (MP. 0.388 to MP 0.488)
- At 14th Street (MP. 0.702 to MP. 0.800)

PROJECT LIMITS: **S.R. 907/Alton Road from 5th Street to Michigan Avenue**

DEPARTMENT Financial Project Number: **249911-1-52-02 and 249911-3-52-02**

COUNTY: **Miami-Dade**

DEPARTMENT Project Manager: **Daniel Iglesias, P.E. 305-470-5266**

CITY Project Manager: **Richard Saltrick, P.E. 305-673-7080 Ext. 6565**

EXHIBIT 'B'
FINANCIAL SUMMARY

The DEPARTMENT's Work Program allocates the following funding, programmed under Financial Project Numbers 249911-1-52-02 and 249911-3-52-02, for PROJECT completion:

<u>Fiscal Year:</u>	<u>Amount:</u>	<u>Fund Type:</u>
249911-1-52-02		
2012/2013	\$119,980.00	Local Funds (LF)
249911-3-52-02		
2012/2013	\$5,020.00	LF
 <u>CITY OF MIAMI BEACH FINANCIAL RESPONSIBILITY:</u>		<u>\$ 125,000.00</u>

EXHIBIT 'C'

CITY OF MIAMI BEACH RESOLUTION

To be attached hereto and incorporated herein once ratified by the CITY Commission.

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this _____, day of _____, 20____, by and between the State of Florida, Department of Transportation, hereinafter referred to as "FDOT" and the State of Florida, Department of Financial Services, Division of Treasury, hereinafter referred to as "TREASURY" and (Participant) hereinafter referred to as the "PARTICIPANT".

WITNESSETH

WHEREAS, FDOT is currently constructing the following project:

Main Financial Project No.: 249911-1-52-02 and 249911-3-52-02
County: Miami-Dade

hereinafter referred to as the "PROJECT".

WHEREAS, FDOT and the PARTICIPANT entered into a **Locally Funded Agreement** (LFA) dated _____, 20____, wherein FDOT agreed to perform certain work on behalf of the PARTICIPANT in conjunction with the PROJECT.

WHEREAS, the parties to this AGREEMENT mutually agreed that it would be in the best interest of FDOT and the PARTICIPANT to establish an interest bearing escrow account to provide funds for the work performed on the PROJECT on behalf of the PARTICIPANT by FDOT.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit in the amount of One Hundred Twenty Five Thousand Dollars (\$125,000.00) will be made by the PARTICIPANT into an interest bearing escrow account established by FDOT for the purposes of the PROJECT. Said escrow account will be opened with the TREASURY on behalf of FDOT upon receipt of this Memorandum of Agreement. Such account will be an asset of FDOT.
2. Other deposits will be made only by the PARTICIPANT as necessary to cover the cost increases or the cost of additional work prior to the execution of any Supplemental Agreements or Amendments.
3. Payment will be made as follows (check appropriate payment method):

- | | |
|--------------------------|---------------|
| <input type="checkbox"/> | Wire transfer |
| <input type="checkbox"/> | ACH deposit |
| <input type="checkbox"/> | Check |

A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible. Following is the wiring and ACH deposit instructions:

For wire transfers: Bank of America
Account # 001009068974
ABA # 026009593
Chief Financial Officer of Florida
Re: DOT – K 11-78, Financial Project #

For ACH deposits: Bank of America
Account # 001009068974
ABA # 063100277
Chief Financial Officer of Florida
Re: DOT – K 11-78, Financial Project #

If a check is the method of payment, the check shall be made payable to the Department of Financial Services, Revenue Processing and mailed to FDOT, OOC-GAO for appropriate processing at the following address:

Florida Department of Transportation
OOC-GAO, LFA Section
605 Suwannee Street, MS 42B
Tallahassee, Florida 32399

4. FDOT's Comptroller or designee shall be the sole signatories on the escrow account with the TREASURY and shall have sole authority to authorize withdrawals from said account.
5. Unless instructed otherwise by the FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the PROJECT as defined in the LFA.
6. The TREASURY agrees to provide written confirmation of receipt of funds to FDOT.
7. The TREASURY further agrees to provide periodic reports to FDOT.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
COMPTROLLER

STATE OF FLORIDA
DEPARTMENT OF FINANCIAL SERVICES,
DIVISION OF TREASURY

PARTICIPANT SIGNATURE

PARTICIPANT NAME & TITLE

PARTICIPANT ADDRESS

FEDERAL EMPLOYER I.D. NUMBER

**FLORIDA DEPARTMENT OF TRANSPORTATION
LANDSCAPE, IRRIGATION AND BONDED AGGREGATE PAVING
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
CITY OF MIAMI BEACH**

This **AGREEMENT**, entered into on _____, 20__, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida, hereinafter called the **CITY**, and collectively referred to as the **PARTIES**.

RECITALS:

- A. The **DEPARTMENT** has jurisdiction over State Road (S.R.) 907/Alton Road from 5th Street (MP 0.000) to Michigan Avenue (MP 1.539), which is located within the limits of the **CITY**; and
- B. The **DEPARTMENT**, pursuant to Contract # T-6290, has drafted design plans for beautification improvements on S.R. 907/Alton Road from 5th Street to Michigan Avenue, the limits of which are described in the attached Exhibit 'A' (the **PROJECT LIMITS**), which by reference shall become a part of this **AGREEMENT**; and
- C. The **DEPARTMENT** will install landscaping, irrigation systems and bonded aggregate paving in accordance with the design plans for Contract # T-6290 (the "Project"); and
- D. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party with regards to the maintenance of the landscaping, irrigation systems and bonded aggregate paving installed pursuant to the Project; and
- E. The **CITY**, by Resolution No. _____, dated _____, attached hereto as Exhibit 'B', which by reference shall become a part of this **AGREEMENT**, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits contained herein and other good and valuable consideration, the parties covenant and agree as follows:

1. RECITALS

The recitals in this **AGREEMENT** are true and correct, and are incorporated herein by reference and made a part hereof.

2. DEPARTMENT RESPONSIBILITIES

The **PARTIES** agree that by executing this **AGREEMENT** all maintenance responsibilities pertaining to the landscaping and irrigation systems within the **PROJECT LIMITS** are assigned to the **CITY** in perpetuity upon the **DEPARTMENT'S** release of its contractor from further warranty work and responsibility, as set forth in Section 580-5 of the Departments Standard Specification for Road and Bridge Construction. Additionally, the **PARTIES** agree that all maintenance responsibilities pertaining to the bonded aggregate paving shall be assigned to the **CITY** in perpetuity upon the **DEPARTMENT'S** issuance of the Notice of Final Acceptance of the Project to its contractor.

3. CITY'S MAINTENANCE RESPONSIBILITIES

The **CITY** shall maintain the landscaping, irrigation systems and bonded aggregate paving, hereinafter may also be called "Roadway Features", in accordance with all applicable **DEPARTMENT** guidelines, standards, and procedures, which shall include but shall not be limited to the Maintenance Rating Program Handbook, as may be amended from time to time. Additionally, the **CITY** shall maintain the landscaping, irrigation systems and bonded aggregate paving in accordance with the International Society of Arboriculture standards, guidelines, and procedures, as may be amended from time to time, and in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions. The **CITY'S** maintenance obligations shall include but not be limited to:

- a. Mowing, cutting and/or trimming and edging the grass and turf.
- b. Pruning all plant materials, which include trees, shrubs and ground covers, and parts thereof.
- c. Removing and properly disposing of dead, diseased or otherwise deteriorated plants in their entirety, and replacing those that fall below the standards set forth in the Project Plans and in the Project Specifications, incorporated herein by reference, and all applicable Department guidelines, standards and procedures, as may be amended from time to time. All replacement materials shall be in accordance with the Project Plans and the Project Specifications and Special Provisions.
- d. Mulching all plant beds and tree rings.
- e. Removing and disposing of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials.
- f. Watering and fertilizing all plants as needed to maintain the plant materials in a healthy and vigorous growing condition.
- g. Performing routine and regular inspection of the irrigation system(s) to assure that the systems are fully functional; identifying damage and/or malfunctions to the system(s); repairing and/or replacing broken or missing irrigation equipment; and adjusting spray heads to eliminate overspray of water onto paved areas.
- h. Paying all for water use and all costs associated therewith.
- i. Performing routine and regular inspections of the bonded aggregate paving to ensure that the paving is fully functional; identifying damage and/or malfunctions in the paving; and repairing and/or

replacing damaged bonded aggregate paving to ensure paving is maintained in accordance with all applicable Department guidelines, standards, and all applicable Americans with Disabilities Act (ADA) requirements, as amended from time to time. For any routine repairs or replacement due to noticeable scarring or surface deterioration of the bonded aggregate pavement, the product authorized installer should be contacted.

- j. Removing and disposing of litter from roadside and median strips in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.
- k. Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described by 2.A through 2.J.
- l. Maintaining a service log of all maintenance operations that sets forth the date of the maintenance activity, the location that was maintained, and the work that was performed.
- m. Submitting Lane Closure Requests to the **DEPARTMENT** when maintenance activities will require the closure of a traffic lane in the **DEPARTMENT'S** right-of-way. Lane closure requests shall be submitted through the District Six Lane Closure Information System, to the **DEPARTMENT'S** area Permit Manager and in accordance with the District Six Lane Closure Policy, as may be amended from time to time.

The **DEPARTMENT** may, at its sole discretion, perform periodic inspection of the Roadway Features to ensure that the **CITY** is performing its duties pursuant to this **AGREEMENT**. The Department shall share with the **CITY** its inspection findings, and may use those findings as the basis of its decisions regarding maintenance deficiencies, as set forth in Section 4 of this Agreement. The **CITY** is responsible for obtaining copies of all applicable rules, regulations, policies, procedures, guidelines, and manuals, and the Project Specification and Special Provisions, as may be amended from time to time.

4. MAINTENANCE DEFICIENCIES

If at any time it shall come to the attention of the **DEPARTMENT** that the **CITY's** responsibilities as established herein are not being properly accomplished pursuant to the terms of this **AGREEMENT**, the **DEPARTMENT** may, at its option, issue a written notice, in care of the **CITY MANAGER**, to notify the **CITY** of the maintenance deficiencies. From the date of receipt of the notice, the **CITY** shall have a period of thirty (30) calendar days, within which to correct the cited deficiency or deficiencies. Receipt is determined in accordance with Section 5 of this **AGREEMENT**.

If said deficiencies are not corrected within this time period, the **DEPARTMENT** may, at its option, proceed as follows:

- a. Maintain the landscaping, irrigation systems and bonded aggregate paving, or a part thereof and invoice the **CITY** for expenses incurred; or
- b. Terminate this Agreement in accordance with Section 7, remove any or all landscaping, irrigation systems and bonded aggregate paving located within the **PROJECT LIMITS**, and charge the **CITY** the reasonable cost of such removal.

5. NOTICES

All notices, requests, demands, consents, approvals, and other communication which are required to be served or given hereunder, shall be in writing and shall be sent by certified U.S. mail, return receipt requested, postage prepaid, addressed to the party to receive such notices as follows:

To the DEPARTMENT: Florida Department of Transportation
1000 Northwest 111 Avenue, Room 6205
Miami, Florida 33172-5800
Attn: District Maintenance Engineer

To the CITY: City of Miami Beach

1700 Convention Center Drive
Miami, Florida 33139
Attention: City Manager

Notices shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided.

6. REMOVAL, RELOCATION OR ADJUSTMENT OF THE LANDSCAPE, IRRIGATION SYSTEMS AND BONDED AGGREGATE PAVING

- a. The **PARTIES** agree that the Roadway Features addressed by this **AGREEMENT** may be removed, relocated or adjusted at any time in the future, at the **DEPARTMENT'S** sole discretion. In the event that the **DEPARTMENT** relocates or adjusts the landscaping, irrigation systems and bonded aggregate paving, the **CITY'S** maintenance responsibilities will survive the relocation or adjustment, as long as the materials remain within the **PROJECT LIMITS**.

7. TERMINATION

This **AGREEMENT** is subject to termination under any one of the following conditions:

- b. By the **DEPARTMENT**, if the **CITY** fails to perform its duties under Section 3 of this **AGREEMENT**, following the thirty (30) days written notice, as specified in Section 4 of this **AGREEMENT**.
- c. In accordance with Section 287.058(1)(c), Florida Statutes, the **DEPARTMENT** shall reserve the right to unilaterally cancel this **AGREEMENT** if the **CITY** refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the **CITY** pertinent to this **AGREEMENT** which are subject to provisions of Chapter 119, of the Florida Statutes.
- d. If mutually agreed to by both parties, upon thirty (30) days advance notice. An agreement to terminate shall be valid only if made in writing and executed

with the same formalities as this **AGREEMENT**.

8. TERMS

- a. The effective date of this **AGREEMENT** shall commence upon execution by the **PARTIES**. This **AGREEMENT** shall continue in perpetuity or until termination as set forth in Section 7.
- b. For purposes of performing its duties under this **AGREEMENT**, the **CITY** shall insert the following clause into any contracts entered into by the **CITY**, with vendors or contractors:

Vendors/Contractors:

- i. 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 vendor/contractor during the term of the **AGREEMENT**; and
 - ii. Shall expressly require 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 of all new employees hired by the subcontractors during the **AGREEMENT** term.
- c. This writing embodies the entire agreement and understanding between the **PARTIES** hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
 - d. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT**.
 - e. This **AGREEMENT** shall be governed by and constructed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the

AGREEMENT.

- f. Venue for any and all actions arising out of or in connection to the interpretation, validity, performance or breach of this **AGREEMENT** shall lie exclusively in a state court of proper jurisdiction in Leon County, Florida.
- g. A modification or waiver of any of the provisions of this **AGREEMENT** shall be effective only if made in writing and executed with the same formality as this agreement.
- h. The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.
- i. No term or provision of this **AGREEMENT** shall be interpreted for or against either Party because the Party or its legal representative drafted the provision.
- j. The **DEPARTMENT** is a state agency, self-insured and subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. Nothing in this **AGREEMENT** shall be deemed or otherwise interpreted as waiving the **DEPARTMENT'S** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

9. INDEMNIFICATION

Subject to Section 768.28, Florida Statutes, as may be amended from time to time, the **CITY** shall promptly indemnify, defend, save and hold harmless the **DEPARTMENT**, its officers, agents, representatives and employees from any and all losses, expenses, fines, fees, taxes, assessments, penalties, costs, damages, judgments, claims, demands, liabilities, attorneys fees, (including regulatory and appellate fees), and suits of any nature or kind whatsoever caused by, arising out of, or related to the **CITY'S** exercise or attempted exercise of its responsibilities as set out in this **AGREEMENT**, including but not limited to, any act, action, neglect or omission by

the **CITY**, its officers, agents, employees or representatives in any way pertaining to this agreement, whether direct or indirect, except that neither the **CITY** nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the sole negligence of the **DEPARTMENT**.

The **CITY'S** obligation to indemnify, defend and pay for the defense of the **DEPARTMENT**, or at the **DEPARTMENT'S** option, to participate and associate with the **DEPARTMENT** in the defense and trial of any claim and any related settlement negotiations, shall be triggered immediately upon the **CITY'S** receipt of the **DEPARTMENT'S** notice of claim for indemnification. The notice of claim for indemnification shall be deemed received if the **DEPARTMENT** sends the notice in accordance with the formal notice mailing requirements set forth in Section 5 of this **AGREEMENT**. The **DEPARTMENT'S** failure to notify the **CITY** of a claim shall not release the **CITY** of the above duty to defend and indemnify the **DEPARTMENT**.

The **CITY** shall pay all costs and fees related to this obligation and its enforcement by the **DEPARTMENT**. The indemnification provisions of this section shall survive termination or expiration of this **AGREEMENT**, but only with respect to those claims that arose from acts or circumstances which occurred prior to termination or expiration of this **AGREEMENT**.

The **CITY'S** evaluation of liability or its inability to evaluate liability shall not excuse the **CITY'S** duty to defend and indemnify the **DEPARTMENT** under the provisions of this section. Only an adjudication or judgment, after the highest appeal is exhausted, specifically finding the **DEPARTMENT** was solely negligent shall excuse performance of this provision by the **CITY**.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF MIAMI BEACH:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:


BY: _____
CITY Mayor

BY: _____
District Director of
Transportation Operations

ATTEST: _____ (SEAL)
CITY Clerk

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY:  _____
CITY Attorney *EPG 4-30-12*

BY: _____
District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

Below are the limits of the landscape, irrigation and bonded aggregate paving to be maintained under this **AGREEMENT**.

State Road Number: 907/Alton Road

Agreement Limits: From 5th Street (M.P. 0.000) to
Michigan Avenue (M.P. 1.539)

County: Miami-Dade

EXHIBIT 'B'

CITY OF MIAMI BEACH RESOLUTION

To be herein incorporated once ratified by the CITY Board of Commissioners.

**MEMORANDUM OF AGREEMENT
REGARDING
OFF-SYSTEM CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS**

Between

**STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
("DEPARTMENT")**

and

**CITY OF MIAMI BEACH, a municipal corporation of the State of Florida
("CITY")**

This Agreement is made and entered into as of _____, 2012, by and through THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida (the "Department"), and CITY OF MIAMI BEACH, a municipal corporation of the State of Florida (the "City"), collectively referred to as the "Parties."

RECITALS

A. The State of Florida Legislature has approved the Department's Work Program and mandated the Department to complete the various projects included in the Department's Work Program; and

B. Included in the Department Work Program is Project Number FM 249911-3-52-01 on S.R. 907/Alton Road, which includes work along 10th Street and 14th Street, roads not on the State Highway System located in Miami-Dade County, Florida, and collectively referred to as "the Project". The Project, along 10th Street and 14th Street, includes the installation of pump station electrical panels and platform structures, the installation of drainage structures and structures associated therewith, piping and improvement of roads associated therewith, ("the Improvements"); and

C. The City is the holder of ownership rights to the roads not on the State Highway System; and

D. The Parties agree that it is in the best interest of each party for the Department to undertake and to complete all aspects of the Project, including the design, construction, construction inspection, utility work, permits, easements, and other tasks associated with those improvements that are on roads not on the State Highway System; and

E. The parties further agree that it is in the best interest of each party to enter into this Agreement in order to allow the Department to construct and complete the Improvements and the Project.

TERMS

NOW THEREFORE, in consideration of the premises, the mutual covenants and other valuable considerations contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The recitals in this Agreement are true and correct, and are incorporated and made part of this Agreement by reference.
2. The Parties agree that the Department intends to undertake and complete the Project under project number FM 249911-3-52-01, as depicted in Exhibit A, and attached to this Agreement. The Project shall include improvements on roads not on the State Highway System, including but not limited to installation of pump station electrical panels and platform structures, the installation of drainage structures and structures associated therewith, piping and improvement of roads associated therewith, on roads not on the State Highway System, as depicted in Exhibit A, and all activities associated with, or arising out of construction of the Improvements. The City shall cooperate with and support the Department's work efforts in these regards. The Department will design and construct the Project and Improvements in accordance with all applicable federal and state laws and regulations and in accordance with Department design and construction standards as set forth in the Department's guidelines, standards, and procedures. The Department shall have final decision authority with respect to all aspects of design, construction of the Improvements, and relocation of any utilities that the Department may require.
3. The Parties acknowledge and agree that, as of the date of this Agreement, the City has reviewed the Project Design Plans ("PDP") and has submitted its comments, if any, via Electronic Reviewer Comments ("ERC"), and that the Department has addressed all of the City's comments, if any, regarding the PDP ("Review Process"). The Parties agree that the plans attached hereto as Exhibit A are the product of the Review Process, and the City authorizes the Department of Public Works to issue a permit (the "Permit") to the Department's Contractor, authorizing the Department to construct the Improvements in accordance with Exhibit A. By issuing the Permit, the City agrees that the Department may proceed to construct the Project in accordance with the Schedule of Work included in

Exhibit A. The City acknowledges and agrees that, during construction of the Improvements, the Department will only utilize the service of law enforcement officers when required by the Department's Standard Specifications for Road and Bridge Construction, and no additional requirements will be imposed. The City agrees that the Permit will not impose any conditions other than those included in this Agreement, and the terms of this Agreement supersede any conflicting terms in the Permit. Additionally, the City waives any permit fees that may apply to issuance of the Permit.

Major modifications of the permitted plans (Exhibit A) that concern the Improvements shall be submitted to the City for review. A Major Modification is any modification that materially alters the kind or nature of the work depicted in the permitted plans (Exhibit A), or that alters the integrity or maintainability of the Improvements or its components. Major modifications of the permitted plans (Exhibit A) prior to commencement of construction, that concern the Improvements, shall be submitted to the City for review. The City will review the modifications within a reasonable time schedule, and manner, to be determined by the Department, in order to avoid delay to the Department's construction contract. In the event that any major modifications to the permitted plans are required during construction, the Department shall be entitled to proceed with the modifications that are necessary to complete the construction of the Project, and shall notify the City of the changes. The City shall modify the Permit in accordance with the plan modifications and shall accept all the major modifications that are required to duly complete the Project. It is understood and agreed that any such changes during construction shall not delay or affect the timely construction schedule of the Project.

4. The City agrees to fully cooperate with the Department in the construction, reconstruction and relocation of utilities that are located within the City's right-of-way, if any. Utility relocations, if any, which may be required by the Department for purposes of the Project, shall be done in accordance with the Department's guidelines, standards and procedures. The Department shall submit the proposed Project Utility Relocation Schedule to the City. Utility relocations, if any, shall be done in accordance with the provisions of Chapter 337, Florida Statutes.
5. The Parties acknowledges that the Federal funds will be utilized in conjunction with the Project. Additionally, the Parties acknowledge and agree that the Improvements, while located in roads not in the State Highway System, will serve S.R. 907/Alton Road as part of

the Project, but shall also provide a benefit to the City's stormwater overflow. The Parties have agreed that the Department shall maintain the following Improvements, along 10th Street and 14th Street, at its sole cost and expense:

- a.- 36" DIP storm water force main and associated fittings
- b- pump station electrical panel and platform structure
- c- drainage dissipater structures
- d- concrete box culvert outfall.

All subsequent operation, maintenance, repair, replacement and rehabilitation to these Improvements shall be borne solely by the Department. It is understood and agreed that the Department's maintenance, repair, replacement and rehabilitation obligations shall continue as long as the Department determines, in its sole discretion, that the Improvements are necessary and required to remain on the City's right-of-way. In the event that the Improvements shall ever be removed by the Department from the City right-of-way, the Department's maintenance obligations under this Agreement shall immediately cease.

The Department shall notify the City at least 48 hours before beginning any maintenance, repair, replacement and rehabilitation within the City's right-of-way. Such notification may be provided verbally or via email, and the notice requirements set forth in paragraph 20 shall not apply to this paragraph. However, it is understood and agreed that the notice requirement shall not apply in the event of an emergency that may require immediate repair to the Improvements, and/or to prevent further damage to the Improvements or the right-of-way. The City acknowledges and agrees that, for purposes of its maintenance responsibilities under this Agreement, the Department will only utilize the service of law enforcement officers when required by the Department's Standard Specifications for Road and Bridge Construction, and no additional requirements will be imposed.

All other features constructed in conjunction with the Project, within the City's right-of-way, shall be perpetually maintained by the City, at its sole cost and expense and all subsequent operation, maintenance, repair, replacement and rehabilitation to the same shall be borne solely by the City.

To maintain means to perform normal maintenance operations for the preservation of any improvements or features, which may include but are not limited to, roadway surfaces,

shoulders, roadside structures, drainage structures and any associated structures, and such traffic control devices as are necessary for the safe and efficient use thereof.

Additionally, the Parties understand and agree that the Department shall transfer all permits, not related to the Improvements, to the City, and the City agrees to accept said transfer and to be fully responsible to comply with all operational and maintenance conditions of the permits, at its sole cost and expense. Nothing in this Agreement shall be deemed to have changed or superseded the terms of the Storm Water Pump Stations and Pollution Control Structures Maintenance Memorandum of Agreement and/or the Landscape and Irrigation Bonded Aggregate Paving Maintenance Memorandum of Agreement, entered into by the Department and the City for the maintenance of certain features of the Project and/or landscaping features in accordance with the referenced agreements between the Parties.

Notwithstanding the requirements hereof, maintenance during construction shall be the responsibility of the Department and its Contractor, as set forth in paragraph 9 of this Agreement.

6. The Parties acknowledge and agree that the City's right-of-way shall remain under the ownership of the City and, except as to the Improvements, any other features or Project improvements located within City's right-of-way will remain under the ownership of the City. The Parties agree and acknowledge, however, that the Department shall retain ownership and control of the Improvements constructed and installed pursuant to this Agreement, and the City shall grant a permanent easement to the Department for purposes of the construction, installation, control, maintenance, repair and replacement of the Improvements, pursuant to the terms of this Agreement, and the City shall not impose any further requirements for such purposes.
7. The Department shall require its construction Contractor to maintain, at all times during the construction, regular Contractor's Public Liability Insurance providing for a limit of not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$5,000,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and regular Contractor's Property Damage Liability Insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total or aggregate limit of \$100,000 for all damages arising out of injury to, or destruction of, property during the

policy period; or such other minimum insurance coverage that may be required by the Department for construction of the Project, in accordance with the Department's standards and specifications. The Department shall further cause its Contractor to name the Department as additional insured on the afore-stated policies, and to name the City as additional insured on the afore-stated policies with regards to activities performed within the City's right-of-way. The Department shall also require its Contractor to provide evidence of Workers' Compensation Insurance in accordance with the laws of the State of Florida and in amounts sufficient to secure the benefit of the Florida Workers' Compensation law for all employees.

8. The Department shall notify the City at least 48 hours before beginning construction within the City's right-of-way. Such notification may be provided verbally or via email, and the notice requirements set forth in paragraph 20 shall not apply to this paragraph.

The Department agrees that the City may, at reasonable times during the construction of the Improvements and with regards to the Project limits located within City right-of-way, inspect the Contractor's construction site and perform such tests as are reasonably necessary to determine whether the goods or services required to be provided by the Contractor, pursuant to the Contractor's Construction Agreement with the Department, conform to the terms of said Construction Agreement. Upon request by the City, the Department shall coordinate with its Contractor to provide access to the City for performance of said inspections.

9. Maintenance of the Improvements during construction shall be the responsibility of the Department's Contractor. Upon completion of the Project, the Department shall issue a Notice of Final Acceptance to the Contractor and shall provide a copy of said notice to the County. As of the date of the Notice of Final Acceptance, the County shall be immediately responsible for its maintenance obligations under this Agreement. The Department shall also have the right to assign interim maintenance responsibility to the County for specified portions of the Project before the issuance of the Notice of Final Acceptance. Said assignment of maintenance responsibility shall be sent by the Department to the County in writing with sufficient description to place the County on notice of the interim maintenance responsibility and shall comply with the notice requirement in paragraph 20 of this agreement.

Notwithstanding the issuance of the Notice of Final Acceptance, the Department shall have the right to assure completion of any punch list by the Contractor. Upon completion of all work related to construction of the Project, the Department shall submit to the County final as-built plans and an engineering certification that construction was completed in accordance with the permitted plans. Additionally, the Department shall vacate the County's right-of-way by removing the Department's property, machinery, and equipment from the County's right-of-way. Furthermore, the Department shall restore those portions of the County's right-of-way disturbed by Project construction activities to substantially the same condition that existed immediately prior to commencement of the construction of the Project.

10. This Agreement shall become effective as of the date both Parties hereto have executed the agreement and shall continue in full force and effect until the Project is completed, as evidenced by the Department's issuance of Notice of Final Acceptance.
Prior to commencement of construction, the Department may, in its sole discretion, terminate this agreement if it determines that it is in the best interest of the public to do so. If the Department elects to terminate this Agreement, the Department shall provide formal notice of termination to the City, in accordance with the provisions set forth in paragraph 22 of this Agreement.
11. In the event that any election, referendum, approval or permit, notice or other proceeding, or authorization is required to carry out the Project, the City agrees to expeditiously initiate and consummate, as provided by law, all actions necessary with respect to any such matters, with time being of the essence.
12. During the construction work related to the Project, the City shall cooperate fully with any such work being performed by the Department and the Department's contractors. The City shall not commit or permit any act which may delay or interfere with the performance of any such work by the Department or any Department contractor unless the Department agrees in writing that the City may commit or permit said act.
13. This Agreement shall be governed by the laws of the State of Florida in terms of interpretation and performance. Venue for any and all actions arising out of or in any way related to the interpretation, validity performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida

14. The Parties acknowledge and agree that the Project shall be constructed using Federal funds and that all costs incurred must be in conformity with applicable Federal and State laws, regulations, and policies and procedures.
15. The Department's performance and obligations under this Agreement are contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. Project costs utilizing fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received.
16. In the event that this Agreement is in excess of \$25,000, and the agreement has a term for a period of more than one year, the provisions of Section §339.135(6)(a), Florida Statutes, are hereby incorporated into this agreement and are as follows:

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 any 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 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 1 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 and which have a term for a period of more than 1 year.

17. The Department is a state agency, self-insured and subject to the provisions of Section 768.28, Florida Statutes. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department's sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.
18. A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this agreement.
19. This agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

20. No term or provision of this Agreement shall be interpreted for or against any party because that party's legal counsel drafted the provision.
21. All Department Vendors/Contractors:
 - 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 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.
22. All notices, requests, demands, or other communications required or provided for under this Agreement shall be in writing and shall be delivered in one of the following manners: personally, via express mail service or mailed by first-class, certified mail, postage prepaid, return receipt requested. Any notice, request, demand, or other communication made pursuant to this paragraph shall be deemed to have been received by the addressee at the earlier of such time as is actually received or seven (7) calendar days after it is mailed. Unless otherwise notified in writing, notices shall be addressed and sent as follows:

To the City:

City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: City Manager

To the Department:

Director of Transportation Operations
State of Florida, Department of Transportation
1000 N.W. 111th Avenue,
Miami, Florida 33172

A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates exhibited, by the signatures below.

CITY OF MIAMI BEACH

STATE OF FLORIDA

DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Name:

Name:

Title:

Title: Director of Transportation Operations

Date: _____

Date: _____


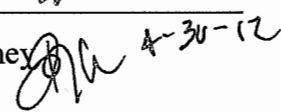
Attest: _____

By:

Title:

Legal Review:

Legal Review:

By:  _____
City Attorney 

By: _____

District VI, Office of the General Counsel

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