

DRAFT

**FLORIDA DEPARTMENT OF TRANSPORTATION
DO NOT BLOCK INTERSECTION MARKINGS AND SIGNS
MASTER 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 the following **State Roads: SR-A1A (Indian Creek Drive), SR-A1A (Collins Avenue), SR-A1A (5th Street), SR-A1A (Harding Avenue), SR-A1A (Abbott Avenue), SR-907 (Alton Road), SR-907 (63rd Street), and SR-934 (Normandy Drive)**, within the limits of the **CITY**; and
- B. The **DEPARTMENT**, pursuant to **PROJECT FM# 446261-2-52-01**, will design and install do not block intersection markings (cross-hatch) and signs, furthermore, the **CITY** has installed, and intends to install, do not block intersection markings and signs, collectively referred to as the "**PROJECT**", which includes existing and future do not block intersection markings and signs on or within the State Road(s) and/or adjacent State Right of Way, collectively referred to as the "**PROJECT LIMITS**", as described in Exhibit "A"); and
- C. The intersection pavement marking and signs projects within the **PROJECT LIMITS** may have been, or may be installed via Permits, **DEPARTMENT** projects, or **DEPARTMENT** Grants issued to the **CITY**; and
- D. It is the intent of the **PARTIES** for this **AGREEMENT** to supplement all existing Maintenance Memorandum of Agreement (MMOA) and existing Permits previously executed between the **DEPARTMENT** and the **CITY**; and
- E. 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 existing and future intersection pavement marking and signs projects installed pursuant to the Project; and

F. 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. TERM OF AGREEMENT

The effective date of this **AGREEMENT** is the date on which the last party executes this **AGREEMENT**, and this **AGREEMENT** shall continue so long as the **PROJECT** improvements remain in place.

3. ASSIGNMENT OF MAINTENANCE RESPONSIBILITIES

The **PARTIES** agree that the execution of this **AGREEMENT** shall constitute an assignment of all maintenance responsibilities pertaining to the do not block intersection markings (cross-hatch), perimeter markings, and signs (the "**IMPROVEMENTS**") within the **PROJECT LIMITS** to the **CITY** upon the **DEPARTMENT'S** acceptance of the **PROJECT**.

This assignment of maintenance responsibilities shall include all currently existing **IMPROVEMENTS** within the **PROJECT LIMITS**, including those installed prior to the execution of this **AGREEMENT**, but excludes maintenance responsibilities which may be addressed under a separate agreement between the **CITY** and the **DEPARTMENT**. The maintenance responsibilities assigned hereunder shall also include any future **IMPROVEMENTS** within the **PROJECT LIMITS**, to be incorporated into this **AGREEMENT** by a supplemental agreement between the parties, in the form attached hereto as **Exhibit "C"**, to be executed by the authorized signatories of this **AGREEMENT**, or their designees.

Additionally, it is understood and agreed that the installation of any **IMPROVEMENTS** within the **PROJECT LIMITS** shall require the approval of the **DEPARTMENT** through a duly issued Permit.

4. MAINTENANCE RESPONSIBILITIES OF THE PARTIES

The **CITY** shall maintain all the **PROJECT** improvements specified in this **AGREEMENT** within the **DEPARTMENT** right-of-way. The maintenance shall be performed in accordance with all applicable standards set forth in the **PROJECT** plans, **PROJECT** specifications, special provisions, permit requirements and maintenance manuals provided as part of the **PROJECT**.

4.1 General Requirements:

The **CITY'S** general maintenance obligations shall include, but shall not be limited to the following:

- a. Removing and disposing of litter in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.
- b. 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.
- c. Submitting lane closure requests to the **DEPARTMENT** when maintenance activities 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, and in accordance with the District Six Lane Closure Policy, as may be amended from time to time.

4.2 Do Not Block Intersection Markings (Cross-Hatch)

- a. Sweep the pavement marking surfaces periodically to keep them free of debris and to maintain an aesthetically pleasing condition. A light pressure washing may be necessary for heavy stain removal or cleaning.
- b. Remove and properly dispose of litter from the pavement marking surfaces.

- c. For any routine repairs or replacement due to noticeable color scarring or surface deterioration of the pavement markings, the product authorized installer should be contacted.
- d. When remedial action is required in accordance with the above requirements, the **CITY** shall complete all necessary repairs at its own expense within sixty (60) days of the date the deficiency is identified.

4.3 Future Improvements:

The **CITY** will be required to obtain a permit from the **DEPARTMENT** for any future modifications and improvements within the **PROJECT LIMITS**.

The **CITY** shall submit all services logs, inspections and surveys to the **DEPARTMENT** Warranty Coordinator as required in the above maintenance responsibilities.

The **DEPARTMENT** may, at its sole discretion, perform periodic inspection of the **IMPROVEMENTS** 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.

5. DEFAULT

If either party fails to observe or perform any covenant, condition, or agreement contained herein, the non-defaulting party shall provide the defaulting party with a sixty (60) calendar day written notice to cure. If the defaulting party fails to cure within the sixty (60) calendar day notice period (or such longer time period agreed by the **PARTIES** in writing), then the defaulting party shall be in default of this **AGREEMENT** and the non-defaulting party may, at its sole and exclusive discretion, elect to cure any default and invoice the defaulting party for the actual expenses incurred.

6. 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 Drive
Miami Beach, Florida 33139
Attention: Public Works Director

With a copy to: City of Miami Beach
1700 Convention Drive
Miami Beach, Florida 33139
Attention: City Manager

Notices shall be deemed to have been received upon actual receipt.

7. REMOVAL, RELOCATION, OR ADJUSTMENT OF THE IMPROVEMENTS

- a. The **PARTIES** agree that the **IMPROVEMENTS** located within the **DEPARTMENT'S** right-of-way 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 any **IMPROVEMENTS** within the **DEPARTMENT'S** right-of-way, which the **CITY** has specifically agreed to maintain herein, the **CITY'S** maintenance responsibilities for those **IMPROVEMENTS** will survive the relocation or adjustment, as long as the materials remain within the **PROJECT LIMITS**.
- b. In the event that the **DEPARTMENT** is required to replace **IMPROVEMENTS** within its right-of-way at any time as part of maintenance activities, a roadway project, or related construction activities, the **DEPARTMENT** shall replace in kind, and the **CITY'S** maintenance obligations under this **AGREEMENT** shall survive said replacements as long as the

IMPROVEMENTS remain within the **PROJECT LIMITS**. However, the **CITY** may, with the written approval of the **DEPARTMENT**, make upgrades within the **PROJECT LIMITS** at its sole cost and expense with the understanding that the **CITY** shall assume all maintenance obligations for the upgrades, and, if the Parties deem necessary, enter into a new maintenance agreement for said upgrades.

8. TERMINATION

This **AGREEMENT** may be terminated only if mutually agreed to by both **PARTIES** and such termination shall be valid only if made in writing and executed with the same formalities as this **AGREEMENT**.

Additionally, it is understood and agreed that the **CITY** shall remove, at its own cost, all the **IMPROVEMENTS** within the **PROJECT LIMITS**, and shall require the approval of the **DEPARTMENT** through a duly issued Permit.

9. MISCELLANEOUS TERMS

a. E-Verify

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 Vendor/Contractor during the term of the contract; 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 contract term. (**Executive Order Number 2011-02**)

The **CITY** shall insert the above clause into any contract entered into by the **CITY** with vendors or contractors hired by the **CITY** for purposes of performing its duties under this **AGREEMENT**.

- b. 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.
- c. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT**.
- d. 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**.
- e. 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 Miami-Dade County, Florida.
- f. 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**.
- g. The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.
- h. 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.
- i. The **DEPARTMENT** and the **CITY** are state agencies, 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 **PARTIES'** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

10. INSURANCE

- a. The **PARTIES** hereto acknowledge that the **PARTIES** are governmental entities subject to the provisions of Section 768.28, Florida Statutes. Each party shall maintain a fiscally sound and prudent risk management program with regard to its obligations under this **AGREEMENT** and in accordance with the provisions of Section 768.28, Florida Statutes. Each party shall collect and keep on file documentation of insurance of any and all contractors procured by it which may participate in any way in the **PROJECT**.

- b. With regard to work to be done inside the **DEPARTMENT'S** property, the **CITY** shall cause its contractors to add the **DEPARTMENT** and the **CITY** as additional insureds and Certificate Holders in their general insurance policies during the term of this **AGREEMENT**. Such insurance shall include Products/Completed Operations coverage. Prior to commencement of any work by the **CITY'S** contractors, the **CITY** shall provide the **DEPARTMENT** with its contractors' ACORD Certificates of Liability Insurance and Additional Insured Endorsements naming the **DEPARTMENT** and the **CITY** as additional insureds. The **DEPARTMENT** shall be notified in writing within ten (10) days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein.

- c. With regard to work to be done inside of the **CITY'S** property, the **DEPARTMENT** shall cause its contractors to add the **CITY** and the **DEPARTMENT** as additional insureds and Certificate Holders in their general insurance policies during the term of this **AGREEMENT**. Such insurance shall include Products/Completed Operations coverage. Prior to commencement of any work by the **DEPARTMENT'S** contractors, the **DEPARTMENT** shall provide the **CITY** with its contractors' ACORD Certificates of Liability Insurance and Additional Insured Endorsements naming the **CITY** and the **DEPARTMENT** as additional insureds. The **CITY** shall be notified in writing within ten (10) days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein.

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 Manager

BY: _____
District Director of
Transportation Operations

ATTEST: _____ (SEAL)
CITY Clerk

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: _____
CITY Attorney

BY: _____
District Chief Counsel

EXHIBIT "A"

PROJECT LIMITS

Below are the limits of the **IMPROVEMENTS** to be maintained by the **CITY** under this **AGREEMENT**.

State Road Number: A1A (Indian Creek Drive)
From convergence with Abbott Avenue to
convergence with Collins Avenue

A1A (Collins Avenue)
From 88th Street 5th Street

A1A (5th Street)
From MacArthur Causeway to Collins Avenue

A1A (Harding Avenue)
From 86th Street to 72nd Street

A1A (Abbott Avenue)
From 72nd Street to Indian Creek Drive

907 (Alton Road)
From convergence with 63rd Street to 5th Street

907 (63rd Street)
From La Gorce Drive to Indian Creek Drive

934 (Normandy Drive)
From Bay Drive to Collins Avenue

County: Miami-Dade

EXHIBIT "B"

CITY OF MIAMI BEACH RESOLUTION

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

EXHIBIT "C"
SUPPLEMENTAL AGREEMENT TO THE
FLORIDA DEPARTMENT OF TRANSPORTATION
DO NOT BLOCK INTERSECTION MARKINGS AND SIGNS
MASTER MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
CITY OF MIAMI BEACH

This Supplemental Agreement, dated the _____ day of _____, 20____, is entered into between the Florida Department of Transportation ("DEPARTMENT") and the CITY of Miami Beach ("CITY").

In accordance with the provisions of the Master Maintenance Memorandum Agreement ("MMA") for existing and future do not block intersection markings (cross-hatch) and signs (the "IMPROVEMENTS") between the parties, dated the _____ day of _____, 20____, the parties enter into this Supplemental Agreement for purposes of incorporating the following Improvements, pursuant to FDOT Permit/Project/Grant No. _____, within the State right of way described in such Permit/Project/Grant, copy attached hereto and incorporated herein by reference.

By their signature below, the parties hereby acknowledge that FDOT/Project/Grant No. _____ for Improvements on SR_____, within the limits described in said Permit/Project/Grant, is hereby incorporated into the MMA, and the CITY shall comply with all maintenance obligations thereunder and the parties further agree to abide by all provisions thereunder.

CITY OF MIAMI BEACH:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____