

RESOLUTION NO. 11-2036

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING FOUR (4) AGREEMENTS ATTACHED AS COMPOSITE EXHIBIT "A" MEMORIALIZING EXPENDITURE OF FUNDS FROM CITT FUNDS FOR INSTALLATION OF SIDEWALKS, CROSSWALKS AND VALVE ADJUSTMENTS AS REQUIRED BY THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the State of Florida Department of Transportation ("FDOT") proposes to construct or improve State Road No. A-1-A, Section No. 4198581, in Miami-Dade County, Florida as well as installation of crosswalks, sidewalks, and valve adjustments; and

WHEREAS, the Town Manager reported on this matter in the July, 2011 Commission meeting and the Commission verbally approved these issues based on an estimate of funds to be expended by the State of Florida Department of Transportation; and

WHEREAS, the State of Florida Department of Transportation has provided the exact costs as reflected in the attached agreements for a total amount of \$ 246,737.00; and

WHEREAS, it is in the best interest of the Town to approve these agreements.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above-stated recitals are hereby adopted and confirmed.

Section 2. Agreements Approved. Locally Funded Agreement, the Specialty Surfaces Maintenance Memorandum of Agreement, the Utility Work by Highway Contractor Agreement; and Memorandum of Agreement for the Payment of Fund, all attached as Composite Exhibit "A", are hereby approved and the Town Manager and Town Attorney are hereby authorized to do to do all things necessary to effectuate this easement.

Section 3. Be It Further Resolved. A certified copy of this Resolution be forwarded forthwith to the State of Florida Department of Transportation at Tallahassee, Florida.

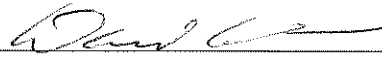
Section 4. Effective Date. This Resolution shall be effective immediately from adoption hereof.

PASSED and **ADOPTED** on this 9th day of August, 2011.

Motion by Commissioner Karukin, second by Commissioner Olchyk.


FINAL VOTE ON ADOPTION

Commissioner Michael Karukin	<i>yes</i>
Commissioner Edward Kopelman	<i>absent</i>
Commissioner Marta Olchyk	<i>yes</i>
Vice Mayor Joseph Graubart	<i>yes</i>
Mayor Daniel Dietch	<i>yes</i>



Daniel Dietch, Mayor

ATTEST:



Debra E. Eastman, MMC
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR
THE TOWN OF SURFSIDE ONLY:**



Lynn M. Dannheisser
Town Attorney

STATE OF FLORIDA)

)ss:

COUNTY OF MIAMI- DADE)

I, Debra E. Eastman, M.M.C., Town Clerk of the Town of Surfside, Florida, do hereby certify that the above and foregoing is a true and correct copy of Resolution No. 11-__ adopted by the Town Commission at its meeting held on the _____ day of _____, 2011.

Issued: _____

Debra E. Eastman, M.M.C.
Town Clerk

EXHIBIT A

FLORIDA DEPARTMENT OF TRANSPORTATION
SPECIALTY SURFACES
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH
TOWN OF SURFSIDE

This **AGREEMENT**, entered into this ____ day of _____, 20__, by and between the **FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **TOWN OF SURFSIDE**, a municipal corporation of the State of Florida, hereinafter called the **TOWN**.

RECITALS:

WHEREAS, the **DEPARTMENT** has jurisdiction over **State Road (S.R.) A1A/Collins Avenue, from 87th Terrace (M.P. 10.588) to 96th Street (M.P. 11.587)**, within the limits of the **TOWN**, as part of the State of Florida Highway System; and

WHEREAS, the **DEPARTMENT** has drafted design plans for improvements on **S.R. A1A/Collins Avenue, from 87th Terrace to 96th Street**, in accordance with **DEPARTMENT** Contract # T-6235 the limits of which, (hereinafter **PROJECT LIMITS**), are described in the attached Exhibit "A", which by reference hereto shall become a part hereof; and

WHEREAS, the **DEPARTMENT** and the **TOWN** are both committed to improving the aesthetics within the **PROJECT LIMITS**; and

WHEREAS, the **TOWN** has requested that the **DEPARTMENT** install specialty surface crosswalks within the **PROJECT LIMITS**, and the **DEPARTMENT** is willing to do so subject to the terms and conditions contained herein; and

WHEREAS, the **TOWN**, by Resolution No. _____, dated _____, attached hereto as Exhibit "B", which by reference hereto shall become a part hereof, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. DEPARTMENT RESPONSIBILITIES

1.1. Assignment

The **DEPARTMENT** and the **TOWN** agree that, by executing this **AGREEMENT**, all maintenance responsibilities pertaining to the specialty surface crosswalks installed by **DEPARTMENT** within the **PROJECT LIMITS**, pursuant to this **AGREEMENT**, will be assigned to the **TOWN** in perpetuity.

2. TOWN'S MAINTENANCE RESPONSIBILITIES

The **TOWN** shall be solely responsible for the maintenance and preservation of the specialty surfaces within the **PROJECT LIMITS**.

- 2.1. Maintain and make repairs to the specialty surfaces to prevent safety hazards for those using or intending to use the sidewalk and pedestrian crossings.
- 2.2. On an annual basis, the area of each crosswalk in the outside traffic lane shall be tested for friction resistance in accordance with ASTM E 274-06. Friction resistance shall be no less than 30 FN40R or equivalent as specified in Exhibit "A", Table 1. Failure to achieve minimum friction resistance shall require all lanes of the crosswalk to be friction tested to determine the extent of the deficiency. All deficient areas shall be removed to their full extent (lane-by-lane) and replaced with the same product installed initially. If more than fifty percent (50%) of the lanes in the intersection require replacement, the entire intersection installation may be reconstructed with a different product on the Qualified Products List.
- 2.3. The **TOWN** shall conduct annual condition surveys of the specialty surfaces for rutting, raveling, pot holes, delamination and cracking for the life of the adjacent pavement.
 - a) Unless the pavement adjacent to the crosswalk is also deficient in rutting, rutting depth of the specialty surface shall not exceed 0.25 inches. Remedial work shall include the full depth removal of the specialty surface across the full width of the lane and crosswalk.

Specialty Surfaces

Maintenance Memorandum of Agreement between Florida Department of Transportation and Town of Surfside

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- b) Unless the pavement in the intersection is showing uniform raveling deficiencies, raveling, potholes or delamination of the specialty surface shall not exceed 0.25 inches in depth or more than 25 square inches in area. Remedial work shall include the patching of the specialty surface in accordance with the manufacturer's instructions.
 - c) Unless pavement adjacent in the intersection is deficient in cracking criteria, cracking width of the specialty surface shall not exceed 1/8 of an inch for more than 10 feet in any lane of the crosswalk. Remedial work shall include as a minimum, the full depth removal of the specialty surface along the complete length of the crack(s) and for the width recommended by the manufacturer.
- 2.4. The results of all friction tests and condition surveys shall be sent to the District Maintenance Office's Warranty Coordinator with a cover letter either certifying that the crosswalks comply with the above stated requirements, or what remedial action will be taken to restore the friction and/or integrity of the crosswalk area.
 - 2.5. When remedial action is required in accordance with the above requirements, the **TOWN** at its own expense shall complete all necessary repairs within ninety (90) days of the date the deficiency is identified.
 - 2.6. No more than two (2) full specialty surface repairs shall be made to an area without first resurfacing the pavement to its full depth.
 - 2.7. Sweep the specialty surface crosswalks 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.
 - 2.8. Remove and properly dispose of litter from specialty surfaces.
 - 2.9. For any routine repairs or replacement due to noticeable color scarring or surface deterioration of the specialty surfaces, the product authorized

Specialty Surfaces

installer should be contacted.

3. AMENDMENTS

This **AGREEMENT** may be amended in writing if mutually agreed to by both parties.

4. MAINTENANCE DEFICIENCIES

If, at any time while the terms of this **AGREEMENT** are in effect, it shall come to the attention of the **DEPARTMENT'S DISTRICT MAINTENANCE ENGINEER** that the **TOWN's** responsibility as established herein or a part thereof is not being properly accomplished pursuant to the terms of this **AGREEMENT**, said **DISTRICT MAINTENANCE ENGINEER** may, at his option, issue a written notice, in care of the **TOWN MANAGER**, to place the **TOWN** on notice regarding its maintenance deficiencies. Thereafter, the **TOWN** shall have a period of ninety (90) days within which to correct the cited deficiency or deficiencies. If said deficiencies are not corrected within this time period, the **DEPARTMENT** may, at its option, proceed as follows:

4.1. Maintain the specialty surface crosswalks declared deficient with **DEPARTMENT** and/or its independent contractor's materials, equipment and personnel. The actual cost for such work will be charged to the **TOWN**.

4.2. The **DEPARTMENT** reserves the right to replace the specialty surface crosswalks with conventional pavement and bill the **TOWN** for this cost.

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 registered mail or 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
Attention: District Maintenance Engineer

To the TOWN: Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
Attention: Town Manager

6. SPECIALTY SURFACE CROSSWALKS INSTALLATION

6.1. It is understood between the parties hereto that the specialty surface crosswalks covered by this **AGREEMENT** may be removed at any time in the future, as found necessary by the **DEPARTMENT**, in order that the adjacent state road be widened, altered or otherwise changed and maintained to meet with future criteria or planning of the **DEPARTMENT**. All costs associated with such activities will be solely at the expense of the **DEPARTMENT**.

7. TERMINATION

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

7.1. In accordance with Section 287.058(1)(c), Florida Statutes, the **DEPARTMENT** shall reserve the right to unilaterally cancel this **AGREEMENT** if the **TOWN** refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the **TOWN** pertinent to this **AGREEMENT** which are subject to provisions of Chapter 119, of the Florida Statutes.

7.2. Only if mutually agreed to by both parties with a six (6) month written notice.

8. TERMS

8.1. The **TOWN** shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

- i. all persons employed by the **TOWN** during the term of this **AGREEMENT** to perform employment duties within Florida; and
- ii. all persons, including subcontractors, assigned by the **TOWN** to perform work pursuant to this **AGREEMENT** with the **DEPARTMENT**.

Specialty Surfaces

Maintenance Memorandum of Agreement between Florida Department of Transportation and Town of Surfside

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- 8.2. The term of this **AGREEMENT** shall only commence upon execution by all parties and after the **TOWN** receives the Notice to Proceed letter from the **DEPARTMENT**. This **AGREEMENT** shall continue in perpetuity or until termination as set forth in Section 7.
- 8.3. This writing embodies the entire **AGREEMENT** and understanding between the parties hereto and there are not other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein.
- 8.4. This **AGREEMENT** is nontransferable and nonassignable in whole or in part without the prior written consent of the **DEPARTMENT**.
- 8.5. This **AGREEMENT**, regardless of where executed, shall be governed by and constructed in accordance with the laws of the State of Florida.

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

TOWN OF SURFSIDE:

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:**

BY: _____
TOWN Manager

BY: _____
District Secretary

ATTEST: _____
TOWN Clerk

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: _____
TOWN Attorney

BY: _____
District Chief Counsel

EXHIBIT "A"

PROJECT LIMITS

Below are the limits of the specialty surface crosswalks to be maintained under this **AGREEMENT**.

State Road Number: A1A/Collins Avenue

Agreement Limits: From 87th Terrace (M.P. 10.588) to 96th Street (M.P. 11.587)

County: Miami-Dade

Specialty Surface Crosswalks:

- Intersections of Collins Avenue &
 - 87th Terrace (east and west legs)
 - 88th Street (west, east and south legs)
 - 89th Street (west and east legs)
 - 90th Street (all four legs)
 - 91st Street (west leg)
 - 92nd Street (west and east legs)
 - 93rd Street (west and south legs)
 - 94th Street (all four legs)
 - 95th Street (all four legs)
 - 96th Street (west, east and south legs)

Table 1: Friction Number Conversions for Test Speeds Other Than 40 mph

30 mph Test Speed FN Results	To Convert to 40 mph Results	50 mph Test Speed FN Results	To Convert to 40 mph Results
<29	Subtract 1	<26	Add 1
29 to 47	Subtract 2	26 to 42	Add 2
48 to 67	Subtract 3	43 to 60	Add 3

EXHIBIT "B"

TOWN OF SURFSIDE RESOLUTION

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

LOCALLY FUNDED AGREEMENT

THIS LOCALLY FUNDED AGREEMENT (hereinafter ‘Agreement’) is made and entered into this ___ day of _____, 20___, between the **TOWN OF SURFSIDE**, a municipal corporation of the State of Florida, hereinafter referred to as the ‘TOWN’, 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.) A1A/Collins Avenue corridor within the corporate limits of the TOWN; and

WHEREAS, the TOWN has requested the DEPARTMENT to install or cause to be installed stamped asphalt crosswalks to various intersections along S.R. A1A/Collins Avenue from 87th Terrace to 96th Street; and

WHEREAS, the DEPARTMENT has agreed to install or cause to be installed stamped asphalt crosswalks to various intersections along S.R. A1A/Collins Avenue, from 87th Terrace to 96th Street, subject to the terms and conditions detailed in this Agreement; and

WHEREAS, the TOWN shall fund the increased costs, under Financial Project Number 419858-1-52-02, associated with the installation of the stamped asphalt crosswalks on S.R. A1A/Collins Avenue, from 87th Terrace to 96th Street, 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 TOWN Commission approving this Agreement is attached hereto as Exhibit "C", 'TOWN OF SURFSIDE RESOLUTION', and is incorporated herein by reference.

(b) The TOWN shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

i. all persons employed by the TOWN during the term of this Agreement to perform employment duties within Florida; and

ii. all persons, including subcontractors, assigned by the TOWN to perform work pursuant to this Agreement with the DEPARTMENT.

(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 TOWN.

(d) The TOWN will provide funding to the DEPARTMENT, in the aggregate amount of ONE HUNDRED NINETY EIGHT THOUSAND EIGHT HUNDRED EIGHTY

SEVEN DOLLARS (\$198,887.00), 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 TOWN funding for the PROJECT is on deposit with the DEPARTMENT.
- (f) Upon the receipt, authorization and encumbrance of funding received from the TOWN as a result of this Agreement, the DEPARTMENT Contractor will commence work on the PROJECT.

3. Financial Provisions

- (a) The TOWN agrees that it will, no later than fourteen (14) calendar days after the DEPARTMENT’s execution of this Agreement, furnish the DEPARTMENT an advance deposit in the amount of ONE HUNDRED NINETY EIGHT THOUSAND EIGHT HUNDRED EIGHTY SEVEN DOLLARS (\$198,887.00) for full payment of the estimated PROJECT cost for Locally Funded Project Number 419858-1-52-02. 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 TOWN will provide an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT or prior to posting the accepted bid, whichever is earlier, so that the total deposit is equal to the bid amount plus allowances. The DEPARTMENT will notify the TOWN 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 TOWN shall not relieve the TOWN

from its obligation to pay for its full participation on final accounting as provided herein below. If the TOWN 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 TOWN 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 TOWN in writing.
- (d) Should PROJECT modifications or changes to bid items occur that increase the TOWN's share of total PROJECT costs, the TOWN will be notified by the DEPARTMENT accordingly. The TOWN 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 TOWN as soon as it becomes apparent the actual costs will overrun the award amount. However, failure of the DEPARTMENT to so notify the TOWN shall not relieve the TOWN from its obligation to pay for its full participation during the PROJECT and on final accounting as provided herein below. Funds due from the TOWN 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 TOWN for a period of three (3) years after final close out of the PROJECT. The TOWN 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 TOWN. If the final accounting is not performed within three hundred and sixty (360) days, the TOWN 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 TOWN will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The TOWN 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 TOWN, 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 TOWN 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 TOWN, 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 TOWN: Town of Surfside
 9293 Harding Avenue
 Surfside, Florida 33154
 Attention: Bill Evans, Public Works Director

(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 TOWN may require approval by the TOWN Commission, and, to the extent such approval is required by applicable law, obtaining such approval shall be a condition to the obligations of the TOWN 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 TOWN OF SURFSIDE, signing by and through its Town Mayor, and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, signing by and through its District Secretary, each duly authorized to execute same.

TOWN OF SURFSIDE:

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

BY: _____
TOWN MAYOR

BY: _____
DISTRICT SECRETARY

ATTEST: _____
(SEAL) TOWN CLERK

ATTEST: _____
(SEAL) EXECUTIVE SECRETARY

LEGAL REVIEW:

TOWN ATTORNEY

DISTRICT CHIEF COUNSEL

EXHIBIT 'A'

SCOPE OF SERVICES

The PROJECT work consists of constructing pedestrian improvements consisting of stamped asphalt crosswalks installations at various intersections along S.R. A1A/Collins Avenue from 87th Terrace to 96th Street in the TOWN.

The DEPARTMENT will be installing stamped asphalt crosswalks at the following intersections on Collins Avenue:

- 87th Terrace (east and west legs)
- 88th Street (west, east and south legs)
- 89th Street (west and east legs)
- 90th Street (all four legs)
- 91st Street (west leg)
- 92nd Street (west and east legs)
- 93rd Street (west and south legs)
- 94th Street (all four legs)
- 95th Street (all four legs)
- 96th Street (west, east and south legs)

PROJECT LIMITS: S.R. A1A/Collins Avenue from 87th Terrace to 96th Street

DEPARTMENT Financial Project Number: 419858-1-52-02

COUNTY: Miami-Dade

DEPARTMENT Project Manager: Adriana Manzanares 305-470-5283

TOWN Project Manager: Bill Evans, Public Works Director 305-861-4863 ext. 235

EXHIBIT 'B'
FINANCIAL SUMMARY

The DEPARTMENT's Work Program allocates the following funding, programmed under Financial Project Number 419858-1-52-02, for PROJECT completion:

<u>Fiscal Year:</u>	<u>Amount:</u>	<u>Fund Type:</u>
2011/2012	\$198,887.00	Local Funds (LF)

TOWN OF SURFSIDE FINANCIAL RESPONSIBILITY: \$ 198,887.00

EXHIBIT 'C'

TOWN OF SURFSIDE RESOLUTION

To be attached hereto and incorporated herein once ratified by the TOWN 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 and the Town of Surfside hereinafter referred to as the "Participant".

WITNESSETH

WHEREAS, "FDOT" is currently constructing the following project:

Financial Project Number: 419858-1-52-02
County: Miami-Dade County

hereinafter referred to as the "Project".

WHEREAS, FDOT and the Participant entered into a **Locally Funded Agreement** dated _____, 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 the 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 the 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 \$198,887.00 (One Hundred Ninety Eight Thousand Eight Hundred Eighty Seven Dollars) will be made by the Participant into an interest bearing escrow account established by the FDOT for the purposes of the project. Said escrow account will be opened with the Department of Financial Services, Division of Treasury, Bureau of Collateral Management on behalf of the 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 of additional work prior to the execution of any Supplemental Agreements.

3. All deposits shall be made payable to the Department of Financial Services, Revenue Processing and mailed to the FDOT Office of Comptroller for appropriate processing at the following address:

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

4. The FDOT's Comptroller and/or her designees shall be the sole signatories on the escrow account with the Department of Financial Services and shall have sole authority to authorize withdrawals from said account.

5. Unless instructed otherwise by the parties hereto, 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 Department of Financial Services agrees to provide written confirmation of receipt of funds to the FDOT.

7. The Department of Financial Services further agrees to provide periodic reports to the 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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
(LUMP SUM)

Form No. 710-010-57
UTILITIES
10/04

Financial Project ID: 419858-1-56-01	Federal Project ID: N/A
County: Miami-Dade	State Road No.: A1A
District Document No: N/A	
Utility Agency/Owner (UAO): Town of Surfside	

THIS AGREEMENT, entered into this _____ day of _____, year of _____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "FDOT," and Town of Surfside, hereinafter referred to as the "UAO";

WITNESSETH:

WHEREAS, the UAO owns certain utility facilities which are located on the public road or publicly owned rail corridor identified below, hereinafter referred to as the "Facilities" (said term shall be deemed to include utility facilities as the same may be relocated, adjusted, or placed out of service); and

WHEREAS, the FDOT, is currently engaging in a project which involves constructing, reconstructing, or otherwise changing a public road and other improvements located on a public road or publicly owned rail corridor identified as Adjustment of valve boxes, manholes, and fire hydrants along Collins Ave. from 87th St. to 96th St., State Road No. A1A, hereinafter referred to as the "Project"; and

WHEREAS, the Project requires minor modifications to the Facilities or the FDOT's design more particularly described in Exhibit A attached hereto and by this reference made a part hereof, hereinafter referred to as "Utility Work," and full plans and technical specifications for the Utility Work are not required; and

WHEREAS, the FDOT will perform the Utility Work as part of the Project; and

WHEREAS, the UAO, pursuant to the terms and conditions hereof, will bear certain costs associated with the Utility Work; and

WHEREAS, the FDOT and the UAO desire to enter into an agreement which establishes the terms and conditions applicable to the Utility Work;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the FDOT and the UAO hereby agree as follows:

1. Performance of Utility Work

- a. The FDOT will include the Utility Work in its plans and specifications for the Project and will include the Utility Work as part of the FDOT's construction of the Project. The preparation of the plans and specifications and the construction of the Project will be performed in such manner as the FDOT, in its discretion, deemed appropriate.
- b. All location, protection, relocation, adjustment, or removal of the UAO's Facilities which is not listed in Exhibit A shall be performed pursuant to a separate agreement.

2. Cost of Utility Work

- a. The UAO will, at least Ninety (90) calendar days prior to the date on which the FDOT advertises the Project for bids, pay the FDOT the amount of \$ 47,850.00 for the cost of the Utility Work. Said amount will be deposited into the State Transportation Trust Fund.
- b. The FDOT and the UAO acknowledge and agree that the amount stated above includes an additional ten percent (10%) to cover the UAO's obligation for the cost of the Utility Work as set forth in Section 337.403(1)(b), Florida Statutes.

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may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

When the **FDOT** receives a notice of claim for damages that may have been caused by the **UAO** in the performance of services required under this Agreement, the **FDOT** will immediately forward the claim to the **UAO**. The **UAO** and the **FDOT** will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the **FDOT** will determine whether to require the participation of the **UAO** in the defense of the claim or to require the **UAO** to defend the **FDOT** in such claim as described in this section. The **FDOT's** failure to notify the **UAO** of a claim shall not release the **UAO** from any of the requirements of this section. The **FDOT** and the **UAO** will pay their own costs for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs.

FOR NON-GOVERNMENT-OWNED UTILITIES:

The **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

The **UAO's** obligation to indemnify, defend, and pay for the defense or at the **FDOT's** option, to participate and associate with the **FDOT** in the defense and trial of any damage claim or suit and any related settlement negotiations, shall arise within fourteen (14) days of receipt by the **UAO** of the **FDOT's** notice of claim for indemnification to the **UAO**. The notice of claim for indemnification shall be served by certified mail. The **UAO's** obligation to defend and indemnify within fourteen (14) days of such notice shall not be excused because of the **UAO's** inability to evaluate liability or because the **UAO** evaluates liability and determines the **UAO** is not liable or determines the **FDOT** is solely negligent. Only a final adjudication or judgment finding the **FDOT** solely negligent shall excuse performance of this provision by the **UAO**. The **UAO** shall pay all costs and fees related to this obligation and its enforcement by the **FDOT**. The **FDOT's** delay in notifying the **UAO** of a claim shall not release **UAO** of the above duty to defend.

5. Force Majeure

Neither the **UAO** nor the **FDOT** shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimate duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

6. Miscellaneous

- a. To the Facilities shall at all times remain the property of and be properly protected and maintained by the **UAO** in accordance with the then current Utility Accommodation Manual and the current utility permit for the Facilities.
- b. Pursuant to Section 287.058, Florida Statutes, the **FDOT** may unilaterally cancel this Agreement for refusal by the **UAO** to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **UAO** in conjunction with this Agreement.

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- c. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto, except that the parties understand and agree that the **FDOT** has manuals and written policies and procedures which shall be applicable at the time of the Project and the relocation of the Facilities and except that the **UAO** and the **FDOT** may have entered into other agreements for work not included in Exhibit A for Facilities located within the limits of the Project. Copies of **FDOT** manuals, policies, and procedures will be provided to the **UAO** upon request.
- d. 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.
- e. Time is of essence in the performance of all obligations under this Agreement.
- f. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. The **UAO** shall have a continuing obligation to notify each District of the **FDOT** of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to the **UAO**:

Mr. Bill Evans - Public Works Director (305) 993-1059
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154

If to the **FDOT**:

Mr. Antonio Soto, FDOT District Six Utility Administrator
1000 NW 111 th Street
Miami, Florida 33172

7. **Certification**

This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by the **UAO** in the form of additions, deletions, or substitutions are reflected only in an Appendix entitled Changes to Form Document and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the **UAO** hereby represents that no change has been made to the text of this document except through the terms of the appendix entitled Changes to Form Document."

You **MUST** signify by selecting or checking which of the following applies:

- No changes have been made to this Form Document and no Appendix entitled "Changes to Form Document" is attached.
- No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Form Document."

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first written.

UTILITY: Town of Surfside

BY: (Signature) 

DATE: 03/01/11

(Typed Name: Bill Evans)

(Typed Title: Public Works Director)

Recommend Approval by the District Utility Office

BY: (Signature) _____

DATE: _____

FDOT Legal review

BY: (Signature) _____

DATE: _____

District Counsel

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: (Signature) _____

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: _____

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

EXHIBIT A

**TOWN OF SURFSIDE
JOINT PARTICIPATION AGREEMENT**

Sheet 1 of 4

PROJECT NO: 419858-1-52-01

Refer to Sheet 2 of 2 for detailed listing of utility work.

QUANTITY	DESCRIPTION (PAY ITEM #)	UNIT PRICE	TOTAL PRICE
85	Valve Adjust (0425-6)	\$300.00	\$25,500.00
20	Manhole Adjust (425-5-1)	\$500.00	\$10,000.00
4	Fire Hydrant Relocate (1644800)	\$2,000.00	\$8,000.00
		SUBTOTAL	\$43,500.00
		CONTINGENCY (10%)	\$4,350.00
		TOTAL	\$47,850.00

LIST OF COMMENTS

PROJECT NO: 419858-1-52-01

Sheet 2 of 4

LOCATION: SR A1A/COLLINS AVENUE FROM N. 75 STREET TO HARDING AVENUE

DATE: 1-Mar-11

ITEM	STATION	SIDE	COMMENTS
1	128+21.65	14.03 RT	Water valve to be adjusted
2	128+21.67	7.70 RT	Water valve to be adjusted
3	128+32.37	28.89 LT	Water valve to be adjusted
4	128+55.72	30.43 LT	Water valve to be adjusted
5	128+69.13	32.78 LT	Manhole to be adjusted
6	131+26.52	5.69 RT	Water valve to be adjusted
7	131+90.51	23.76 LT	Manhole to be adjusted
8	132+40.64	12.46 RT	Water valve to be adjusted
9	132+50.90	21.39 RT	Water valve to be adjusted
10	132+52.99	21.10 RT	Water valve to be adjusted
11	132+55.67	15.05 RT	Water valve to be adjusted
12	132+55.94	21.95 RT	Water valve to be adjusted
13	132+64.78	221.56 RT	Water valve to be adjusted
14	133+15.96	20.71 LT	Water valve to be adjusted
15	133+44.04	15.76 LT	Water valve to be adjusted
16	133+55.97	13.61 RT	Water valve to be adjusted
17	133+72.99	16.65 RT	Water valve to be adjusted
18	133+67.27	22.28 RT	Water valve to be adjusted
19	134+12.80	4.84 RT	Manhole to be adjusted
20	134+74.47	12.62 RT	Water valve to be adjusted
21	136+15.43	21.58 RT	Water valve to be adjusted
22	136+59.27	4.92 RT	Manhole to be adjusted
23	136+59.41	5.05 RT	Manhole to be adjusted
24	136+84.73	18.03 RT	Water valve to be adjusted
25	136+85	25 RT	Fire hydrant to be relocated
26	138+24.02	22.57 RT	Water valve to be adjusted
27	138+26.26	22.53 RT	Water valve to be adjusted
28	138+28.91	18.50 RT	Water valve to be adjusted
29	138+88.04	17.47 RT	Water valve to be adjusted
30	139+09.57	5.11 RT	Manhole to be adjusted
31	139+20.96	16.02 RT	Water valve to be adjusted
32	139+46.78	21.51 RT	Water valve to be adjusted
33	139+67.68	21.81 RT	Water valve to be adjusted
34	141+81.21	18.83 RT	Water valve to be adjusted
35	141+95.23	21.04 RT	Water valve to be adjusted

36	142+56.09	5.00 RT	Manhole to be adjusted
37	143+84.73	35.57 RT	Water valve to be adjusted
38	143+36.97	19.96 RT	Water valve to be adjusted
39	144+00	40 RT	Fire hydrant to be relocated
40	144+13.79	29.18 RT	Water valve to be adjusted
41	144+23.37	27.79 RT	Water valve to be adjusted
42	144+22.12	10.68 LT	Water valve to be adjusted
43	145+85.35	0.15 LT	Manhole to be adjusted
44	149+25.70	0.48 RT	Manhole to be adjusted
45	151+23.50	15.62 RT	Water valve to be adjusted
46	153+79.83	21.22 RT	Water valve to be adjusted
47	154+24.47	20.56 RT	Water valve to be adjusted
48	155+30.88	13.19 RT	Water valve to be adjusted
49	156+17.80	1.80 RT	Manhole to be adjusted
50	157+05.79	17.39 RT	Water valve to be adjusted
51	157+21.46	15.68 RT	Water valve to be adjusted
52	157+32.10	14.34 RT	Water valve to be adjusted
53	157+49.10	30.19 LT	Water valve to be adjusted
54	158+10.23	17.79 RT	Water valve to be adjusted
55	158+74.23	18.82 RT	Water valve to be adjusted
56	159+39.80	20.90 RT	Water valve to be adjusted
57	160+17.80	0.23 LT	Manhole to be adjusted
58	160+96.85	16.37 RT	Water valve to be adjusted
59	160+97	27 RT	Fire hydrant to be relocated
60	162+25.12	15.34 LT	Water valve to be adjusted
61	162+15.64	20.51 RT	Water valve to be adjusted
62	162+15.74	16.34 RT	Water valve to be adjusted
63	162+20.73	20.23 RT	Water valve to be adjusted
64	162+94.63	17.13 RT	Water valve to be adjusted
65	163+38.44	15.86 RT	Water valve to be adjusted
66	163+41.57	16.05 RT	Water valve to be adjusted
67	163+72.13	14.91 RT	Water valve to be adjusted
68	163+99.00	18.44 LT	Water valve to be adjusted
69	164+06.30	18.27 LT	Water valve to be adjusted
70	164+11.39	33.33 LT	Water valve to be adjusted
71	164+18.15	0.19 LT	Manhole to be adjusted
72	164+34.03	12.25 RT	Water valve to be adjusted
73	164+34.03	10.22 RT	Water valve to be adjusted
74	166+09.89	17346 RT	Water valve to be adjusted
75	167+59.58	17.07 RT	Water valve to be adjusted
76	168+18.14	0.21 RT	Manhole to be adjusted
77	170+29.28	15.33 RT	Water valve to be adjusted
78	170+87.58	11.21 RT	Water valve to be adjusted

79	170+99.86	15.12 RT	Water valve to be adjusted
80	170+29.90	39.15 RT	Water valve to be adjusted
81	171+56.19	17.83 RT	Water valve to be adjusted
82	172+18.10	0.04 RT	Manhole to be adjusted
83	172+25.78	17.63 RT	Water valve to be adjusted
84	172+32.68	17.47 RT	Water valve to be adjusted
85	172+61.59	0.18 LT	Manhole to be adjusted
86	173+78.15	17.77 RT	Water valve to be adjusted
87	173+80	28 RT	Fire hydrant to be relocated
88	173+88.80	16.93 RT	Water valve to be adjusted
89	173+93.28	18.26 RT	Water valve to be adjusted
90	174+14.76	17.34 RT	Water valve to be adjusted
91	176+82.95	14.59 RT	Water valve to be adjusted
92	176+93.41	17.98 RT	Water valve to be adjusted
93	177+09.64	0.13 RT	Manhole to be adjusted
94	177+48.63	10.68 RT	Water valve to be adjusted
95	177+42.16	13.30 RT	Water valve to be adjusted
96	178+04.80	18.04 RT	Water valve to be adjusted
97	178+65.30	21.66 RT	Water valve to be adjusted
98	178+63.83	16.83 RT	Water valve to be adjusted
99	179+60.83	0.15 RT	Manhole to be adjusted
100	180+18.42	0.28 RT	Manhole to be adjusted
101	179+89.51	15.22 RT	Water valve to be adjusted
102	180+28.55	12.53 RT	Water valve to be adjusted
103	180+36.40	17.91 RT	Water valve to be adjusted
104	181+15.12	0.47 RT	Manhole to be adjusted
105	181+26.30	17.13 RT	Water valve to be adjusted
106	183+03.73	0.70 LT	Manhole to be adjusted
107	183+30.94	0.23 LT	Manhole to be adjusted
108	183+62.70	16.40 RT	Water valve to be adjusted
109	183+89.69	13.21 RT	Water valve to be adjusted