

RESOLUTION NO. 2023- 3243

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A MASTER MAINTENANCE MEMORANDUM OF AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) FOR BEAUTIFICATION AND SIDEWALK IMPROVEMENT PROJECTS ON STATE ROADS AND RIGHTS-OF-WAY WITHIN THE TOWN; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (“Town”) desires to enter into a Master Maintenance Memorandum of Agreement (“Master Agreement”) with the Florida Department of Transportation (“FDOT”) for beautification and improvement projects on State roads and rights-of-way, including irrigation, bonded aggregate surfaces, decorative pavers, decorative sidewalks, decorative crosswalks and channel gutters (collectively, the “Projects”); and

WHEREAS, the Town intends to undertake beautification projects, specifically sidewalk improvements, within the Business District, as part of the Town’s walkability project;

WHEREAS, the Town desires to enter into the Master Agreement with FDOT, in substantially the form attached hereto as Exhibit “A”, for the purpose of performing the Projects via permits and grants; and

WHEREAS, the Town Commission finds that the Master Agreement and this Resolution are in the best interest and welfare of the Town.

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 true and correct and are incorporated herein by this reference.

Section 2. Approval of Master Agreement. The Town Commission hereby approves the Master Agreement with FDOT, in substantially the form attached hereto as Exhibit "A", subject to the final approval by the Town Manager and Town Attorney as to form and legal sufficiency.

Section 3. Authorization to Execute Master Agreement, Amendments. The Town Manager is authorized to execute the Master Agreement, in substantially the form attached hereto as Exhibit "A," and any amendments thereto for specific projects and permits.

Section 4. Implementation. The Town Manager and Town Officials are hereby authorized to take any and all actions which are necessary to implement the Master Agreement, and any amendments thereto, and the purposes of this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 12th day of December, 2023.

Motion By: Commissioner Landsman

Second By: Vice Mayor Rose

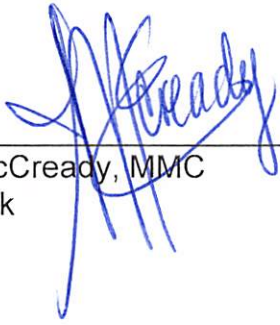
FINAL VOTE ON ADOPTION:

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meisheid	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Vice Mayor Jeffrey Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>



Shlomo Danzinger, Mayor

ATTEST:



Sandra McCready, MMC
Town Clerk



APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:



Weiss Serota Hellman Cole & Bierman, P.L.
Town Attorney

**FLORIDA DEPARTMENT OF TRANSPORTATION
LANDSCAPE, IRRIGATION, BONDED AGGREGATE SURFACES
DECORATIVE PAVERS, DECORATIVE SIDEWALKS
DECORATIVE CROSSWALKS & CHANNEL GUTTERS
MASTER MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
TOWN OF SURFSIDE**

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 **TOWN OF SURFSIDE**, a municipal corporation of the State of Florida, hereinafter called the **TOWN**, and collectively referred to as the **PARTIES**.

RECITALS:

- A. The **DEPARTMENT** has jurisdiction over the following **State Roads: SR-A1A (Collins Avenue - Northbound), SR-A1A (Harding Avenue - Southbound) and SR-922 (96th Street)** within the limits of the **TOWN**; and
- B. The **TOWN** has taken, and intends to undertake, beautification projects (for purposes of this **AGREEMENT**, the "Projects"), which includes existing and future improvements on or within the State Road(s) and/or adjacent State right of way (for purposes of this **AGREEMENT**, collectively referred to as the "**PROJECT LIMITS**", as described in Exhibit "A"); and
- C. The beautification Projects within the **PROJECT LIMITS** may have been, or may be installed via Permits, **DEPARTMENT** projects, or **DEPARTMENT** Grants issued to the **TOWN**; and
- D. The proposed **TOWN** beautification Project improvements may generally include existing and future landscape, irrigation, bonded aggregate surfaces, decorative pavers, decorative sidewalks, decorative crosswalks and channel gutters, on the State Roads and/or adjacent State right of way; and
- E. 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 **TOWN**; and

- F. 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 landscape, irrigation, bonded aggregate surfaces, decorative pavers, decorative sidewalks, decorative crosswalks and channel gutters installed pursuant to the Project; and
- G. The **TOWN**, 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. ASSIGNMENT OF MAINTENANCE RESPONSIBILITIES

The **PARTIES** agree that the execution of this **AGREEMENT** shall constitute an assignment of all maintenance responsibilities pertaining to any existing and future landscape, irrigation, bonded aggregate surfaces, decorative pavers, decorative sidewalks, decorative crosswalks and channel gutters (collectively the "**IMPROVEMENTS**") within the **PROJECT LIMITS**.

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 **TOWN** 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 MMOA, 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.

3. TOWN'S MAINTENANCE RESPONSIBILITIES

So long as the **IMPROVEMENTS** remain in place, the **TOWN** shall be responsible for the maintenance of the same. The **TOWN** shall maintain the **IMPROVEMENTS** 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, with respect to the landscape, the **TOWN** shall maintain same in accordance with the International Society of Arboriculture standards, guidelines and procedures, the latest edition of the "Maintenance Rating Program", and Index 546 of the latest **DEPARTMENT** Design Standards, as may be amended from time to time. The **TOWN** shall further maintain the **IMPROVEMENTS** in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions. The **TOWN's** maintenance obligations shall include but not be limited to:

3.1 General Requirements:

- a. Removing and disposing of litter from **PROJECT LIMITS** in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.
- b. Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described by 3.2 through 3.7.
- c. 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.
- d. 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.

3.2 Landscape:

- a. Mowing, cutting and/or trimming and edging the grass and turf within the **PROJECT LIMITS**.
- b. Pruning all plant materials, which include trees, shrubs and ground covers, and parts thereof, including all material from private property encroaching into the **DEPARTMENT'S** Right-of-Way.
- c. All pruning and trimming will follow the Maintenance Rating Program Handbook which specifically requires no encroachment of trees, tree limbs or vegetation in or over travel way (or clear zone) lower than 14.5 feet, or lower than 10 feet over sidewalks.
- d. 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.
- e. Mulching all plant beds and tree rings.
- f. Removing and disposing of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials.
- g. Watering and fertilizing all plants as needed to maintain the plant materials in a healthy and vigorous growing condition.
- h. Repairing irrigation systems and associated components as needed. Paying for all water use and all costs associated therewith.
- i. Repairing decorative lighting systems as needed. Paying for all electricity and all costs associated therewith.
- j. Removing and disposing of litter from the **Project Limits** in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.

- k. Repairing all sidewalks damaged by landscaping found inside and outside the **DEPARTMENT's** Right-of-Way.
- l. Damages to the sidewalk caused by the landscaping and silva cells shall be made by the **TOWN**. Replace the silva cells according to the manufacturer's recommendations. Replace sidewalk above the silva cells, including any damaged sidewalk adjacent to the silva cells by saw-cutting along the existing joints. New joints will not be allowed.
- m. The **TOWN** shall conduct annual condition surveys of the sidewalk slabs/flags over and adjacent to the silva cell tree root system for gaps, settlement, drop-offs and other deficiencies described in this **AGREEMENT** for the life of the silva cells.
- n. Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described by 3.2.a through 3.2.m.

3.3 Bonded Aggregate Surfaces (Addapave and alike):

- a. Performing routine and regular inspections of the bonded aggregate surfaces including their perimeter concrete edges (the "interface") to ensure that the surface is fully functional; identifying damage and/or malfunctions in the surfaces; and repairing and/or replacing damaged bonded aggregate surfaces and the interface to ensure surfaces are maintained in accordance with all applicable **DEPARTMENT** guidelines, standards, and all applicable American with Disabilities Act (ADA) requirements, as amended from time to time.
- b. The **TOWN** shall conduct annual condition surveys of the bonded aggregate surfaces for gaps, settlement, drop-offs and other deficiencies described in this **AGREEMENT** for the life of the bonded aggregate. Ensure and document in this survey that the surface friction of the bonded aggregate surface meets or exceeds the surface friction of the existing concrete sidewalk areas.
- c. Gaps within the bonded aggregate surfaces shall not exceed a quarter (1/4) of an inch. Gaps at the interface between the bonded aggregate surfaces and the adjacent concrete

sidewalk(s) shall not exceed a quarter (1/4) of an inch. This requirement also applies to adjacent areas of existing concrete sidewalk(s) that have been impacted by the trees planted within the bonded aggregate surfaces.

- d. Differential settlement within the bonded aggregate surfaces shall not exceed a quarter (1/4) of an inch in depth. Differential settlement at the interface between the bonded aggregate surfaces and the adjacent concrete sidewalk(s) shall not exceed a quarter (1/4) of an inch in depth. This requirement also applies to adjacent areas of existing concrete sidewalk(s) that have been impacted by the trees planted within the bonded aggregate surfaces.
- e. 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.

3.4 Decorative Pavers:

- a. Sweep the decorative pavers periodically to keep it free of debris and to maintain an aesthetically pleasing condition. A light pressure washing may be necessary for heavy stain removal or cleaning.
- b. The **TOWN** shall conduct annual condition surveys of the decorative pavers, including their perimeter concrete edges for gaps, settlement, drop-offs, and other deficiencies for the life of the decorative pavers.
- c. Performing routine and regular inspections of the decorative pavers, including their perimeter concrete edges to ensure that the surface is American with Disabilities Act (ADA) compliant.
- d. Gaps within the decorative pavers shall not exceed a quarter (1/4) of an inch.
- e. Differential settlement within the decorative pavers shall not exceed a quarter (0.25) of an inch in depth.
- f. Undertaking the maintenance and repair (when needed) of decorative pavers, including their perimeter concrete edges.

- g. For any routine repairs or replacement due to noticeable color scarring or surface deterioration of the decorative pavers, the product authorized installer should be contacted.
- h. When remedial action is required in accordance with the above requirements, the **TOWN** at its own expense shall complete all necessary repairs within thirty (30) days of the date the deficiency is identified.

3.4 Decorative Sidewalks

- a. Decorative sidewalks included in this **AGREEMENT** include pavers, bricks, specialty colors, and special designed sidewalks.
- b. Performing routine and regular inspections of the decorative sidewalks. Identify damages on the surfaces. Repair and/or replace damaged decorative sidewalks to ensure surfaces are maintained in accordance with all applicable **DEPARTMENT** guidelines, standards, and all applicable American with Disabilities Act (ADA) requirements, as amended from time to time.
- c. The **TOWN** shall conduct annual condition surveys of the decorative sidewalks for gaps, settlement, drop-offs and other deficiencies described in this **AGREEMENT** for the life of the decorative sidewalks.
- d. Gaps within the decorative sidewalks shall not exceed a quarter (1/4) of an inch. Gaps at the interface (perimeter) between the decorative sidewalks and the adjacent standard concrete sidewalk(s) shall not exceed a quarter (1/4) of an inch. This requirement also applies to adjacent areas of existing concrete sidewalk(s) that have been impacted by the trees planted within the decorative sidewalks.
- e. Differential settlement within the decorative sidewalks shall not exceed a quarter (1/4) of an inch in depth. Differential settlement at the interface (perimeter) between the decorative sidewalks and the adjacent standard concrete sidewalk(s) shall not exceed a quarter (1/4) of an inch in depth. This requirement also applies to adjacent areas of existing concrete sidewalk(s) that have been impacted by the trees planted within the decorative sidewalks.

- f. 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.
- g. Paint, repair and/or replace damaged concrete slabs/flags shall be in kind (texture, geometry, color, strength, etc.) and in accordance with all applicable **DEPARTMENT** guidelines, standards, and all applicable American with Disabilities Act (ADA) requirements, as amended from time to time.

3.5 Decorative Crosswalk (Patterned Pavement):

- a. Within sixty (60) days of project acceptance by the **DEPARTMENT**, all lanes of each patterned crosswalk shall be evaluated for surface friction. The friction test shall be conducted using either a locked wheel tester in accordance with FM 5-592 (Florida Test Method for Friction Measuring Protocol for Patterned Pavements) or a Dynamic Friction Tester in accordance with ASTM E1911. FM5-592 can be accessed at the following link:

<http://materials.dot.state.fl.us/smo/administration/resources/library/publications/fstm/Methods/fm5-592.pdf>

- b. The initial friction resistance shall be at least 35 obtained at 40 mph with a ribbed tire test (FN40R) or equivalent. Failure to achieve this minimum resistance shall require all deficient crosswalk areas to be removed to their full extent (lane-by-lane) and replaced with the same product installed initially. If the **DEPARTMENT** determines that more than 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 (QPL) or replaced with conventional pavement.
- c. Approximately one (1) year after project acceptance and every two (2) years thereafter and for the life of the adjacent pavement, only the outside traffic lane areas of each patterned crosswalk shall be tested for friction resistance in accordance with ASTM E274 or ASTM E1911. Friction resistance shall, at a minimum, have a FN40R value of 35 (or equivalent).

- d. The results of all friction tests shall be sent to the District's Warranty Coordinator with a cover letter either certifying that the crosswalks comply with the minimum friction criteria, or stating what remedial action will be taken to restore the friction.
- e. Failure to achieve the minimum 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 the **DEPARTMENT** determines that more than 50% of the lanes in the intersection require replacement, the entire intersection installation may be reconstructed with a different product on the QPL or replaced with conventional pavement.
- f. When remedial action is required in accordance with the above requirements, the **TOWN** shall complete all necessary repairs at its own expense within ninety (90) days of the date when the deficiency was identified. No more than two (2) full depth patterned pavement repairs shall be made to an area without first resurfacing the underlying pavement to 1" minimum depth.
- g. The **DEPARTMENT** will not be responsible for replacing the treatment following any construction activities in the vicinity of the treatment.
- h. Should the **TOWN** fail to satisfactorily perform any required remedial work in accordance with this **AGREEMENT**, the **DEPARTMENT** reserves the right to replace the patterned pavement with conventional pavement (matching the adjacent pavement) and bill the **TOWN** for this cost.

3.6 Channel Gutters:

- a. Maintain the proposed channel gutters (trench drain systems) operating as originally designed. Clean and desilt the trench and adjacent curbs on both sides so water does not accumulate on top of the sidewalk and on the curb, as debris and other materials can accumulate throughout the life of the system. Fix all damaged drainage systems to ensure the channel gutters operate as designed.

- b. Perform routine and regular inspection of the channel gutters to assure that the systems are fully functional. Identifying, repairing, and replacing all damaged, broken, or malfunctioning components.
- c. Gaps at the interface (perimeter) between the channel gutters and the adjacent areas shall not exceed a quarter (1/4) of an inch.
- d. Differential settlement at the interface (perimeter) between the channel gutters and the adjacent areas shall not exceed a quarter (1/4) of an inch in depth.
- e. When remedial action is required in accordance with the above requirements, the **TOWN** at its own expense shall complete all necessary repairs within twenty (20) days of the date the deficiency is identified.

3.7 Future Improvements:

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

The **TOWN** 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 landscape, decorative pavers and aggregate pavement to ensure that the **TOWN** is performing its duties pursuant to this **AGREEMENT**. The Department shall share with the **TOWN** 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 **TOWN** 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 **TOWN'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 **TOWN MANAGER**, to notify the **TOWN** of the maintenance deficiencies. From the date of receipt of the notice, the **TOWN** 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 **IMPROVEMENTS**, or a part thereof and invoice the **TOWN** for expenses incurred; or
- b. Terminate this **AGREEMENT** in accordance with Section 7, remove any or all **IMPROVEMENTS** located within the **PROJECT LIMITS**, and charge the **TOWN** 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 TOWN: Town of Surfside
9293 Harding Avenue
Surfside, FL 33154
Attention: Town 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 IMPROVEMENTS

- a. The **PARTIES** agree that the **IMPROVEMENTS** 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 **IMPROVEMENTS**, the **TOWN's** maintenance responsibilities 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 the **IMPROVEMENTS** at any time as part of maintenance activities, a roadway project, or related construction activities, the **DEPARTMENT** shall replace the same with a standard feature. As a result, the **TOWN's** maintenance obligations under this **AGREEMENT** for that particular feature, only at those locations where they were modified to a standard feature, shall terminate. However, the **TOWN** may, with the approval of the **DEPARTMENT**, upgrade the standard feature(s) at its sole cost and expense with the understanding that the **TOWN** shall assume all maintenance obligations for the upgraded sidewalk, enter into a new maintenance agreement, or an amendment to this Agreement.

7. TERMINATION

In addition to the provisions of Section 6(b) hereunder, this **AGREEMENT** is subject to termination under any one of the following conditions:

- a. By the **DEPARTMENT**, if the **TOWN** 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**.
- b. 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** unless the records are exempt from Section 24(a) of Article I of the State Constitution and Section 119.07(1), of the Florida Statutes.

- c. If mutually agreed to by both parties, upon thirty (30) days written advance notice. An agreement to terminate shall be valid only if made in writing and executed with the same formalities as this **AGREEMENT**.

Prior to termination of the **AGREEMENT** under this Section, the **TOWN** shall, at its sole cost and expense, remove all the **IMPROVEMENTS** and restore the areas to standard features, in accordance with the **DEPARTMENT'S** guidelines, standards, and procedures, and to the satisfaction of the **DEPARTMENT**, and shall further any remaining **IMPROVEMENTS**, and restore the area to the same or similar condition as existed prior to the installment of the **IMPROVEMENTS**, in accordance with the **DEPARTMENT'S** guidelines, standards, and procedures, and to the satisfaction of the **DEPARTMENT**.

8. TERMS

- a. The effective date of this **AGREEMENT** shall commence upon execution by the **PARTIES** and shall continue so long as the **IMPROVEMENTS** remain in place until termination as set forth in Section 7.

- b. E-Verify

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

- 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**.
- i. The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.
- j. 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.
- k. 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 **TOWN** 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 **TOWN'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 **TOWN**, its officers, agents, employees or representatives in any way pertaining to this **AGREEMENT**, whether direct or indirect, except that neither the **TOWN** 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 negligence of the **DEPARTMENT**.

The **TOWN'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 **TOWN'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 **TOWN** of a claim shall not release the **TOWN** of the above duty to defend and indemnify the **DEPARTMENT**.

The **TOWN** shall pay all costs and reasonable attorney's 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 **TOWN's** evaluation of liability or its inability to evaluate liability shall not excuse the **TOWN'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 **TOWN**.

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 Director of
Transportation Operations

ATTEST: _____ (SEAL)
Town Clerk

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: _____
Town Attorney

BY: _____
District Chief Counsel

EXHIBIT "A"

PROJECT LIMITS

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

State Road Number: SR-A1A (Collins Avenue - Northbound)
SR-A1A (Harding Avenue - Southbound)
SR-922 (96th Street)

County: Miami-Dade

EXHIBIT "B"

TOWN OF SURFSIDE RESOLUTION

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

EXHIBIT "C"
SUPPLEMENTAL AGREEMENT TO THE
FLORIDA DEPARTMENT OF TRANSPORTATION
LANDSCAPE, IRRIGATION, BONDED AGGREGATE SURFACES
DECORATIVE PAVERS, DECORATIVE SIDEWALKS
DECORATIVE CROSSWALKS & CHANNEL GUTTERS
MASTER MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
TOWN OF SURFSIDE

This Supplemental Agreement, dated the _____ day of _____, 20____, is entered into between the Florida Department of Transportation ("Department") and the Town of Surfside ("TOWN").

In accordance with the provisions of the Master Maintenance Memorandum Agreement ("MMA") for existing and future landscape, irrigation, bonded aggregate surfaces, decorative pavers, decorative sidewalks, decorative crosswalks and channel gutters (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 TOWN shall comply with all maintenance obligations thereunder and the parties further agree to abide by all provisions thereunder.

TOWN OF SURFSIDE:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____