

RESOLUTION NO. 2025- 3463

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AGREEMENT WITH SURF HOUSE LAND, LLC, FOR SIDEWALK IMPROVEMENTS AND MAINTENANCE; FINDING THAT THE SERVICES DO NOT REQUIRE OR ARE EXEMPT FROM COMPETITIVE PROCUREMENT PURSUANT TO TOWN CODE; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on Dec. 10, 2019, the Town of Surfside ("Town") adopted Resolution No. 19-2661 (the "Site Plan Approval") which approved the application for site plan approval from Surfhouse Ocean Views, LLC for the property located at 8995 Collins Avenue, Surfside, Florida ("Property"); and

WHEREAS, on June 16, 2022, the Town adopted Resolution No. 22-2895 ("Resolution"), approving a site plan amendment application by Surfhouse Ocean Views, LLC to the Site Plan Approval; and

WHEREAS, on April 5, 2024, Surf House Land, LLC (the "Owner") purchased the Property from Surfhouse Ocean Views, LLC; and

WHEREAS, the Owner now desires to replace the Town's sidewalk located on the East side of Collins Avenue adjacent to the Owner's Property with a specialty surface, *i.e.*, pavers ("Improvements"); and

WHEREAS, the Owner submitted or will submit to the Florida Department of Transportation an application to approve plans to install the Improvements ("Sidewalk Improvement Plans") within the "Limits of Decorative Pavers"; and

WHEREAS, the Town entered into a Florida Department of Transportation Landscape, Irrigation, Bonded Aggregate Surfaces Decorative Pavers, Decorative Crosswalks & Channel Gutters Master Maintenance Memorandum of Agreement with the State of Florida Department of Transportation dated December 28, 2023 ("MMOA"), attached hereto as Composite **Exhibit "A"** and will enter a Supplemental Agreement with the Florida Department of Transportation for the maintenance of the Improvements referenced at Exhibit "C" to said MOA; and

WHEREAS, the Town, as a condition of approval of the Sidewalk Improvement Plans, requires that the Owner shall obtain a permit for the Improvements and execute the Sidewalk Maintenance Agreement ("Agreement") for such Improvements, attached hereto as **Exhibit "B"**; and

WHEREAS, the Town Commission seeks to approve and enter into the Agreement with the Owner for the Improvements in substantially the form attached hereto as **Exhibit "B,"** including or adopting the terms and conditions of the Agreement, except as amended or modified by the Town; and

WHEREAS, the Town Commission finds that this Resolution is in the best interest and welfare of the residents of the Town.

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

Section 1. Recitals. Each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval. The Town Commission approves the Agreement in substantially the form attached hereto as **Exhibit "B."**

Section 3. Exemption from Competitive Bidding. The Town Commission finds that entering into the Agreement for the Improvements does not require competitive bidding or is exempt from competitive bidding pursuant to Town Code.

Section 4. Authorization. The Town Commission hereby authorizes the Town Manager to execute the Agreement in substantially the form attached hereto as **Exhibit "B,"** subject to approval by the Town Attorney as to form, content, and legal sufficiency; and to take any and all necessary action which is reasonably necessary to implement the Agreement, obtain the Improvements, and implement the purpose of this Resolution, including executing Exhibit "C" to said MMOA.

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

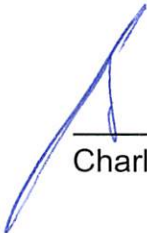
PASSED AND ADOPTED this 12th day of November, 2025.

Motion By: Vice Mayor Tina Paul,

Second By: Commissioner Coto.

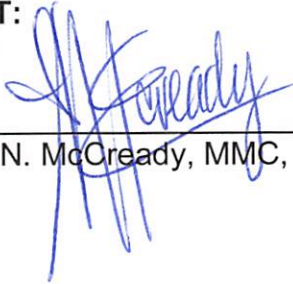
FINAL VOTE ON ADOPTION:

Commissioner Ruben A. Coto	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Absent</u>
Commissioner Gerardo Vildostegui	<u>Yes</u>
Vice Mayor Tina Paul	<u>Yes</u>
Mayor Charles W. Burkett	<u>Yes</u>



Charles W. Burkett, Mayor

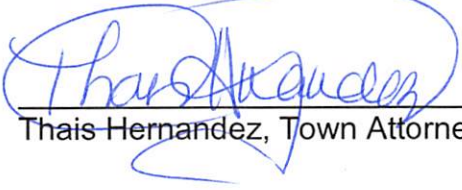
ATTEST:



Sandra N. McCreedy, MMC, Town Clerk



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



Thais Hernandez, Town Attorney

Exhibit "A"

**("Florida Department of Transportation Landscape, Irrigation, Bonded Aggregate
Surfaces Decorative Pavers, Decorative Crosswalks & Channel Gutters Master
Maintenance Memorandum of Agreement)**

Exhibit “B” (“Sidewalk Maintenance Agreement”)

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

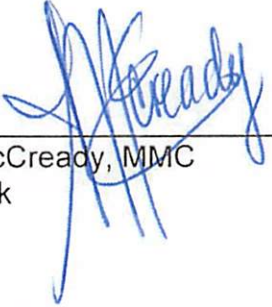
FINAL VOTE ON ADOPTION:

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meischheid	<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 McCreedy, 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 December 28, 2023, 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. 2023-3243, dated December 12, 2023, 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

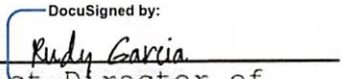
exhausted, specifically finding the **DEPARTMENT** was solely negligent, shall excuse performance of this provision by the **TOWN**.

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

TOWN OF SURFSIDE:

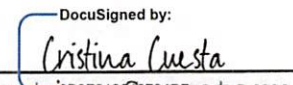
STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY: 
Town Manager

BY: 
District Director of
Transportation Operations

ATTEST: 
Town Clerk



ATTEST: 
Executive Secretary

LEGAL REVIEW:

BY: 
Town Attorney

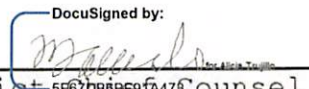
BY: 
District Counsel

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.

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

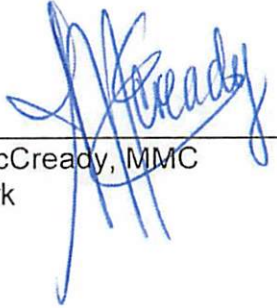
FINAL VOTE ON ADOPTION:

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meischheid	<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 McCreedy, 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

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 ("MMOA") 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 MMOA, 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: _____

This instrument prepared by and
after recording return to:

Shubin Law Group, P.A.
c/o Ian DeMello, Esq.
100 SE 2nd Street, Suite 4020
Miami, FL 33131

For Recorder's Use Only

SIDEWALK MAINTENANCE AGREEMENT

This **AGREEMENT** is made on this ____ day of November, 2025 between **SURF HOUSE LAND, LLC**, a Delaware limited liability company (the "OWNER"), and the **TOWN OF SURFSIDE**, Florida (the "TOWN"). The OWNER and the TOWN are collectively referred to herein as the "PARTIES" and each, individually, a "PARTY."

WHEREAS, on June 16, 2022, by Resolution No. 22-2895 ("RESOLUTION"), the TOWN approved and adopted a site plan application for the property located at 8995 Collins Avenue, Surfside, Florida and as more particularly described on **Exhibit "A"** attached hereto (the "OWNER'S PROPERTY"); and

WHEREAS, the OWNER now desires to replace the TOWN's sidewalk located on the East side of Collins Avenue adjacent to the OWNER'S PROPERTY with a specialty surface, *i.e.*, pavers (herein, "IMPROVEMENTS"); and

WHEREAS, the OWNER submitted or will submit to the FLORIDA DEPARTMENT OF TRANSPORTATION an application to approve plans to install the IMPROVEMENTS (herein, "SIDEWALK IMPROVEMENT PLANS") within the "Limits of Decorative Pavers" as shown on **Exhibit "B"** attached hereto; and

WHEREAS, the TOWN entered into a Florida Department of Transportation Landscape, Irrigation, Bonded Aggregate Surfaces Decorative Pavers, Decorative Crosswalks & Channel Gutters Master Maintenance Memorandum of Agreement ("MMOA") with the State of Florida Department of Transportation ("F D O T") dated December 28, 2023, attached hereto as **Exhibit "C"** and will enter a Supplemental Agreement with the Florida Department of Transportation for the maintenance of the IMPROVEMENTS;

WHEREAS, the TOWN, as a condition of approval of the SIDEWALK IMPROVEMENT PLANS, requires that the OWNER shall obtain a permit for the IMPROVEMENTS and execute

this Sidewalk Maintenance Agreement (herein, "AGREEMENT") for such IMPROVEMENTS; and

WHEREAS, the OWNER and TOWN hereby agree and covenant to enter into this AGREEMENT on the following terms and conditions.

NOW, THEREFORE, the PARTIES hereby agree as follows:

1. **RECITALS.** The recitals set forth above are hereby incorporated into this AGREEMENT as if same were set forth in the body of this AGREEMENT.

2. **MAINTENANCE OF IMPROVEMENTS.** Pursuant to, and as a condition of approval of the IMPROVEMENTS/SIDEWALK IMPROVEMENT PLANS, the TOWN shall provide through this AGREEMENT a right to the OWNER to construct and maintain the IMPROVEMENTS within the sidewalk located adjacent to the OWNER'S PROPERTY by the placement of a specialty surface, *i.e.*, pavers. The OWNER shall install, at the OWNER's expense the IMPROVEMENTS within the Improvement Area, shown as the "Limits of Decorative Pavers" on Exhibit B attached hereto (herein, "IMPROVEMENT AREA"), and as depicted on the approved SIDEWALK IMPROVEMENT PLANS. Any future repairs, replacement, and maintenance of its pavers or IMPROVEMENTS within the IMPROVEMENT AREA will continue to be the responsibility of the OWNER and successor owner(s) except as otherwise provided, and such maintenance shall be completed consistent with paragraphs 3.4 and 4 of the MMOA. The TOWN shall make annual inspections of the IMPROVEMENT AREA. Any and all costs and repairs associated with required repairs, replacement and maintenance of the IMPROVEMENTS as noted by the TOWN inspections, and as required under paragraph 4 of the MMOA, will be the responsibility of the OWNER. Annually, or on an as needed basis as determined by the TOWN in its sole and absolute discretion, the OWNER shall pressure wash, re-sand and seal the IMPROVEMENTS. Failure to comply with the OWNER'S obligations as set forth in this paragraph shall result in a code violation pursuant to Section 14-56 and Section 1-8 of the Town of Surfside Code.

3. **SOVEREIGN IMMUNITY.** Nothing in this AGREEMENT shall be deemed or otherwise interpreted as waiving the TOWN's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

4. **NO PARTNERSHIP.** Nothing contained in this AGREEMENT shall constitute or be construed to be or create a partnership or joint venture between the TOWN and OWNER.

5. **OWNER OBLIGATIONS AND INSURANCE.** The OWNER shall defend any claims arising from claims by third parties for alleged injury(ies) resulting from the OWNER's improper construction, repairs, replacement and/or maintenance of the IMPROVEMENTS. The OWNER shall, at its sole cost and expense, procure and maintain throughout the duration of this

AGREEMENT the following minimum insurance coverages to protect the OWNER as the insured against all loss, claims, damage and liabilities caused by the OWNER, its agents, sub-contractors or employees, and as may arise from claims pertaining to the construction, repairs, replacement, condition or maintenance of the IMPROVEMENTS as indicated below:

- Comprehensive General Liability (“CGL”) insurance, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability, and Two Million Dollars (\$2,000,000) aggregate.
- Insurance required of the OWNER shall name the TOWN as additional Insured, be primary to, and not contribute with, any insurance or self-insurance maintained by the TOWN. Any insurance maintained by the TOWN shall be in excess of the OWNER’S insurance and shall not contribute to the OWNER’S insurance. The insurance policy(ies) shall be issued by companies authorized to do business under the laws of the State of Florida with a minimum A.M. Best rating of A-Excellent.
- Before any work on the IMPROVEMENTS is performed, and at any time upon request, the OWNER shall furnish to the TOWN, Certificates of Insurance evidencing the minimum required coverage. All policies shall contain a waiver of subrogation endorsement. The OWNER shall also require and ensure that each of its subcontractors providing services with respect to the IMPROVEMENTS and the IMPROVEMENT AREA (if any) procures and maintains, until the completion of the services, insurance of the types specified herein.

6. **ADDITIONAL IMPROVEMENTS.** The OWNER agrees to submit any additional or further request for IMPROVEMENTS within the IMPROVEMENT AREA to the Building Department for prior approval and permits before installation and/or commencement of work.

7. **RELOCATION.** Upon completion of the installation of the IMPROVEMENTS by the OWNER, and if thereafter at any time in the future, the TOWN intends to perform any work that would disrupt the use of, or modify, the IMPROVEMENTS, including but not limited to widening of street, relocation of utility lines, water main breaks, sewage backup, etc., the OWNER shall be given thirty (30) days’ notice, unless it is an emergency that requires immediate action by the TOWN. The TOWN will not be responsible for any cost or damages associated with any work that would disrupt the use of or modify the IMPROVEMENT AREA, including and not limited to replacing the paver or the sand set pavers. However, the TOWN shall be required to replace and

repair, at its costs, the existing sub-base below the sand pavers as presently constructed, in accordance with FDOT Spec 526. The TOWN will provide the OWNER with a schedule and timing of any work to be carried out and coordinate with the OWNER the TOWN's work so that re-installation of the pavers can take place simultaneously with the TOWN completing the installation of the substrate below the pavers.

8. **RECORDATION.** This AGREEMENT shall, at the OWNER's expense, be recorded in the Public records of Miami-Dade County, Florida, forthwith immediately following execution.

9. **SUBCONTRACTING.** The OWNER shall remain responsible for services, responsibilities and liabilities of any person or entity acting under the OWNER.

10. **SUCCESSOR OWNERSHIP.** The OWNER has the affirmative duty to disclose the existence of this AGREEMENT to any successor owner, assignee, or transferee. Such disclosure requirement shall be satisfied by including in any contract of sale, agreement to purchase, or any similar instrument of conveyance, a statement that the successor owner, assignee, or transferee will be bound by the obligations of this AGREEMENT. The OWNER shall remain responsible for services, responsibilities and liabilities of the IMPROVEMENT AREA unless and until any successor owner, assignee or transferee succeeds to the OWNER's interest in the OWNER's PROPERTY, at which time the successor owner, assignee or transferee shall be responsible for all obligations under this AGREEMENT.

11. **TERMINATION.** It is hereby agreed that this AGREEMENT shall become null and void if the OWNER installs now or in the future a "standard red-top sidewalk" or similar standard sidewalk in accordance with FDOT's guidelines, standards, and procedures, rather than the IMPROVEMENTS described in this AGREEMENT.

12. **TERMINATION CAUSE.** The TOWN may, but only with "cause", terminate this AGREEMENT at any time by giving the OWNER thirty (30) days' written notice. In such event, the OWNER shall incur all costs associated with returning the sidewalk located adjacent to the OWNER'S PROPERTY back to its original condition prior to the IMPROVEMENTS. "Original condition", shall mean a "standard red-top sidewalk" or similar "standard sidewalk" restoring the area to standard features, in accordance with FDOT's guidelines, standards, and procedures, and to the satisfaction of FDOT. The OWNER shall have no other recourse against the TOWN besides what is stated herein. "Cause" shall mean a material breach of the Agreement by the OWNER or its successor(s).

13. **TERMINATION FOR INSOLVENCY.** The TOWN also reserves the right to terminate the AGREEMENT in the event the OWNER is placed either in voluntary or involuntary bankruptcy or makes any assignment for the benefit of creditors.

14. **COMPLIANCE WITH LAW.** The OWNER shall comply with all laws, regulations and ordinances of any federal, state, or local governmental authority having jurisdiction with respect to this AGREEMENT and shall obtain and maintain any and all material permits, licenses, approvals and consents, if applicable, necessary for the lawful conduct of the activities contemplated under this AGREEMENT.

15. **GOVERNING LAW.** This Agreement will be governed exclusively by and construed in accordance with the laws of the State of Florida. The venue of any claim, objection, or dispute arising out of the terms of this AGREEMENT shall be in Miami-Dade County, Florida.

16. **ATTORNEYS' FEES.** In the event suit or an action is instituted by the TOWN or the OWNER to enforce any of the terms or conditions of this AGREEMENT, or for breach, the prevailing party shall be entitled to all costs and attorneys' fees, as determined/adjudicated by the court.

17. **NOTICES.** All notices and other communications required or permitted to be given under this AGREEMENT by either PARTY to the other shall be in writing and shall be sent (except as otherwise provided herein) (i) by certified or registered mail, first class postage prepaid, return receipt requested, or (ii) by guaranteed overnight delivery by a nationally recognized courier service, or (iii) by facsimile and/or email with confirmation receipt (with a copy simultaneously sent by certified or registered mail, first class postage prepaid, return receipt requested or by overnight delivery by traditionally recognized courier service), addressed to such PARTY as follows:

If to the TOWN:	Mario Diaz Town Manager Town of Surfside 9293 Harding Avenue Surfside, Florida 33154 Tel: (305) 861-4863, Ext. 225 MDiaz@townofsurfsidefl.gov	Andre Eugent Public Works Director Town of Surfside 9293 Harding Avenue Surfside, Florida 33154 Tel: (305) 861-4863, Ext. 305 aeugent@townofsurfsidefl.gov
If to the OWNER:	Surf House Land, LLC Attention: Legal Department 500 W. Cypress Creek Road Suite 330 Fort Lauderdale, FL 33309 jjeffery@fortpartners.com	Surf House Owner/Condominium Association 98995 Collins Ave Surfside, FL 33154

18. **AMENDMENT.** Any modification of this AGREEMENT shall be effective only if in writing and executed by the TOWN or the TOWN's authorized representative and the OWNER or any successor of the OWNER to this AGREEMENT. No waiver of any provision of this

AGREEMENT shall be valid or enforceable unless such waiver is in writing and signed by the PARTY granting such waiver.

19. **SEVERABILITY.** The PARTIES to this AGREEMENT expressly agree that it is not their intention to violate any public policy, statutory or common law rules, regulations, or decisions of any governmental or regulatory body. If any provision of this AGREEMENT is judicially or administratively interpreted or construed as being in violation of any such policy, rule, regulation, or decision, the provision, sections, sentence, word, clause, or combination thereof causing such violation will be inoperative (and in lieu thereof there will be inserted such provision, section, sentence, word, clause, or combination thereof as may be valid and consistent with the intent of the PARTIES under this AGREEMENT) and the remainder of this AGREEMENT, as amended, will remain binding upon the PARTIES, unless the inoperative provision would cause enforcement of the remainder of this AGREEMENT to be inequitable under the circumstances.

20. **ENTIRE AGREEMENT.** The terms and conditions contained herein supersede all prior oral and written representations and understandings between the PARTIES, including prior iterations and versions of the AGREEMENT, and constitute the entire AGREEMENT between us concerning the subject matter of this AGREEMENT. This AGREEMENT shall not be modified or amended except in writing signed by authorized representatives of both PARTIES.

21. **Compliance with Laws.** The OWNER shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities necessary to fulfill OWNER's obligations under this AGREEMENT, including federal, State of Florida, Miami-Dade County, the Town of Surfside, and in particular shall obtain all required permits from all jurisdictional agencies to perform under this Agreement at its own expense.

22. **Waiver.** The failure of either PARTY to this AGREEMENT to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this AGREEMENT shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

23. **Public Entity Crimes Affidavit.** OWNER shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

24. **Counterparts.** This AGREEMENT may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

25. Conflicts. In the event of a conflict between the terms of this AGREEMENT and any exhibits or attachments hereto, the terms of this AGREEMENT shall control.

26. E-Verify Affidavit. In accordance with Section 448.095, Florida Statutes, the Town requires all contractors doing business with the Town to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Town will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.

[Remainder of page intentionally left blank. Signature pages follow.]

E-VERIFY AFFIDAVIT

In accordance with Section 448.095, Florida Statutes, the Town requires all contractors doing business with the Town to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Town will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

The contracting entity must provide its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

☐ **Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.**

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name:

Print Name:

Witness #2 Print Name:

Title:

Entity Name:

ACKNOWLEDGMENT

State of Florida

County of _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by _____
(name of person) as _____ (type of authority) for
_____ (name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as
Commissioned)

Personally known to me; or

Produced identification (Type of Identification: _____)

Did take an oath; or

Did not take an oath

IN WITNESS WHEREOF, the PARTIES, intending to be legally bound, hereby have executed this AGREEMENT as of the date set forth above.

SURF HOUSE LAND, LLC
A Delaware Limited Liability Company

By: _____
Nadim Ashi, Authorized Signatory

Date

TOWN OF SURFSIDE
A Florida Municipal Corporation

By: _____
Mario Diaz, Town Manager

Date

ATTEST:

By: _____
Sandra N. McCready, MMC, Town Clerk

Date

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

By: _____
Thais Hernandez, Town Attorney

Date

EXHIBIT "A"

OWNER'S PROPERTY

LEGAL DESCRIPTION:

PARCEL 1

Lots 1 and 2, Block 1—A, SECOND AMENDED PLAT OF NORMANDY BEACH, according to the plat thereof recorded in Plat Book 16, Page 44 of the Public Records of Miami—Dade County, Florida.

and

Lot 1, Block 4, ALTOS DEL MAR NO. 4, according to the plat thereof recorded in Plat Book 10, Page 63 of the Public Records of Miami—Dade County, Florida.

Together with

PARCEL 2

A Parcel of land lying Easterly of and adjacent to Lots 1 and 2, Block 1—A, SECOND AMENDED PLAT OF NORMANDY BEACH, according to the plat thereof recorded in Plat Book 16, Page 44 of the Public Records of Miami—Dade County, Florida and Westerly of the Erosion Control Line as shown on the "Erosion Control Line" according to the plat thereof as recorded in Plat Book 105 at Page 62 of the Public Records of Miami Dade County, more particularly described as follows:

Begin at Northeast Corner of said Lot 1 and 2, thence run North 86°50'51" East along the Easterly extension of the North Line of said Lots 1 and 2 for a distance of 93.90 feet to a point on the Erosion Control Line as shown on said Plat Book 105 at Page 62; thence run South 05°37'30" East, along said Erosion Control Line, for a distance of 72.83 feet to a point on the Easterly extension of the South line of said Lots 1 and 2; thence run South 86°50'51" West, along the aforesaid Easterly extension of said Lots 1 and 2, for a distance of 93.40 feet to the Southeast corner of said Lots 1 and 2; thence run North 06°00'58" West, along the Easterly line of said Lots 1 and 2, for a distance of 72.85 feet to the Point of Beginning.

Said Parcel containing 6814 square feet more or less.

EXHIBIT “B”

SIDEWALK IMPROVEMENT PLANS

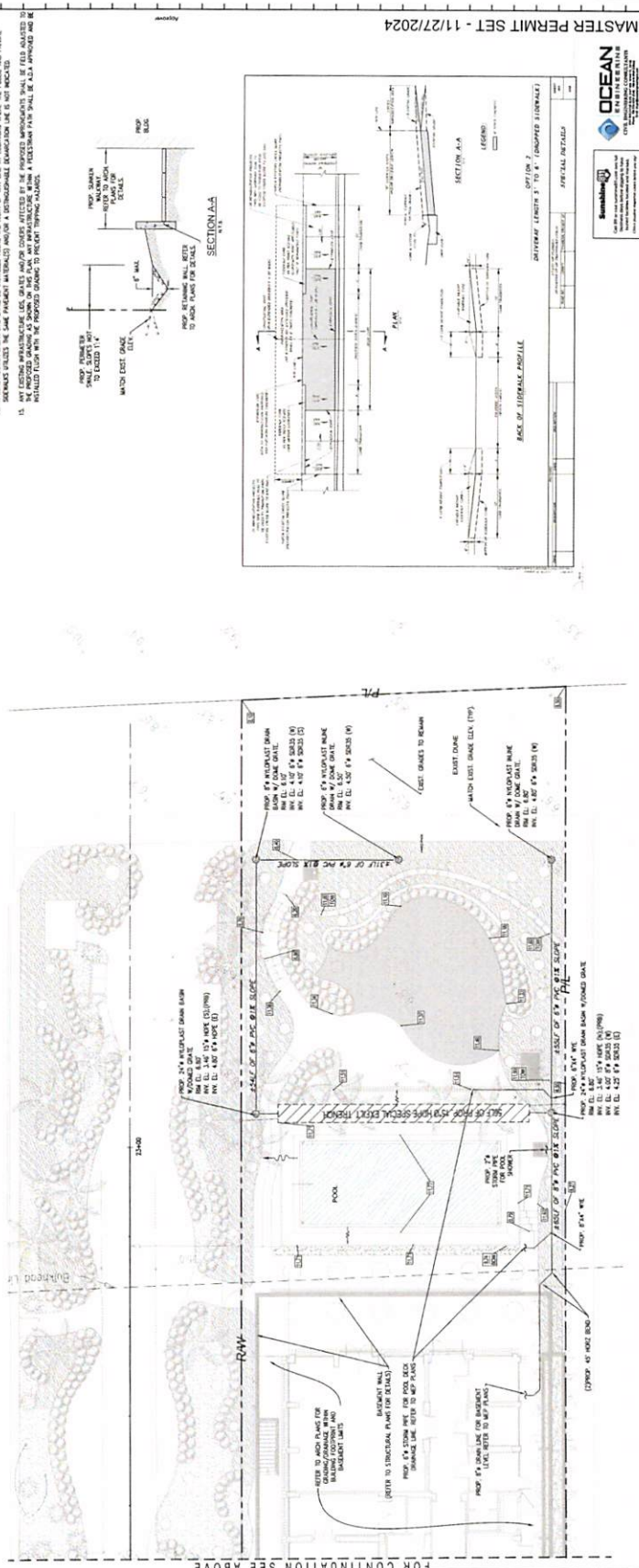
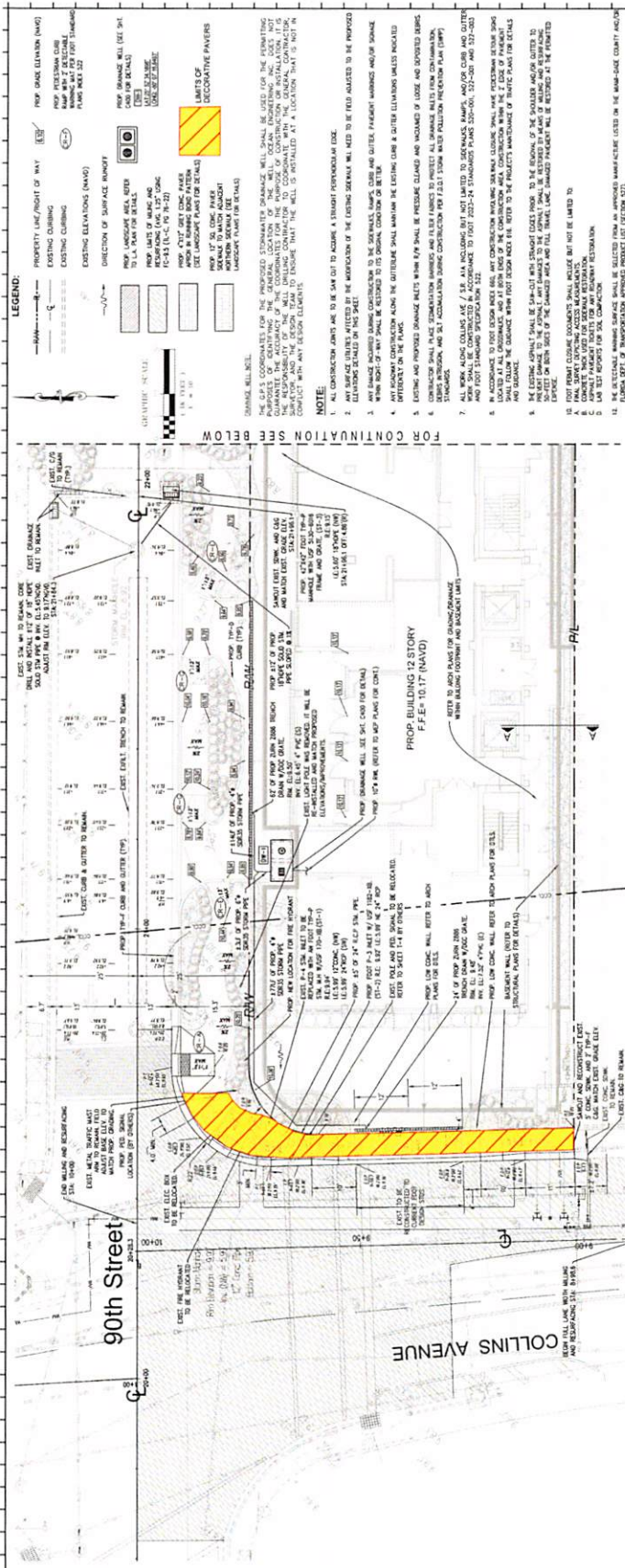


EXHIBIT “C”

**FLORIDA DEPARTMENT OF TRANSPORTATION LANDSCAPE, IRRIGATION,
BONDED AGGREGATE SURFACES DECORATIVE PAVERS, DECORATIVE
CROSSWALKS & CHANNEL GUTTERS MASTER MAINTENANCE MEMORANDUM
OF AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF
TRANSPORTATION DATED DECEMBER 28, 2023.**

**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 December 28, 2023, 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 (MMA) 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. 2023-3243, dated December 12, 2023, 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

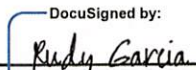
exhausted, specifically finding the **DEPARTMENT** was solely negligent, shall excuse performance of this provision by the **TOWN**.

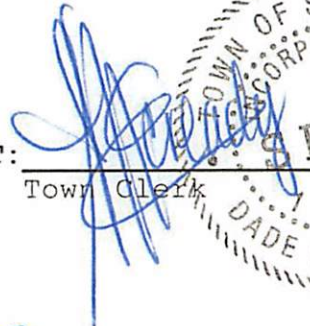
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

TOWN OF SURFSIDE:

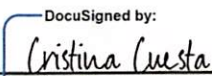
STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY: 
Town Manager

DocuSigned by:
BY: 
District Director of
Transportation Operations

ATTEST: 
Town Clerk

(SEAL)
TOWN OF SURFSIDE
INCORPORATED
1935
DADE COUNTY, FLORIDA

DocuSigned by:
ATTEST: 
Executive Secretary

LEGAL REVIEW:

BY: 
Town Attorney

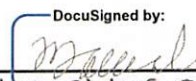
DocuSigned by:
BY: 
District Director of Counsel

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.

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

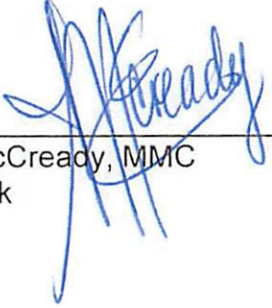
FINAL VOTE ON ADOPTION:

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meischheid	<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 McCreedy, 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

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 ("MMOA") 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 MMOA, 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: _____