FLORIDA DEPARTMENT OF TRANSPORTATION
PATTERN PAVEMENT CROSSWALKS, LANDSCAPING AND MISCELLANEOUS PEDESTRIAN FEATURES
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
CITY OF MIAMI BEACH

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

RECITALS:

A. The **DEPARTMENT** has jurisdiction over **State Road (SR) 907 (Alton Road) at Lincoln Road**, which is located within the limits of the **CITY**; and

B. The **CITY**, pursuant to **Permit Numbers 2020-A-691-00021 and 2021-L-691-00007**, has drafted design plans for improvements along SR-907 (Alton Road) at Lincoln Road, the limits of which are further described Exhibit 'A' attached hereto and made part hereof (**PROJECT LIMITS**), have been approved in accordance with the design plans referenced in said Permit (**PLANS**); and

C. The **CITY** will install pattern pavement crosswalks, landscaping and pedestrian features along SR-907, inside the **DEPARTMENT** Right-of-Way, within the **PROJECT LIMITS**, in accordance with Permit Numbers 2020-A-691-00021 and 2021-L-691-00007 (the "Project"); and

D. It is the intent of the **PARTIES** for this **AGREEMENT** to supplement all existing Maintenance Memorandum of Agreement and existing Permits previously executed between the **DEPARTMENT** and the **CITY**; and

E. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the **CITY's** responsibilities with regards to the

maintenance of the pattern pavement crosswalks, landscaping and pedestrian features (the "**IMPROVEMENTS**") within the **PROJECT LIMITS**; and

F. The **CITY**, by Resolution No._____, dated _____, attached hereto as Exhibit 'B', which by reference shall become a part of this **AGREEMENT**, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

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

1. **RECITALS**

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

2. **DEPARTMENT RESPONSIBILITIES**

The **PARTIES** agree that the execution of this **AGREEMENT** shall constitute an assignment of all maintenance responsibilities pertaining to the **IMPROVEMENTS** within the **PROJECT LIMITS** to the **CITY** upon the **DEPARTMENT's** acceptance of the **CITY's** work.

3. **CITY'S MAINTENANCE RESPONSIBILITIES**

So long as the **IMPROVEMENTS** remain in place, the **CITY** shall be responsible for the maintenance of the same. The **CITY** 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 **CITY** 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 **CITY** 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 **CITY's** maintenance obligations shall include but not be limited to:

So long as the **IMPROVEMENTS** remain in place, the **CITY** shall be responsible for the maintenance of the same, at **CITY's** sole cost and expense. The **CITY** shall maintain the pattern pavement crosswalks, landscaping and pedestrian features in accordance with all applicable **DEPARTMENT** guidelines, standards, and procedures, which shall include but shall not be limited to the Maintenance Rating Program Handbook, as may be amended from time to time. Additionally, the **CITY** shall maintain the landscape 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 **CITY** shall further maintain the landscape, turf and hardscape in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions. The **CITY's** maintenance obligations for all proposed landscape, turf, pedestrian features, and pattern pavement crosswalks 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. Maintain all gravity walls, pedestrian steps, risers, handrails, bus shelters, and all elements associated with the aforementioned features.

c. Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described by 3.1 through 3.2.

d. 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.

e. 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 Pattern 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 **CITY** 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 **CITY** 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 **CITY** for this cost.

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.

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

4. MAINTENANCE DEFICIENCIES

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

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

a. Maintain the **IMPROVEMENTS**, or a part thereof, and invoice the **CITY** for expenses incurred; or

b. Terminate this **AGREEMENT** in accordance with Section 7, remove any or all **IMPROVEMENTS** located within the **PROJECT LIMITS**, and charge the **CITY** the reasonable cost of such removal.

5. NOTICES

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

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

To the CITY: City of Miami Beach
1700 Convention Drive
Miami Beach, Florida 33139
Attention: City Manager

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

6. REMOVAL, RELOCATION OR ADJUSTMENT OF THE 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. The **DEPARTMENT** shall notify the **CITY** as soon as practicable of any such removal, relocation or adjustment of the **IMPROVEMENTS.** This notification is not subject to the notice provisions of Paragraph 5 of this **AGREEMENT.** In the event that the **DEPARTMENT** relocates or adjusts the **IMPROVEMENTS,** the **CITY's** maintenance responsibilities will survive the relocation or adjustment, as long as the materials remain within the Project Limits.

7. TERMINATION

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

a. By the **DEPARTMENT,** if the **CITY** fails to perform its duties under Section 3 of this **AGREEMENT,** following the thirty (30) days written notice, as specified in Section 4 of this **AGREEMENT.**

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

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

8. TERMS

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

b. This writing embodies the entire **AGREEMENT** and understanding between the **PARTIES** hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

c. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT.**

d. This **AGREEMENT** shall be governed by and constructed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the **AGREEMENT.**

e. Venue for any and all actions arising out of or in connection to the interpretation, validity, performance or breach of this **AGREEMENT** shall lie exclusively in a state court of proper jurisdiction in Leon County, Florida.

f. A modification or waiver of any of the provisions of this **AGREEMENT** shall be effective only if made in writing and executed with the same formality as this **AGREEMENT.**

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.

l. The **CITY** is a municipal corporation, 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 **CITY's** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

9. INDEMNIFICATION

Subject to Section 768.28, Florida Statutes, as may be amended from time to time, the **CITY** shall:

(a) 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, reasonable costs, damages, judgments, claims, demands, liabilities, reasonable attorneys fees, (including regulatory and appellate fees), and suits of any nature or kind whatsoever caused by, arising out of, or related to the **CITY's** negligent exercise or of its responsibilities as set out in this **AGREEMENT**, including but not limited to, any negligent act, negligent action, negligence or omission by the **CITY**, its officers, agents, employees or representatives in the performance of this **AGREEMENT**, whether direct or indirect, except that neither the **CITY** nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages caused or resulting from the negligence of the **DEPARTMENT**; and

(b) pay all reasonable costs and fees related to this obligation and its enforcement by the **DEPARTMENT.**

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

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

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.**

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

CITY OF MIAMI BEACH:

BY:_____
City Manager or Mayor

ATTEST:_____**(SEAL)**
City Clerk

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY:_____
District Director of
Transportation Operations

ATTEST:_____
Executive Secretary

LEGAL REVIEW:

BY:_____
City Attorney

BY:_____
District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

Below are the limits of the pattern pavement crosswalks, landscaping and pedestrian features to be maintained under this **AGREEMENT.**

State Road Number: 907 (Alton Road)

Agreement Limits: At Lincoln Road

County: Miami-Dade

EXHIBIT 'B'

CITY OF MIAMI BEACH RESOLUTION

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