

EXHIBIT "A"

FLORIDA DEPARTMENT OF TRANSPORTATION
PUMP STATION, DRAINAGE SYSTEMS, SEAWALL
& MISCELLANEOUS 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) A1A (Collins Avenue) from 25th Street to 26th Street, and SR-A1A (Indian Creek Drive) from Collins Avenue to 41st Street (SR-112), which is located within the limits of the **CITY**; and
- B. The **PARTIES** to this **AGREEMENT** mutually recognize that it is in the best interest of the Public to improve SR-A1A (Collins Avenue) from 25th Street to 26th Street, and SR-A1A (Indian Creek Drive) from Collins Avenue to 41st Street (SR-112), the limits of which are described in the attached Exhibit "A" (the "**PROJECT LIMITS**"), which by reference shall become a part of this **AGREEMENT**; and
- C. The **CITY**, pursuant to **PROJECT** FM#439228-2-58-01, has agreed to design and construct permanent roadway and seawall improvements, collectively referred to as the "**PROJECT**," along the **PROJECT LIMITS**, within **DEPARTMENT** and **CITY** right-of-way; and
- D. The **PARTIES** agreed to have the **CITY** undertake administration of the **PROJECT** design and construction, to expedite delivery of the **PROJECT** in compliance with all design criteria and legal requirements.
- E. The **CITY** represents and agrees that to the extent the **PROJECT** improvements have been developed within private properties, it has acquired license agreements, easements, or any other necessary permissions or property rights ("**PRIVATE PROPERTY**

AGREEMENTS") to design and construct the **PROJECT** improvements, in accordance with all applicable Local, State, and Federal laws; 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 **PROJECT**; and
- G. 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, in consideration of the mutual benefits contained herein and other good and valuable consideration, the **PARTIES** covenant and agree as follows:

1. RECITALS

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

2. TERM OF AGREEMENT

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

3. ASSIGNMENT OF MAINTENANCE RESPONSIBILITIES

The **PARTIES** agree that the execution of this **AGREEMENT** shall constitute an assignment of all maintenance responsibilities pertaining to certain **PROJECT** improvements specified below to belong to the **CITY** upon the **DEPARTMENT'S** issuance of final acceptance of the **PROJECT** and as more specifically set forth herein.

4. MAINTENANCE RESPONSIBILITIES OF THE PARTIES

The **CITY** and the **DEPARTMENT**, as applicable, shall maintain certain **PROJECT** improvements specified below within the **DEPARTMENT** and **CITY** right-of-way. The maintenance shall be performed in accordance with all applicable standards set forth in the **PROJECT** plans, **PROJECT** specifications, special provisions,

permit requirements and maintenance manuals provided as part of the **PROJECT**.

4.1 General Requirements:

The **CITY'S** general maintenance obligations, with respect to the **PROJECT** improvements for which the **CITY** is responsible, shall include, but shall not be limited to the following:

- a. Removing and disposing of litter in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.
- b. Maintaining a service log of all maintenance operations that sets forth the date of the maintenance activity, the location that was maintained, and the work that was performed.
- c. Submitting lane closure requests to the **DEPARTMENT** when maintenance activities 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, and in accordance with the District Six Lane Closure Policy, as may be amended from time to time.
- d. Regarding the **PROJECT** improvements located within private property, the **PARTIES** shall work together to secure from the private property owners all necessary property rights transferred to the **DEPARTMENT** in order for the **DEPARTMENT** to access the private properties and perform the maintenance or repairs required to be performed by the **DEPARTMENT**.

4.2 Pump Station System:

- a. The **CITY** agrees to operate and routinely maintain the **PUMP STRUCTURE SYSTEM** (as defined below), including payment of all associated utility bills.
- b. The **PUMP STRUCTURE SYSTEM** includes the pump station well, the four pollution control structures and components, all pipes connecting the pollution control structures, energy dissipator, sluice gates, weirs, bulkhead walls, rip rap, pump station control panel, control panel concrete pad, generator, generator concrete pad, pumps, motors, impellers, and variable frequency drives (VFDs) (the "**PUMP STRUCTURE SYSTEM**").

- c. The **CITY'S** maintenance responsibilities for the **PUMP STRUCTURE SYSTEM** along the **PROJECT LIMITS**, within **DEPARTMENT** and **CITY** right-of-way shall include, but shall not be limited to, the following:
- i. Periodically inspecting and maintaining the **PUMP STRUCTURE SYSTEM** and all its associated features (electrical, mechanical, etc.) in accordance with the manufacturer's minimum care and maintenance requirements, and in accordance with the **PROJECT** plans and specifications, but never less than once per contractual year.
 - ii. Adhering to the safety precautions prescribed by the manufacturer and enumerated in the **PROJECT** plans and specifications.
 - iii. Complying with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as the same may be amended from time to time.
 - iv. The **CITY** will keep electronic records of all inspections and maintenance services performed. Upon request by the **DEPARTMENT**, the **CITY** shall provide the service records for review.
 - v. Paying all costs associated with repairs, that may include replacement of parts, of the **PUMP STRUCTURE SYSTEM**, that are not included as part of the repair work described in the definition of **MAJOR REPAIRS** (as defined in the below subsection (d)).
- d. The **DEPARTMENT** will be solely responsible for any **MAJOR REPAIRS** along the **PROJECT LIMITS**, within **DEPARTMENT** and **CITY** right-of-way. The **CITY** must notify the **DEPARTMENT** as soon as the need for a **MAJOR REPAIR** is discovered. **MAJOR REPAIRS** shall only include a complete replacement of any major components of the **PUMP STRUCTURE SYSTEM**. Major components include pump station well, four pollution control structures, bulkhead walls, pump station control panel, generator, energy dissipator, sluice gates, pumps and variable frequency drives (VFDs). When a **MAJOR REPAIR** is required, the **DEPARTMENT** at its own expense, shall complete all necessary **MAJOR REPAIRS** within sixty (60) days of the date the deficiency is identified. The

DEPARTMENT, however, shall not be responsible for the following **MAJOR REPAIRS**, for which the **CITY** shall be solely responsible at the **CITY'S** own expense:

- i. Any **MAJOR REPAIRS** that are needed as a result of the **CITY'S** failure to perform its maintenance responsibilities pursuant to this **AGREEMENT**, or
- ii. Any **MAJOR REPAIRS** that are the result of a negligent act of the **CITY** in performing its maintenance responsibilities pursuant to this **AGREEMENT**.

4.3 Drainage Features:

- a. With the exception of the **CITY'S** maintenance responsibilities described in Section 4.2 of this **AGREEMENT**, the **DEPARTMENT** will maintain all drainage features built inside the **DEPARTMENT'S** right-of-way.
- b. All **PROJECT** drainage features built within the **CITY'S** right-of-way shall be maintained by the **CITY**.
- c. The **CITY** shall be responsible for ensuring that all **PROJECT** drainage features built on private property are maintained, which efforts may include enforcing the private property owner's maintenance obligations under the **PRIVATE PROPERTY AGREEMENTS**.
- d. For the purpose of defining maintenance limits, the **DEPARTMENT'S** maintenance will end at the cross walk at each of the **CITY'S** side streets.
- e. The **CITY'S** maintenance responsibilities pertaining to drainage features shall include, but shall not be limited to the following:
 - i. Maintaining the drainage features operating as originally designed. Cleaning and desilting the drainage features, including but not limited to pipes, inlets, manholes, structures, trench drains, yard drains, of debris and other materials that can accumulate throughout the life of the system.
 - ii. Performing routine and regular inspection of the drainage features to assure that the systems are fully functional.

- iii. Identifying, repairing, and replacing damaged and failing components.
- iv. Maintaining all outfalls.
- f. When remedial action is required, the **CITY** at its own expense, shall enforce the **PRIVATE PARTY AGREEMENTS** and/or complete all necessary repairs within a time frame that minimizes public exposure to unsafe conditions, not exceeding sixty (60) days of the date the deficiency is identified.
- g. For all drainage features connected to the **DEPARTMENT'S** systems, all inspections and maintenance shall follow all Local, State, and Federal guidelines and laws, and shall comply with all terms of State permit requirements.

4.4 SEAWALL AND RIP RAP:

- a. The **CITY** shall inspect and repair all seawalls and rip-rap outside of the **DEPARTMENT'S** right-of-way in accordance with **CITY'S** standards and specifications.
- b. The **CITY** shall be responsible for ensuring that all seawalls and rip-rap built on private property are maintained, which efforts may include enforcing the private property owner's maintenance obligations under the **PRIVATE PROPERTY AGREEMENTS**.
- c. The **CITY'S** maintenance responsibilities for the seawalls and rip rap shall include, but shall not be limited to, the following:
 - i. Periodically inspecting and maintaining the seawalls and rip-rap in accordance with the **PROJECT** plans and specifications, but never less than once every five years.
 - ii. Complying with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as the same may be amended from time to time governing the particular seawall.
 - iii. Performing visual inspections of both above and underwater elements to detect deficiencies, including,

but not limited to, spalls, delamination, corrosion, and scour.

- d. When remedial action is required, the **CITY** at its own expense, shall commence to enforce the **PRIVATE PARTY AGREEMENTS** or complete all necessary repairs within a time frame that minimizes public exposure to unsafe conditions, not exceeding sixty (60) days of the date the deficiency is identified.

4.5 Miscellaneous PROJECT Features outside DEPARTMENT right-of-way:

- a. The **CITY** built features outside of the **DEPARTMENT'S** right-of-way including but not limited to guardrail, barrier walls, sidewalks, curbs, signs, lighting, pedestrian ramps, driveways, and fences. With respect to these improvements outside the **DEPARTMENT'S** right-of-way, the **CITY** shall be responsible for ensuring that these features are maintained, which efforts may include enforcing the private property owner's maintenance obligations under the **PRIVATE PROPERTY AGREEMENTS**.
- b. When remedial action is needed, the **CITY**, at its own expense, shall commence to enforce the applicable **PRIVATE PARTY AGREEMENTS** or complete all necessary repairs within a time frame that minimizes the public exposure to unsafe conditions, not exceeding sixty (60) days of the date the deficiency is identified.
- c. The **CITY** shall submit all services logs, inspections and surveys to the **DEPARTMENT** Warranty Coordinator.
- d. The **DEPARTMENT** may, at its sole discretion, perform periodic inspections of the improvements to be maintained by the **CITY** herein 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 for sending the **CITY** a notice to cure as set forth in Section 5 of this **AGREEMENT**.

4.6 Miscellaneous Features inside DEPARTMENT right-of-way:

- a. The **CITY** shall maintain and replace all devices used to separate the bicyclists from the travel lanes. This includes the products currently proposed for this **PROJECT**, and all

future products used. All alternate products need to be approved by the **DEPARTMENT** before implementation. New locations will also need to be approved by the **DEPARTMENT** before implementation.

- b. The **CITY** shall be responsible for sweeping the areas between the devices used to separate the bicyclists from the travel lanes and the curb, including the curb. This also includes a distance of 100 feet beyond each location where these devices are installed when mechanical sweepers cannot be utilized.
- c. The **CITY** shall maintain all features associated with bus-stops. The **DEPARTMENT** shall maintain the curb.
- d. The **CITY** shall perform routine and regular inspections of these features to assure that each are fully functional, including but not limited to, identifying, repairing, and replacing damaged and failing components.
- e. When remedial action is required, the **CITY** at its own expense shall complete all necessary repairs within sixty (60) days of the date the deficiency is identified.

5. DEFAULT

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

Notwithstanding the foregoing, the CITY shall not be in default of this **AGREEMENT**, as a result of a private property owner's failure to maintain the **PROJECT** improvements located within the private property; provided that within the sixty (60) day cure period, the CITY commences its efforts to ensure that the private property owner performs the required maintenance obligation, and thereafter continues its efforts with due diligence until such time as the default has been cured.

6. NOTICES

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

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

To the CITY: City of Miami Beach
1700 Convention Drive
Miami Beach, Florida 33139
Attention: Public Works Director

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

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

7. REMOVAL, RELOCATION, OR ADJUSTMENT OF THE IMPROVEMENTS

a. The **PARTIES** agree that the improvements located within the **DEPARTMENT'S** right-of-way may be removed, relocated, or adjusted at any time in the future, at the **DEPARTMENT'S** sole discretion. In the event that the **DEPARTMENT** relocates or adjusts any improvements within the **DEPARTMENT'S** right-of-way, which the **CITY** has specifically agreed to maintain herein, the **CITY's** maintenance responsibilities for those improvements will survive the relocation or adjustment, as long as the materials remain within the **PROJECT LIMITS**.

b. In the event that the **DEPARTMENT** is required to replace improvements within its right-of-way at any time as part of maintenance activities, a roadway project, or related construction activities, the **DEPARTMENT** shall replace in kind, and the **CITY'S** maintenance obligations under this **AGREEMENT** shall survive said replacements as long as the improvements remain within the **PROJECT LIMITS**. However, the **CITY** may, with

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

- c. The **PARTIES** agree that the improvements located within the **CITY'S** right-of-way may be removed, relocated, or adjusted at any time, in the future, upon coordination between the **CITY** and the **DEPARTMENT**. In the event that the **CITY** relocates or adjusts any improvements within the **CITY'S** right-of-way, which the **DEPARTMENT** has specifically agreed to maintain herein, the **DEPARTMENT'S** maintenance responsibilities for those improvements will survive the relocation or adjustment, as long as the materials remain within the **PROJECT LIMITS**.

8. TERMINATION

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

9. MISCELLANEOUS TERMS

- a. E-Verify

The **CITY** shall:

- i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
- ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. **(Executive Order Number 2011-02)**

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

- b. This writing embodies the entire **AGREEMENT** and understanding between the **PARTIES** hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
- c. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT** and the **CITY**.
- d. This **AGREEMENT** shall be governed by and constructed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the **AGREEMENT**.
- e. Venue for any and all actions arising out of or in connection to the interpretation, validity, performance or breach of this **AGREEMENT** shall lie exclusively in a state court of proper jurisdiction in Miami-Dade County, Florida.
- f. A modification or waiver of any of the provisions of this **AGREEMENT** shall be effective only if made in writing and executed with the same formality as this **AGREEMENT**.
- g. The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.
- h. No term or provision of this **AGREEMENT** shall be interpreted for or against either Party because the Party or its legal representative drafted the provision.
- i. The **DEPARTMENT** and the **CITY** are state agencies, self-insured and subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. Nothing in this **AGREEMENT** shall be deemed or otherwise interpreted as waiving the **PARTIES'** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

10. INSURANCE

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

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

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

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

CITY OF MIAMI BEACH:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY: _____
CITY Manager

BY: _____
District Director of
Transportation Operations

ATTEST: _____ (SEAL)
CITY Clerk

ATTEST: _____
Executive Secretary

DRAFT

LEGAL REVIEW:

APPROVED AS TO FORM
& LANGUAGE & FOR EXECUTION

BY: _____
CITY Attorney

BY: _____
District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

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

State Road Number: A1A

Local Street Names: Collins Avenue and Indian Creek Drive

**PROJECT LIMITS: Collins Avenue from 25th St to 26th St, and
Indian Creek Dr. from Collins Ave to 41st St**

County: Miami-Dade

DRAFT

EXHIBIT 'B'

CITY OF MIAMI BEACH RESOLUTION

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

DRAFT