

**EXHIBIT D**

**OFF-SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT**

**Between**

**STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION  
("DEPARTMENT")**

**and**

**CITY OF MIAMI BEACH, a MUNICIPALITY IN MIAMI-DADE COUNTY, FLORIDA  
("CITY")**

THIS OFF-SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_, 2023, by and through the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida (the "Department"), and CITY OF MIAMI BEACH, a Municipality in Miami-Dade County, Florida (the "City"), individually referred to as a "Party" and collectively referred to as the "Parties."

**RECITALS**

A. Upon approval of the Department's Work Program by the State of Florida Legislature, and adoption by the Department Secretary, the Department shall complete the various projects included in the Department Work Program; and

B. Included in the Department Work Program is Project Number FM# 429193-1-52-01/429193-1-52-02/429193-1-52-03/429193-1-52-04/429193-1-56-01, SR 907/ALTON ROAD FROM MICHIGAN AVENUE TO S OF ED SULLIVAN DR/43 STREET (the "Project"). Portion of the Project includes work on Michigan Avenue, W 21 Street, W 23 Street, W 27 Street, W 29 Street, Old Alton Road, N. Bay Road, Chase Avenue, in Miami Beach, Florida, roads not on the State Highway System, and within portions of the Miami Beach Golf Club property; and

C. The City is the holder of ownership rights to Michigan Avenue, W 21 Street, W 23 Street, W 27 Street, W 29 Street, Old Alton Road, N. Bay Road, Chase Avenue, roads not on the State Highway System, and the Miami Beach Golf Club; and

D. The Parties agree that it is in the best interest of each party for the Department to undertake and to complete all aspects of the Project, including but not limited to, the design, construction, construction inspection, maintenance during construction, utilities, easements, and other associated tasks; and

E. The Parties further agree that it is in the best interest of each party to enter into this Agreement in order to allow the Department to construct and complete the Project.

### TERMS

**NOW THEREFORE**, in consideration of the premises, the mutual covenants and other valuable considerations contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The recitals in this Agreement are true and correct, and incorporated into and made a part hereof.
2. The Parties agree that the Department intends to undertake and complete Project Number FM# 429193-1-52-01/429193-1-52-02/429193-1-52-03/429193-1-52-04/429193-1-56-01, which Project generally includes the following:
  - Milling, overbuild, resurfacing, and widening of the pavement;
  - New construction from Michigan Avenue to Chase Avenue to include a bi-directional bicycle lane and sidewalk along east side of roadway;
  - New drainage system to include two pump stations and drainage infrastructure;
  - New lighting system from Michigan Avenue to Chase Avenue; and
  - Upgrades to the signing and pavement markings, pedestrian signalization, sidewalk, and pedestrian ramps to current standards.

The Project shall include improvements on Michigan Avenue, from Sta 20+52 to Sta 21+32 (€ Michigan Ave. East), and Sta 8+65 to Sta 9+38 (€ Michigan Ave. West); W 21 Street, from Sta 11+65 to Sta 12+34 (€ W 21 St); W 23 Street, from Sta 11+94 to Sta 12+53 (€ W 23 St); W 27 Street, from Sta 11+68 to Sta 12+49 (€ W 27 St); W 29 Street, from Sta 10+00 to Sta 17+65 (€ W 29 St); Old Alton Road, from Sta 230+05/90' LT to Sta 232+15/60' LT (€ SR 907); N. Bay Road, from Sta 240+38/116' LT to Sta 240+38/54' LT (€ SR 907); Chase Avenue, from Sta RT

240+41/59' RT to Sta 240+60/180' RT (€ SR 907); and within the Miami Beach Golf Club property from Sta 191+65 to Sta 240+19 (€ SR 907) (for purposes of this agreement, the "Off-System Project Limits"), as depicted in Exhibit "A" attached hereto. The work within the Off-System Project Limits shall include, but may not be limited to the following (hereinafter referred to as the "Local Roadway Improvements"):

- a) Milling and resurfacing;
- b) Miscellaneous roadway widening;
- c) New construction of a bi-directional bicycle lane and sidewalk;
- d) Asphalt and sod harmonization;
- e) Roadway elevation changes to tie into Alton Road raised roadway elevations;
- f) Driveway reconstruction;
- g) Drainage modifications including new drainage pipes, drainage inlets, and drainage structures.
- h) Lighting modifications including new light poles, pull boxes, and conduits;
- i) Signalization modifications including new controller cabinets, pedestrian signals, pull boxes, and switch disconnect poles; and
- j) Signing and Marking modifications.

The Project shall further include all activities associated with or arising out of the construction of the Local Roadway Improvements.

Additionally, FDOT has acquired or will acquire the following perpetual easements on the following City properties/right-of-way parcels (collectively, "FDOT Easements") in connection with the Project:

- Parcel 800, a perpetual easement containing an easement area of approximately 22,933 square feet, for the purpose of installing an FDOT stormwater pump station and its respective outfall to the bay, along the west side of Alton Road right of way and the south side of 29<sup>th</sup> Street, as depicted in Composite Exhibit "B", attached hereto.
- Parcel 802.1, a perpetual, non-exclusive easement, containing an easement area of approximately 3,338 square feet, for the purpose of constructing, installing, and maintaining drainage improvements, including, but not limited to, a pump station,

drainage structures, electrical panels, and an outfall in, over, under, upon, and through the City's right-of-way along a portion of West 29<sup>th</sup> Street from SR 907 / Alton Road to North Bay Road as depicted in Composite Exhibit "B" attached hereto.

- Parcel 803.1, a perpetual, non-exclusive easement, containing an easement area of approximately 4,942 square feet ("Easement Area"), for the purpose of constructing, installing, and maintaining intelligent transportation system improvements, including, but not limited to, dynamic message signs, dynamic message sign support structures, CCTV cameras, concrete poles, controller cabinets, pull boxes, and conduits in, over, under, upon, and through the City's right-of-way along a portion of the Miami Beach Golf Club property south of Chase Avenue as depicted in Composite Exhibit "B" attached hereto.

The proposed improvements, which FDOT will be constructing within the FDOT Easements, shall be excluded from this Agreement. The Maintenance responsibilities of each respective party in connection with the improvements located within the FDOT Easements shall be set out in detail in a Maintenance Memorandum of Agreement.

The Department will design and construct the Project in accordance with all applicable federal and state laws and regulations and in accordance with Department design and construction standards as set forth in the Department's guidelines, standards, and procedures. The Department shall have final decision authority with respect to the design, the design review process, and construction of the Local Roadway Improvements; provided, however, that the City has approved the Project Design Plans, as described in Section 3 below including plans to relocate any utilities that the Department may determine to be required.

3. The Parties acknowledge and agree that the City will review the Project Design Plans ("Project Design Plans") and shall submit its comments, if any, via Electronic Reviewer Comments ("ERC"). The Department shall provide the City access to the ERC, and the Department shall use the ERC to submit the Project Design Plans for the City to review. When the Department places the Project Design Plans in the ERC, the Department will designate a Comment Due Date and a Response Due Date. The City shall submit its comments with regards to the Project Design

Plans on or before the Comment Due Date, and the Department shall respond to the City's comments, if any, on or before the Response Due Date, which response dates shall not be shorter than \_\_\_\_ days. If the City does not submit its comments by the Comment Due Date, the City will be deemed to have approved the Project Design Plans submitted by the Department. The review process for the Project Design Plans will be deemed concluded when the Department has submitted the Final Project Design Plans to the ERC, and the Comment Due Date and Response Due Date for the Final Project Design Plans have passed, and the Department has addressed all of the City's comments that were submitted through the ERC. Once the review process is concluded, the Department will construct the Project in accordance with the Final Project Design Plans submitted through the ERC. The City acknowledges and agrees that, during construction of the Local Roadway Improvements, the Department will only utilize the services of law enforcement officers when required by the Department's Standard Specifications for Road and Bridge Construction, and no additional requirements will be imposed. No further agreements or permits shall be required for production or construction of this Project.

Major modifications of the approved Project Design Plans must be submitted to the City for review. A "Major Modification" is any modification that materially alters the kind or nature of the work depicted in the approved Project Design Plans, or that alters the integrity or maintainability of the Local Roadway Improvements, or related components. The City's review shall be within the reasonable time schedule proposed by the Department, in order to avoid delay to the Department pursuant to the construction contract between the Department and its Contractor (the "Construction Agreement"). In the event that any Major Modifications are required during construction, the Department shall be entitled to proceed with the modifications that are necessary to complete the construction of the Project, and shall, upon identifying the need for a Major Modification, immediately notify the City of the required changes prior to proceeding with implementation of the same. It is specifically understood and agreed that any such changes during construction shall not delay nor affect the timely construction schedule of the Project.

4. FDOT shall closely coordinate the relocation of any utilities with the City and the City agrees to fully cooperate with the Department in the construction, reconstruction and relocation of utilities that are located within the City's right-of-way, within the Off-System Project Limits. The utility relocations, if any, which may be required by the Department for purposes of the Project, shall

be done in accordance with the Department's guidelines, standards and procedures. The Department shall submit the proposed utility relocation schedule to the City. Utility relocations, if any, shall be done in accordance with the provisions of Chapter 337, F. S.

Additionally, the City agrees to fully cooperate with the Department in the removal of any encroachments or permitted improvements, and in the modification of any driveway connections, located within the City's right-of-way, within the Off-System Project Limits, that are in conflict with the Project, and the City hereby authorizes the Department to take any legal action necessary to effectuate the removal of any such conflicting encroachments or permitted improvements, and to effectuate the modification of any such driveway connections at no expense to the City. The Department shall coordinate with the City for said removals or modifications, at no cost to the City.

5. The Department may utilize federal funds to design and construct the Project. The City agrees to perpetually maintain the Local Roadway Improvements. To maintain means to perform normal maintenance operations for the preservation of the Local Roadway Improvements.

Additionally, the Parties understand and agree that the Department shall transfer any permit(s) required for the construction of the Local Roadway Improvements, if any, to the City as the operational maintenance entity, and the City agrees to accept said transfer and to be fully responsible to comply with all operational and maintenance conditions of the permit(s), at its sole cost and expense.

Notwithstanding the requirements hereof, maintenance of the Local Roadway Improvements during construction shall be the responsibility of the Department and its Contractor, as set forth in paragraph 9 of this Agreement.

6. With the exception of non-exclusive easement rights which FDOT contemplates securing under the FDOT Easements for Parcels 800,802 and 803, the Parties acknowledge and agree that the City's right-of-way and the improvements and structures located within the City's right-of-way, are and will remain under the ownership of the City, and that the Department will not have any ownership interest in the right-of-way, improvements, or structures located thereon or installed therein pursuant to this Project.

7. Insurance and Liability.

- a) Insurance. The Department shall require its construction Contractor to maintain, at all times during construction, Commercial General Liability insurance providing continuous

coverage for all work or operations performed under the Construction Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy, or such other minimum insurance coverage that may be required by the Department for the construction of the Project, in accordance with the Department's Standards and Specifications for Road and Bridge Construction. The Department shall further cause its Contractor to name the City and the Department as additional named insured Parties on the afore-stated policies, and to provide evidence of Workers' Compensation Insurance in accordance with the laws of the State of Florida and in amounts sufficient to secure the benefit of the Florida Workers' Compensation law for all employees.

b) Liability/Indemnification.

1) The Department shall ensure that the City is added as an additional co-indemnified party with the Department in the Construction Agreement, and as to the subcontractors of the Contractor to the extent required under said Construction Agreement. The Construction Agreement shall also contain a requirement that the Contractor(s) provide a payment and performance bond at least in the amount and form required by state law naming the Department and the City as joint obligees or joint contracting public entities.

2) \_\_\_\_\_ To the extent permitted by applicable law, each Party agrees to be responsible for its acts of negligence, or the acts of negligence of their respective officers, employees, agents, contractors, or any other person or entity acting under either Party's control or supervision, while acting within the scope of this Agreement, and agrees to be responsible for any damages resulting from said negligence. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations. Notwithstanding the foregoing, any liability arising out of the terms of this Agreement shall be subject to applicable laws, including, but not limited to, Section 768.28, Florida Statutes, and the

limitations, restrictions, and defenses therein. Nothing contained herein shall constitute a waiver of sovereign immunity by any of the Parties to this Agreement.

8. The Department shall notify the City at least 48 hours before beginning construction within the City's right-of-way. Such notification may be provided via email, to the \_\_\_\_\_ the City's Public Works Department \_\_\_\_\_, and the notice requirements set forth in paragraph 20 shall not apply to this paragraph.

The Department agrees that the City may, at reasonable times during the construction of the Local Roadway Improvements, inspect the Contractor's construction site and perform such tests as are reasonably necessary to determine whether the goods or services required to be provided by the Contractor, pursuant to the Contractor's Construction Agreement with the Department, conform to the terms of said Construction Agreement. Upon request by the City, the Department shall coordinate with its Contractor to provide access to the City for performance of said inspections. During the construction work related to the Project, the City shall fully cooperate with any such work being performed by the Department and the Department's Contractors. The City shall not commit nor permit any act which may delay or interfere with the performance of any such work by the Department or the Department's Contractors, unless the Department agrees in writing that the City may commit or permit said act.

9. Maintenance of the Local Roadway Improvements during construction, commencing as of the first date of construction, shall be the responsibility of the Department's Contractor. Notwithstanding, neither the Department nor its Contractor shall be responsible for mowing or removing litter during construction of the Project except for the areas within the limits specified in paragraph 2 of this Agreement. After completion of construction, subject to outstanding punch list and warranty work, the City shall assume all maintenance responsibilities for the Local Roadway Improvements, unless otherwise delineated in Section \*.

Upon completion of construction, the Department is required to invite the City on the Final Inspection of the work within the Off-System Project Limits, and will incorporate City concerns that are within the scope of the Contractor's Construction Agreement into the final Project punch list to be corrected by the Contractor. Notice for Final Inspection shall be delivered via email and overnight mail to the City, providing the City with a minimum of ten (10 days notice of the Final



Inspection date. However, if the City does not attend the Final Inspection, the Department shall proceed to conduct the Final Inspection, finalize the Project punch list, and issue a Notice of Final Acceptance to its Contractor. The Final Inspection shall be performed and the Notice of Final Acceptance shall be issued in accordance with the Department's Standard Specifications for Road and Bridge Construction and the Construction Project Administration Manual (CPAM).

Upon issuance of the Notice of Final Acceptance to the Contractor, the Department shall provide a copy of said notice to the City. As of the date of the Notice of Final Acceptance, the City shall be immediately responsible for the maintenance of the Local Roadway Improvements, and shall further accept the Local Roadway Improvements. The Department, however, shall have the right to assure completion of any punch list by the Contractor. Notwithstanding the issuance of the Notice of Final Acceptance, the City may notify the Department Project Manager of deficiencies in the Local Roadway Improvements that may be covered by the warranty provisions in the Contractor's Construction Agreement. The Department shall enforce the warranty if remedial action is required by the warranty provisions.

Upon completion of all work related to construction of the Project, the Department will be required to submit to the City final as-built plans for the Local Roadway Improvements and an engineering certification that construction was completed in accordance with the plans. Upon the City's request, the Department shall secure any authorizations or assignments which may be required in order to transfer ownership of the as-built plans. Additionally, the Department shall vacate those portions of the City's right-of-way used to construct the Local Roadway Improvements, and shall remove the Department's property, machinery, and equipment from said portions of the City's right-of-way. Furthermore, the Department shall restore those portions of the City right-of-way disturbed by Project construction activities to the same or better condition than that which existed immediately prior to commencement of the construction of the Project.

10. Upon submission by the Department of the non-exclusive perpetual easements for the FDOT Easements, with accompanying sketch and legal description, the City shall forthwith submit the same to its governing board or commission for consideration and approval.
11. This Agreement shall become effective as of the date both parties hereto have executed the Agreement. Prior to commencement of construction, the Department may in its sole discretion

terminate this Agreement if it determines that it is in the best interest of the public to do so. If the Department elects to terminate this Agreement, the Department shall deliver formal notice of termination to the City, as set forth in paragraph 20 of this Agreement.

12. In the event that any election, referendum, approval, ratification, notice or other proceeding, or authorization is required to carry out the Project, the City's Public Works Department\_\_\_\_\_ agrees to expeditiously initiate and consummate, as provided by law, all actions necessary with respect to any such matters, with time being of the essence.
13. In the event that the Project shall be constructed using federal funds, all costs incurred must be in conformity with applicable federal and state laws, regulations, and policies and procedures.
14. The City's and Department's performance and obligations under this Agreement are contingent upon an annual appropriation by its board or the Legislature, as applicable. If the Department's funding for this Project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred.
15. In the event that this Agreement is in excess of \$25,000, and the Agreement has a term for a period of more than one year, the provisions of Section §339.135(6)(a), Florida Statutes, are hereby incorporated into this Agreement and are as follows:  
*“The department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during any such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year.”*
16. The City and the Department are state agencies, self-insured and subject to the provisions of Section 768.28, Florida Statutes. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the City's or Department's sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

17. 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.
18. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Miami-Dade County, Florida.
19. No term or provision of this Agreement shall be interpreted for or against any party because that party's legal counsel drafted the provision.
20. In accordance with Executive Order No. 11-02 the Department's Vendor/Contractor(s) shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of;
  - i. all persons employed by the Vendor/Contractor during the term of the Contract to perform employment duties within Florida; and
  - ii. all persons, including subcontractors, assigned by the Vendor/Contractor to perform work pursuant to the contract with the Department.
21. All notices required pursuant to the terms hereof, shall be in writing and shall be deemed to have been duly given, made and received when delivered (personally, by courier service such as Federal Express, or by other messenger) against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below:

To the City:

Director of Public Works \_\_\_\_\_

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139

To the Department:

Director of Transportation Operations  
State of Florida, Department of Transportation  
1000 N.W. 111<sup>th</sup> Avenue

Miami, Florida 33172

22. The City, by and through Resolution No. \_\_\_\_\_, attached hereto as Exhibit “\_\_\_\_\_”, has duly authorized the execution and delivery of this Agreement and agrees to be bound by the terms hereunder, and has further authorized the City Manager or City Manager’s designee to take all necessary steps to effectuate the terms of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates exhibited, by the signatures below.

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form and legality:

By: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Director of Transportation Operations

Date: \_\_\_\_\_

Department Legal Review:

\_\_\_\_\_