

**FLORIDA DEPARTMENT OF TRANSPORTATION
LANDSCAPE, IRRIGATION, BRICK PAVER CUT OUTS, PATTERN
PAVEMENT CROSSWALKS AND
STAMPED CONCRETE TRAFFIC SEPARATOR
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
CITY OF NORTH MIAMI**

This **AGREEMENT**, entered into on _____, 2012, 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 NORTH MIAMI**, 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 (S.R.) 7/NW 7th Avenue, from NW 119th Street (M.P. 8.062) to NW 131st Street (M.P. 8.918)**, which is located within the limits of the **CITY**; and
- B. The **DEPARTMENT**, pursuant to Contract # T-6319, has drafted design plans for beautification improvements on S.R. 7/NW 7th Avenue, from NW 119th Street to NW 131st Street, 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 **DEPARTMENT** will install landscaping, irrigation, brick paver cut outs, pattern pavement crosswalks and a stamped concrete traffic separator in accordance with the design plans for Contract # T-6319(the "Project"); and
- D. 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 landscaping, irrigation, brick paver cut outs, pattern pavement crosswalks and a stamped concrete traffic separator installed pursuant to the Project; and
- E. The **CITY** 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 by executing this **AGREEMENT** all maintenance responsibilities pertaining to the landscape within the **PROJECT LIMITS** are assigned to the **CITY** in perpetuity upon the Department's release of its contractor from further warranty work and responsibility, as set forth in Section 580-5 of the **DEPARTMENT's** Standard Specification for Road and Bridge Construction. Additionally, the **PARTIES** agree that all maintenance responsibilities pertaining to the irrigation, brick paver cut outs, pattern pavement crosswalks and a stamped concrete traffic separator shall be assigned to the **CITY** in perpetuity upon the Department's issuance of the Notice of Final Acceptance of the Project to its contractor.

3. CITY'S MAINTENANCE RESPONSIBILITIES

The **CITY** shall maintain the landscape, irrigation, brick paver cut outs, pattern pavement crosswalks and a stamped concrete traffic separator 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, irrigation, brick paver cut outs, pattern pavement crosswalks and a stamped concrete traffic separator in accordance with the International Society of Arboriculture standards, guidelines, and procedures, as may be amended from time to time, and 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:

3.1 Landscape and Irrigation:

- a) Mowing, cutting and/or trimming and edging the grass and turf.
- b) Pruning all plant materials, which include trees, shrubs and ground covers, and parts thereof.
- c) 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.
- d) Mulching all plant beds and tree rings.
- e) Removing and disposing of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials.
- f) Watering and fertilizing all plants as needed to maintain the plant materials in a healthy and vigorous growing condition.
- g) Performing routine and regular inspection of the irrigation system(s) to assure that the systems are fully functional; identifying damage and/or malfunctions to the system(s); repairing and/or replacing broken or missing irrigation equipment; and adjusting spray heads to eliminate overspray of water onto paved areas.
- h) Paying all for water use and all costs associated therewith.
- i) Removing and disposing of litter from roadside and median strips in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended

from time to time.

- j) Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described by 2.A through 2.I.
- k) 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.
- l) 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 Crosswalks:

- a) Within sixty (60) days of final 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. FM 5-592 can be accessed at the following link:

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

The initial friction resistance shall be at least thirty five (35), obtained at 40 mph with a ribbed tired 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 quality product installed initially. If the **DEPARTMENT** determines that more than fifty percent (50%) of the lanes in the intersection require replacement, the entire intersection may be

reconstructed with a different product on the Qualified Products List (QPL) or replaced with conventional pavement.

- b) One (1) year after the final acceptance, and every two (2) years thereafter for the life of the patterned crosswalk, 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 thirty five (35) (or equivalent).

Failure to achieve minimum friction 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 more than fifty percent (50%) of the lanes in the intersection require replacement, the entire intersection installation may be reconstructed with a different product on the QPL.

- c) 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 the deficiency is identified. No more than two (2) full depth patterned pavement repairs shall be made to an area without first resurfacing the pavement to one inch (1") minimum depth.
- d) In addition to the requirements stated above, the **CITY** shall conduct annual condition surveys of the patterned pavement for rutting, raveling, pot holes, delamination and cracking for the life of the patterned pavement.

Unless the pavement adjacent to the crosswalk is also experiencing adjacent pavement rutting deficiencies, rutting depth of the patterned pavement shall not exceed 0.25 inches or more than 25 square inches in area. Remedial work shall include the full depth removal of the patterned pavement across the full width of the lane and

crosswalk.

Unless the pavement adjacent to the crosswalk is also experiencing cracking deficiencies, cracking width of the patterned pavement shall not exceed 1/8 of an inch for more than 10 feet in any lane of the crosswalk. Remedial work shall include as a minimum, the full depth removal of the patterned pavement along the complete length of the crack(s) and for the width recommended by the manufacturer.

- e) The results of all friction tests and condition surveys shall be sent to the District's Warranty Coordinator with a cover letter either certifying that the crosswalks comply with the above stated requirements, or what remedial action will be taken to restore the friction and/or integrity of the crosswalk area.
- f) The **DEPARTMENT** will not be responsible for replacing the treatment following any construction activities in the vicinity of the treatment.
- g) The **DEPARTMENT** will not be responsible for replacing the treatment following any construction activities in the vicinity of the treatment.

3.3 Brick Paver Cut Outs:

- a) The **CITY** shall conduct annual condition surveys of the pavers, not to include pavers installed under a permit, for gaps, settlement, drop-offs, and other deficiencies for the life of the adjacent pavement.
- b) Gaps within the pavers shall not exceed a quarter (1/4) of an inch.
- c) Differential settlement within the pavers shall not exceed a quarter (0.25) of an inch in depth.
- d) Ensure that no edge drop-offs adjacent to the pavers exist greater than two inches (2") measured to the adjacent areas. Restored areas must have a greater than one inch (1") drop-off.
- e) When remedial action is required in accordance with

the above requirements, the **CITY** at its own expense shall complete all necessary repairs within ninety (90) days of the date the deficiency is identified.

3.3 Stamped Concrete Traffic Separator:

- a) The **CITY** shall conduct annual condition surveys for color scarring and surface deterioration of the concrete surfaces.
- b) For any routine repairs or replacement due to noticeable color scarring or surface deterioration of the concrete surfaces, the product authorized installer should be contacted.

The **CITY** 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, irrigation, brick paver cut outs, pattern pavement crosswalks and a stamped concrete traffic separator 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 landscape, irrigation, brick paver cut outs, pattern pavement crosswalks and a stamped concrete traffic separator, 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 the landscape, irrigation, brick paver cut outs, pattern pavement crosswalks and a stamped concrete traffic separator 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 North Miami
776 NE 125th Street
North Miami, Florida 33161
Attention: City Manager

With a Copy to: City of North Miami
776 NE 125th Street
North Miami, Florida 33161
Attention: City Attorney

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 LANDSCAPE, IRRIGATION, BRICK PAVER CUT OUTS, PATTERN PAVEMENT CROSSWALKS AND A STAMPED CONCRETE TRAFFIC SEPARATOR

- a) The Parties agree that the landscape, irrigation, brick paver cut outs, pattern pavement crosswalks and a stamped concrete traffic separator 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 the landscape, irrigation, brick paver cut outs, pattern pavement crosswalks and a stamped concrete traffic separator, 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**. This **AGREEMENT** shall continue in perpetuity or until termination as set

forth in Section 7.

- b) For purposes of performing its duties under this **AGREEMENT**, the **CITY** shall insert the following clause into any contracts entered into by the **CITY**, with vendors or contractors:

Vendors/Contractors

- i. Shall 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 **AGREEMENT**; and
 - ii. Shall expressly require 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 of all new employees hired by the subcontractors during the **AGREEMENT** term.
- 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 Miami-Dade 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.
- h) The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.
- i) 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.
- j) 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 **CITY** 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 **CITY'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 **CITY**, its officers, agents, employees or representatives in any way pertaining to 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 directly caused or resulting from the sole negligence of 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 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 NORTH MIAMI

STATE OF FLORIDA

DEPARTMENT OF TRANSPORTATION:

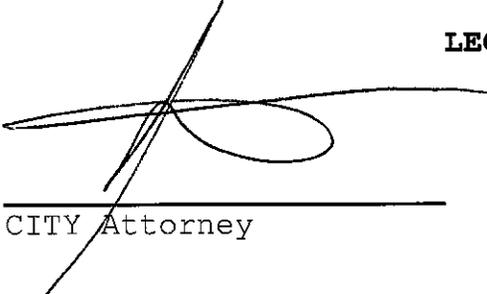
BY: 
CITY Manager

BY: _____
District Director of
Transportation Operations

ATTEST:  (SEAL)
CITY Clerk

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: 
CITY Attorney

BY: _____
District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

Below are the limits of the landscape, irrigation, brick paver cut outs, pattern pavement crosswalks and stamped concrete traffic separator to be maintained under this **AGREEMENT**.

State Road Number: S.R. 7/NW 7th Avenue

Agreement Limits: From NW 119th Street (M.P. 8.062) to NW 131st Street (M.P. 8.918)

County: Miami-Dade