

OFF-SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT

Between

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

(“DEPARTMENT”)

and

CITY OF CORAL GABLES (“CITY”), a municipal corporation of the State of Florida

THIS AGREEMENT is made and entered into as of _____, 2015, by and through THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida (the “Department”), and CITY OF CORAL GABLES, FLORIDA, a municipal corporation of the State of Florida (the “CITY”), 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 No. 433492-1-52-01 (the “Project”) on SR 953/LeJeune Road /SW 42nd Avenue, from Almeria Avenue to Majorca Avenue (the “Project Limits”), in Coral Gables, Florida, which includes work on Alhambra Circle, a road not on the State Highway System; and

C. The CITY is the holder of ownership rights to the road not on the State Highway System; 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, utilities, permits, 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 433492-1-52-01; the Project shall include improvements on Alhambra Circle, road not on the State Highway System, extending approximately 205ft into Alhambra Circle west of SR953/LeJeune Road edge of pavement and 300ft into Alhambra Circle east of SR 953/LeJeune Road edge of pavement. The improvements on Alhambra Circle include, but may not be limited to, the following: Pavement widening; drainage improvements; sidewalk and driveway reconstruction; signing and pavement marking; landscape, lighting and irrigation modifications to existing raised median and existing/proposed bulb-outs (the “Local Roadway Improvements”), within the Project Limits. The Project shall further include all activities associated with, or arising out of the construction work of the Local Roadway Improvements. The CITY shall cooperate with and shall support the Department’s work efforts in these regards. 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, and the relocation of 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 (“PDP”) 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. 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 CITY shall authorize its Public Works and Waste Management Department to issue a permit ("the Permit") to the Department's construction Contractor, authorizing the Department to 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. The CITY agrees that the Permit will not impose any conditions other than those included in this Agreement, and the terms of this Agreement supersede any conflicting terms in the Permit. Additionally, the CITY waives any permit fees that may apply to issuance of the Permit.

Major modifications of the permitted 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 permitted 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's construction contract. 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 notify the CITY of the changes. It is specifically understood and agreed that any such changes during construction shall not delay nor affect the timely construction schedule of the Project.

The CITY shall modify the permit in accordance with any plan modifications and shall accept all Major Modifications that are required by the Department to duly complete the Project.

4. 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 Project Limits. 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.

5. The CITY acknowledges that the Department will be utilizing federal funds to construct the Project, and as a result thereof, 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, which shall include but is not limited to, roadway surfaces, shoulders, roadside structures, drainage, signing and pavement markers, and such traffic control devices as are necessary for the safe and efficient use of the Local Roadway Improvements.

Additionally, the Parties understand and agree that the Department shall transfer the permit(s) 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 during construction shall be the responsibility of the Department and its Contractor, as set forth in paragraph 9 of this Agreement.

6. 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. The Department shall require its construction Contractor to maintain, at all times during the construction to carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Construction Contract. 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 FormCG 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 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.

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 verbally or via email, 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 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 during construction, commencing as of the first date of construction, shall be the responsibility of the Department's Contractor, except that litter removal and all necessary mowing shall be the responsibility of the CITY. After completion of construction, the CITY shall assume all maintenance responsibilities. Upon completion of construction, the Department will invite the CITY on the Final Inspection of the work within the Project Limits, and will incorporate valid CITY concerns that are within the scope of the contract into the final Project punch list to be corrected by the 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). The CITY's presence at the Final Inspection, however, is not mandatory, and the Department shall conduct the Final Inspection, finalize the Project punch list, and issue a Notice of Final Acceptance to its Contractor, whether or not the CITY attends the Final Inspection.

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 Project. 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 contract between the Department and its Contractor. The Department shall enforce the warranty if the remedial action is required by the warranty provisions, as determined by the Department.

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. 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 condition than that which existed immediately prior to commencement of the construction of the Project.

10. This Agreement shall become effective as of the date both parties hereto have executed the agreement and shall continue in full force and effect until the Project is completed, as evidenced by the Department's issuance of the Notice of Final Acceptance.

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.

11. In the event that any election, referendum, approval, ratification, or permit, notice or other proceeding, or authorization is required to carry out the Project, the CITY 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.
12. The Parties acknowledge and agree that the Project shall be constructed using federal funds and that all costs incurred must be in conformity with applicable federal and state laws, regulations, and policies and procedures.
13. The Department's performance and obligations under this Agreement are contingent upon an annual appropriation by the Legislature. 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. Project costs utilizing fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received.

14. 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 a for a period of more than 1 year.

15. The Department is a state agency, 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 Department's sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.
16. 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
17. 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 Leon CITY, Florida.
18. No term or provision of this Agreement shall be interpreted for or against any party because that party's legal counsel drafted the provision.
19. 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.

20. All notices required pursuant to the terms hereof, shall be in writing and shall be sent by first class United States Mail, facsimile transmission, hand delivery or express mail. 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. Unless otherwise notified in writing, notices shall be sent to the following:

To the CITY:

Public Works Department Director
2800 SW 72 Avenue
Miami, Florida 33155

To the Department:

Director of Transportation Operations
State of Florida, Department of Transportation
1000 N.W. 111th Avenue
Miami, Florida 33172

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

CITY OF CORAL GABLES

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

Name: Cathy Swanson-Rivenbark

Title: City Manager

Date: _____

By: _____

Name: Debora M. Rivera, P.E.

Title: Director of Transportation Operations

Date: _____

Attest: _____

By:

Title: Clerk

Approved as to form and legality:

Department Legal Review:

By:

CITY Attorney
