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**OFF-SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT**

**Between**

**STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION**

**(“DEPARTMENT”)**

**and**

**BROWARD COUNTY, FLORIDA, a political subdivision of the State of Florida**

**(“COUNTY”)**

THIS AGREEMENT is made and entered into as of \_\_\_\_\_, 2020, by and through THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida (the “Department”), and BROWARD COUNTY, FLORIDA, a political subdivision of the State of Florida (the “County”), 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’s Work Program is Project Number FM No. 430637-2-52-01 on SR 847/NW 47<sup>th</sup> Avenue from SR 860/NW 183 Street to Premier Parkway (the “Project”). A portion of the Project includes work on NW 47<sup>th</sup> Avenue, from the Miami-Dade County and Broward County Line to Premier Parkway (for purposes of this Agreement, the “Project Limits”), in Broward County, Florida, roads not on the State Highway System; and

C. The County is the holder of ownership rights to NW 47<sup>th</sup> Avenue, from the Miami-Dade County and Broward County Line to Premier Parkway, a 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.

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**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 430637-2-52-01; the Project shall include improvements within the Project Limits on SR 847/NW 47th Avenue, from SR 860/NW 183 Street to Premier Parkway (the "Project") including work on the County roadway from the Miami-Dade County and Broward County Line to Premier Parkway, a roadway not on the State Highway System. The work not on State Highway System, shall include, but may not be limited to, the following improvements:
3. NW 47 Ave - landscape improvements from Miami-Dade County and Broward County Line to Premier Parkway (for purposes of this Agreement, the above-referenced work on the County road system is referred to as the "Local Roadway Improvements"). The Project shall further include all activities associated with, or arising out of the construction of the Local Roadway Improvements.
  - a. The Department has designed and will 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.
4. The Parties acknowledge and agree that the County has reviewed and approved the Final Design Plan, and authorizes the issuance by County officials of any applicable permit(s) (hereinafter the "Permit") to the Department's construction Contractor, authorizing the Department to construct the project in accordance with said Project Final Design Plans. The County acknowledges and agrees that, during construction of the Local Roadway Improvements, the Department will only utilize the services of law enforcement officers when

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required by the Department's Standard Specifications for Road and Bridge Construction, and no additional requirements will be imposed. The County agrees that the Permit will not impose any conditions other than those included in this Agreement, and that the terms of this Agreement supersede any conflicting terms in the Permit. Additionally, the County waives any permit fees that may apply to issuance of the Permit.

5. Major modifications of the permitted plans must be submitted to the County 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 County's review shall be within 14 calendar days, 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, upon identifying the need for a Major Modification, immediately notify the County 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. The County shall modify the permit in accordance with any plan modifications agreed upon that are required by the Department to duly complete the Project.
6. The County acknowledges that the Department will be utilizing federal funds to construct the Project, and as a result thereof, the County agrees to perpetually maintain the Local Roadway Improvements. To maintain means to perform normal maintenance operations for the preservation of the Local Roadway Improvements. The parties acknowledge that the County is in the process of entering into a Maintenance Agreement with the City of Miramar, a city located within Broward County, pursuant to which the City of Miramar will maintain the Local Roadway Improvements post construction and establishment phases of the Department's Construction project. However, although the County may delegate its maintenance obligations, the County shall remain responsible for its maintenance obligations under this Agreement.
  - a. Additionally, the Parties understand and agree that the Department shall transfer the permit(s) for the Local Roadway Improvements, if any, to the County as the operational maintenance entity, and the County agrees to accept said transfer and to be fully

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responsible to comply with all operational and maintenance conditions of the permit(s), at its sole cost and expense.

- b. 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.
7. The Parties acknowledge and agree that the County's right-of-way and the improvements and structures located within the County's right-of-way, are and will remain under the ownership of the County, 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.
8. The Department shall require its construction Contractor to maintain, at all times during the construction, Commercial General Liability insurance providing continuous coverage for all work or operations performed under the 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 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 County 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.
9. The Department shall notify the County at least 48 hours before beginning construction within the County's right-of-way. Such notification may be provided via email, to the Division Director of Broward County's Highway Construction & Engineering Division, and the notice requirements set forth in paragraph 20 shall not apply to this paragraph.
  - a. The Department agrees that the County 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

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Construction Agreement with the Department, conform to the terms of said Construction Agreement. Upon request by the County, the Department shall coordinate with its Contractor to provide access to the County for performance of said inspections.

- b. During the construction work related to the Project, the County shall fully cooperate with any such work being performed by the Department and the Department's contractors. The County 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 County may commit or permit said act.
10. Maintenance during construction within the Project Limits, commencing as of the first date of construction, shall be the responsibility of the Department's Contractor. After completion of construction, the County, or a third party acting on the County's behalf, shall assume all maintenance responsibilities. However, although the County may delegate its maintenance obligations, the County shall remain responsible for its maintenance obligations under this Agreement. Upon completion of construction, the Department will invite the County on the Final Inspection of the work within the Project Limits, and will incorporate County concerns that are within the scope of the contract into the final Project punch list to be corrected by the Contractor. Notice for Final Inspection shall be delivered via email to the Division Director of Broward County's Highway Construction & Engineering Division, and the notice provision of paragraph 20 shall not be applicable. However, if the County 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).
- a. Upon issuance of the Notice of Final Acceptance to the Contractor, the Department shall provide a copy of said notice to the County. As of the date of the Notice of Final Acceptance, the County 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

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Acceptance, the County 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.

- b. Upon completion of all work related to construction of the Project, the Department will be required to submit to the County 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 County'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 County's right-of-way. Furthermore, the Department shall restore those portions of the County 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.

11. 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.

- a. 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 County, as set forth in paragraph 20 of this Agreement. Upon such termination by the Department, any and all County obligations under this Agreement shall cease and become void.

12. 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 County 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. 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.

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14. 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.
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:
  - a. 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 Department and the County are entities 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 or the County'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 Broward 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.

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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 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 County:

Assistant Director,  
Broward County Highway Construction &  
Engineering Division,  
1 North University Drive  
Plantation, FL 33324

To the Department:

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

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

**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

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

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

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

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

Department Legal Review:  
\_\_\_\_\_

**BROWARD COUNTY**

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
ex officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor/Vice-Mayor

\_\_\_\_ day of \_\_\_\_\_, 2020

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By **Matthew**  
**Haber**  
Matthew Haber (Date)  
Assistant County Attorney

Digitally signed by Matthew Haber  
DN: cn=Matthew Haber, o=Broward  
County, ou=CAO,  
email=mhaberebroward.org, c=US  
Date: 2020.09.29 16:33:32 -0400

By **MICHAEL KERR**  
Michael Kerr (Date)  
Deputy County Attorney

Digitally signed by MICHAEL KERR  
Date: 2020.09.30 08:55:59 -0400