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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Agenda Item No. 8(L)(2)

Date: July 3, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Resolution Authorizing the Execution of a Stormwater Pump Station Maintenance and Transfer Memorandum of Agreement between Miami-Dade County and the Florida Department of Transportation

Resolution No. R-564-12

RECOMMENDATION

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing the execution of a Stormwater Pump Station Maintenance and Transfer Memorandum of Agreement between Miami-Dade County and the Florida Department of Transportation (FDOT).

SCOPE

The pump station is located at NW 25 Street, just east of NW 39 Avenue. This site is in Commission District 6.

FISCAL IMPACT/FUNDING SOURCE

The transfer of maintenance responsibility to the County will have an estimated annual fiscal impact of $68,159.41. These costs will be funded through Stormwater Utility, and an Index Code PW349092 will be utilized.

DELEGATION OF AUTHORITY

No additional authority is being requested within the body of this contract.

TRACK RECORD/MONITOR

The Project Manager responsible for management and maintenance of the pump station is Manuel Garcia, Chief, Road, Bridge, Canal and Mosquito Control Division, Miami-Dade County Public Works and Waste Management Department (PWWM).

BACKGROUND

On December 7, 1999, the BCC approved a Memorandum of Understanding (MOU) between Miami-Dade County and FDOT that established a framework to develop and implement the Miami Intermodal Center (MIC) under Resolution R-1268-99. Development of the MIC necessitated that the County transfer to FDOT certain roadways, including their associated maintenance responsibilities, to be transferred back to the County upon completion of the MIC.

In order to address flooding issues between NW 25 Street to NW 28 Street and NW 39 Avenue to NW 42 Avenue, FDOT constructed a stormwater pump station at NW 25 Street, just east of NW 39 Avenue. This pump station became operational November 4, 2011. FDOT agreed to maintain the pump station for a period of one (1) year commencing on this date, ending November 3, 2012. At the end of FDOT's maintenance term, all jurisdictional, management and maintenance responsibilities for the pump station shall transfer to the County through PWWM.

If at any time during FDOT's maintenance term, ending on November 3, 2012, the pump station and drainage system do not function in accordance with the designated level of service, FDOT will take the necessary corrective measures and the Agreement will be extended for one additional year from the date the corrective measures are completed by FDOT, as evidenced by written confirmation to the County by FDOT.

Alina T. Hudak
County Manager/Deputy Mayor

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: July 3, 2012

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(L)(2)

Please note any items checked.

_____	**"3-Day Rule" for committees applicable if raised**
_____	**6 weeks required between first reading and public hearing**
_____	**4 weeks notification to municipal officials required prior to public hearing**
_____	**Decreases revenues or increases expenditures without balancing budget**
_____	**Budget required**
_____	**Statement of fiscal impact required**
_____	**Ordinance creating a new board requires detailed County Manager's report for public hearing**
_____	**No committee review**
_____	**Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**
✓	**Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(L)(2)
7-3-12

RESOLUTION NO. R-564-12

RESOLUTION AUTHORIZING EXECUTION OF A STORMWATER PUMP STATION MAINTENANCE AND TRANSFER MEMORANDUM OF AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE FLORIDA DEPARTMENT OF TRANSPORTATION; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE THE PROVISIONS THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the execution of a Stormwater Pump Station Maintenance and Transfer Memorandum of Agreement between Miami-Dade County and the Florida Department of Transportation, in substantially the form attached hereto and made a part hereof; and authorizing the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise the provisions therein.

The foregoing resolution was offered by Commissioner **José "Pepe" Diaz**, who moved its adoption. The motion was seconded by Commissioner **Audrey Edmonson** and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman			**aye**
Audrey M. Edmonson, Vice Chairwoman			**aye**
Bruno A. Barreiro	**aye**	Lynda Bell	**aye**
Esteban L. Bovo, Jr.	**aye**	Jose "Pepe" Diaz	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Jean Monestime	**aye**	Dennis C. Moss	**aye**
Rebeca Sosa	**aye**	Sen. Javier D. Souto	**absent**
Xavier L. Suarez	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of July, 2012. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: *Christopher Agrippa*
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Hugo Benitez

FLORIDA DEPARTMENT OF TRANSPORTATION
STORM WATER PUMP STATION
MAINTENANCE AND TRANSFER MEMORANDUM OF AGREEMENT
WITH
MIAMI-DADE COUNTY

This **MAINTENANCE AND TRANSFER MEMORANDUM OF AGREEMENT** (**"AGREEMENT"**), made and entered into as of _____, 2012, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, called "the **DEPARTMENT**," and **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida, called "the **COUNTY**," collectively referred to as the "Parties."

RECITALS:

A. Under a December 1999 Memorandum of Agreement between the Department and the County, the parties established a framework to develop and implement the Miami Intermodal Center ("MIC") program, which would include, among others things, a Rental Car Facility (n/k/a the Rental Car Center or "RCC"), and road and highway improvement; and

B. In order to enable the Department to continue the development process of the MIC, the County transferred to the Department certain roadways, located within the MIC, including the maintenance responsibility thereof, with the understanding that upon completion of the MIC, the roadways would be transferred back to the County; and

C. Included in the referenced roadway transfers under County Quit Claim Deed dated February 21, 2001, recorded February 27, 2001 in Official Records Book 19518, page 1328, of the Public Records of Miami-Dade County, Florida, is NW 25 Street, between NW 37 Avenue and NW 42 Avenue ("NW 25 Street"); and

D. In order to address the flooding issues north of NW 25 Street, including NW 25 Street, NW 26 Street, NW 27 Street and NW 28 Street, all from NW 42 Avenue to NW 39 Avenue, the Department has constructed a stormwater pump station ("pump station") at NW 25th Street, just east of NW 39th Avenue; and

E. Except as may otherwise be provided for in this Agreement, the Department has agreed that the maintenance of the pump station shall remain with the Department for a period of one (1) year from the date that the pump station became operational, to wit: November 4, 2011; and

F. Except as may be otherwise provide for in this Agreement, at the conclusion of the one-year maintenance period by the Department, the Department shall transfer, and the County, through its Public Works and Waste Management Department, shall accept, the transfer and all responsibility for the management and maintenance of the pump station; and

G. The County, by Resolution No._____, dated _____, 20_____, attached as Exhibit____, incorporated to this agreement by reference, desires to enter into this Agreement and to comply with all provisions hereunder, and authorizes and directs its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits contained herein and other good

and valuable consideration, receipt which is acknowledged, 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. **MAINTENANCE AND TRANSFER of PUMP STATION**

The Department has constructed the stormwater pump station located at NW 25th Street and NW 39th Avenue, which has been operational since November 4, 2011. The Parties acknowledge and agree that the pump station was constructed in accordance with the APCTE's Drawings dated October 22, 2010 (the "Drawings), and was duly approved through permit by the Miami Dade County Building Department. These Drawings were also reviewed and approved by the Miami-Dade County Public Works and Waste Management Department. The Department shall be responsible for the maintenance of the pump station for the term of one year, commencing on November 4, 2011 and ending November 3, 2012 (the "Department's maintenance term"). At the conclusion of the Department's maintenance term, the County shall conduct an inspection and performance testing of the pump station and drainage system, and review the maintenance logs. The Parties agree that at the end of the Department's maintenance term, the Department shall transfer all maintenance and jurisdictional responsibility of the pump station and drainage system to the County, through its Public Works and Waste Management Department, and the County does hereby agree to accept the maintenance and jurisdictional transfer and responsibility of the pump station and drainage system in perpetuity, as of the date of the transfer. Notwithstanding the foregoing, if at any time during the Department's maintenance term, the pump station and drainage system did not function, as required, in accordance with the level of service described herein, the Department shall take the necessary corrective measures for the pump station and drainage system to provide the level of service for which it was intended; in such an event, this Agreement shall be extended for one additional year from the date that the corrective measures are completed by the Department, as evidenced by written confirmation to the County by the Department.

The transfer of the pump station and drainage system shall include the transfer of all manuals related to the pump station and the drainage system.

The parties acknowledge and agree that the pump station and drainage system was designed for the following the level of service:

a.) 5-year/24-hour storm: maximum water stages shall be below the Crown of the Road, as per the Miami-Dade Public Works and Waste Management Department guidelines and requirements, existing as of the date of the installation of the pump station;
b.) 10-year/24-hour storm: below the minimum building finished floor elevation, as per the Miami-Dade Public Works and Waste Management Department guidelines and requirements, existing as of the date of the installation of the pump station;
c.) 100-year/72-hour storm: below FEMA (Federal Emergency Management Agency) flood elevation, existing as of the date of the installation of the pump station

Minimum Existing Building Finished Floor Elevation: 5.6 feet·
Floor Insurance Rate Map 12025C0180 J, March 2, 1994, classified the project area as Zone AE with a

100-year base flood elevation of 8.0 feet.

3. MAINTENANCE RESPONSIBILITIES

During the Department's maintenance term, the Department shall be responsible for the maintenance of the pump station. The pump station maintenance shall be in accordance with the Department's guidelines and specifications, as amended from time to time, the Plans and Specifications related to the installation of the pump station, and further in compliance with the manufacturer's applicable care and maintenance recommendations. The Department shall comply with all government rules, regulations, policies, procedures, as the same may be amended from time to time. If so required by the Department, the Department shall be entitled to maintain a service log of all maintenance operations The product manual and all warranty information shall be delivered to the County prior to the transfer of the pump station to the County. Additionally, prior to the transfer of the pump station, the maintenance logs will be made available to the County, and the same shall be delivered to the County at the transfer of the pump station.

The parties acknowledge and agree that the County shall inspect the pump station on or before the Department acceptance of the pump station at Final Completion. During the Department's maintenance term, the County may inspect the pump station to ensure compliance with the Department's guidelines and specifications, the Plans and Specifications related to the installation of the pump station, and with the manufacturer's applicable care and maintenance recommendations. Such inspections shall be coordinated with the Department's maintenance division, and shall occur not more often than on a quarterly basis during the maintenance term.

Upon the transferring the jurisdictional and maintenance responsibilities of the pump station to the County, the County shall maintain the pump station at its sole cost and expense, using County criteria and guidelines. The County shall accept the jurisdictional and maintenance transfer of the pump station in "as is" condition, as of the date of transfer.

4. 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
Attn: L. Carl Filer, Jr., P.E.
District Program Management Engineer & MIC Program Manager
1000 NW 111th Avenue, Room 6114
Miami, Florida 33172-5800
(305) 470-5317

To the COUNTY: Miami-Dade County Public Works and Waste Management Department
Attn: Kathleen Woods-Richardson
Director, Public Works and Waste Management Department
Miami-Dade County

111 NW First Street, Suite 1640
Miami, Florida 33128
(305) 375-2960

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.

5. **REMOVAL, RELOCATION, OR ADJUSTMENT OF THE STORM WATER PUMP STATION**

The Parties agree that the storm water pump station under this Agreement shall not be removed, relocated or adjusted for the duration of this Agreement.

6. **TERMINATION**

This Agreement shall be terminated at the conclusion of the one year term stipulated in Paragraph 2 of this Agreement, at which time the Department shall transfer, and the County shall accept, the management and maintenance of the pump station.

7. **AMENDMENT**

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.

8. **CONSTRUCTION**

a. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation hereof.

b. No term or provision of this Agreement shall be interpreted for or against any one party because that party, or its legal representative(s), drafted the provision.

9. **TERMS**

a. The effective date of this Agreement shall commence upon execution by the Parties.

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 of this Agreement that are not merged herein.

c. This Agreement shall not be transferred or assigned, in whole or in part, without the written consent of the Department.

d. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of the State of Florida shall prevail. Any portion of the Agreement later found to be unlawful or unenforceable shall be severed and not affect the validity of the rest 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 Leon County, Florida.

f. 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, as may be amended from time to time.

10. ADDITIONAL PROVISION

a. In the event that this Agreement includes provisions in excess of $25,000, and the Agreement has provisions which may exceed the term 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.

b. All Department 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 contract; and
   ii.) shall 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective the day and year first above written.

MIAMI DADE COUNTY:

By:_____
Name:_____
Title:_____

Attest:_____(SEAL)
County Clerk

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION:

By:_____
Name:_____
Title:_____

Attest:_____(SEAL)
Executive Secretary

LEGAL REVIEW:

By:_____
County Attorney

By:_____
District 6 Chief Counsel