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

Memorandum

MIAMI-DADE COUNTY

Date: November 5, 2014

Agenda Item No. 8(L)(9)

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Resolution Authorizing the Execution of an Off-System Construction and Maintenance Agreement between Miami-Dade County and the Florida Department of Transportation for the Construction of Improvements Along NW 7 Avenue at NW 20 Street

Resolution No. R-985-14

Recommendation

It is recommended that the Board of County Commissioners (BCC) adopt the attached resolution authorizing the execution of an Off-System Construction and Maintenance Agreement between Miami-Dade County and the Florida Department of Transportation (FDOT) for the construction of improvements along NW 7 Avenue at NW 20 Street.

Scope

The project limits are located within the City of Miami, in Commission Audrey Edmonson's District 3.

Fiscal Impact/Funding Source

The improvements are estimated to cost $139,887.40 and will be constructed by FDOT. FDOT will be utilizing federal funds provided by the Federal Surface Transportation Program. The County is required to provide maintenance operations upon construction completion. The estimated annual maintenance cost for the improvements of 0.18 of a mile of roadway along NW 20th Street stipulated under this Agreement for an allocated amount of less than $100.00 annually which will be funded through the Department's General Fund allocation through Index Code PW338475.

Track Record/Monitor

The project will be assigned to Mr. Bassam Moubayed, CFM, Chief, Construction Division, Miami-Dade County Public Works and Waste Management Department (PWWM), who will be responsible for monitoring this project for the County.

Background

FDOT has a reconstruction project along SR-7/NW 7 Avenue from NW 8 Street to NW 36 Street. As part of this project, the intersection of NW 7 Avenue and NW 20 Street will be improved. Since NW 20 Street is a County road, FDOT needs the County to execute an Off-System Construction and Maintenance Agreement.

The improvements to be constructed include, but may not be limited to, roadway and sidewalk improvements, drainage improvements, elevation changes, and the construction of ADA compliant features. Construction of the improvements is scheduled to commence in May 2015.

Alina T. Hudak
Deputy Mayor

MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: November 5, 2014

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

SUBJECT: Agenda Item No. 8(L)(9)

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 Mayor'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)(9)
11-5-14

RESOLUTION NO. R-985-14

RESOLUTION APPROVING AN OFF-SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION OF IMPROVEMENTS ALONG N.W. 7 AVENUE AT N.W. 20 STREET AND REQUIRING COUNTY TO MAINTAIN IMPROVEMENTS; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT AND TO EXERCISE THE PROVISIONS CONTAINED 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 an Off-System Construction and Maintenance Agreement between Miami-Dade County and the Florida Department of Transportation, for the construction of improvements, along NW 7 Avenue at NW 20 Street, and requiring County to maintain improvements; in substantially the form attached hereto and made a part hereof; 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 contained therein.

The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Lynda Bell** and upon being put to a vote, the vote was as follows:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of November, 2014. 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

OFF-SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT

Between

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

("DEPARTMENT")

and

MIAMI-DADE COUNTY, a political subdivision of the State of Florida

("COUNTY")

THIS AGREEMENT is made and entered into as of _____, 2014, by and through THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida (the "Department"), and MIAMI-DADE COUNTY, 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 Work Program is Project Number FM No. 425598-1-52-01 (the "Project") on SR7/N.W. 7th Avenue at N.W. 20th Street (the "Project Limits"), in the County of Miami, Miami-Dade County, Florida, which includes a road not on the State Highway System; and

C. The County 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 425598-1-52-01; the Project shall include improvements on SR7/N.W. 7th Avenue at N.W. 20th Street, and the Project Limits contains a road not on the State Highway System, and the Project shall include, but not may be limited to, roadway and sidewalk improvements, installation of drainage, elevation changes, and the construction of ADA compliant features (the "Local Roadway Improvements"), within the Project Limits. The Project shall further include all activities associated with, or arising out of the construction of the Local Roadway Improvements. The County 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 County will review the Project Design Plans ("PDP") and shall submit its comments, if any, via Electronic Reviewer Comments ("ERC".) The Department shall provide the County access to the ERC, and the Department shall use the ERC to submit the Project Design Plans for the County 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 County 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 County's comments, if any, on or before the Response Due Date. If the County does not submit its comments by the Comment Due Date, the County 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 County's comments that were submitted through the ERC. Once the review process is concluded, the County 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 County 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 County 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 County waives any permit fees that may apply to issuance of the Permit.

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 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 County 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 County 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 County agrees to fully cooperate with the Department in the construction, reconstruction and relocation of utilities that are located within the County'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 County. Utility relocations, if any, shall be done in accordance with the provisions of Chapter 337, F. S.

5. 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, meeting all Department maintenance criteria and requirements.

To maintain means to perform normal maintenance operations, including but not limited to litter pick-up and sweeping, for the preservation of the Local Roadway Improvements, which shall include but is not limited to, roadway surfaces, shoulders, drainage (as further stipulated herein), sidewalks, curb and gutters, signing and pavement markings, and such traffic control devices as are necessary for the safe and efficient use of the Local Roadway Improvements. Exhibit "A" of this Agreement further defines the maintenance responsibilities between the Department and the County for all drainage modifications made under this Project. For all inlets cases shown in Exhibit "A", the County shall sweep the County roads of all debris which is deposited along the gutter and over the inlets, and to ensure that all grates are securely installed in the inlets, and further agrees to be responsible for all grate replacement for inlets meeting Case 3 as shown in Exhibit "A". The Department, after receiving evidence satisfactory to the Department that the County has met the maintenance requirements stated above, will be responsible for the repair of all drainage features constructed under this Project.

Additionally, the Parties understand and agree that the Department shall transfer the permit(s) to the County as the operational maintenance entity, and the County 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 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.
7. The Department shall require its construction Contractor to maintain, at all times during the construction, Contractor's Public Liability Insurance providing for a limit of not less than $1,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of $5,000,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and regular Contractor's Property Damage Liability Insurance providing for a limit of not less than $50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total or aggregate limit of $100,000 for all damages arising out of

injury to, or destruction of, property during the policy period; 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. 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.

8. 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 verbally or via email, and the notice requirements set forth in paragraph 20 shall not apply to this paragraph.

   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 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.

   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.

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 County. After completion of construction, the County shall assume all maintenance responsibilities in accordance with Paragraph 5 herein. Upon completion of construction, the Department will invite the County on the Final Inspection of the work within the Project Limits, and will incorporate valid County 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 County'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 County 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 County. As of the date of the Notice of Final Acceptance, the County shall be immediately responsible for the maintenance of the Project in accordance with Paragraph 5 herein. 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 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.

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 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 County, 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 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.

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 County, 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 County:

Director, Public Works and Waste Management Department
Miami-Dade County
111 NW First Street, Suite 1640
Miami, Florida 33128

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.

MIAMI-DADE COUNTY

By: _____
Name:
Title:
Date: _____

Attest: _____
By: _____
Title: Clerk

Approved as to form and legality:

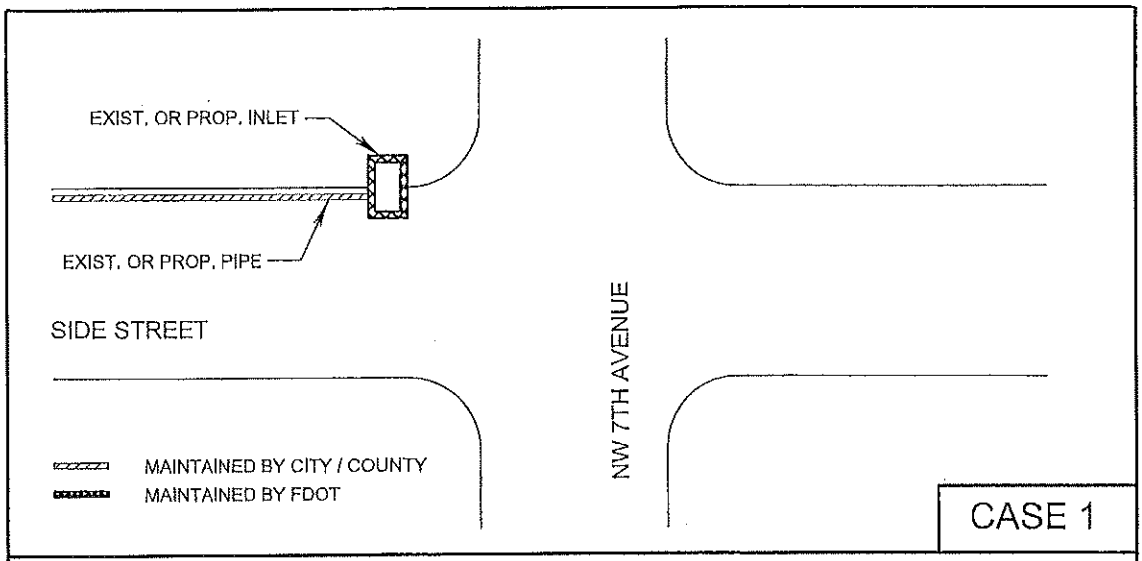
_____
By: _____
County Attorney

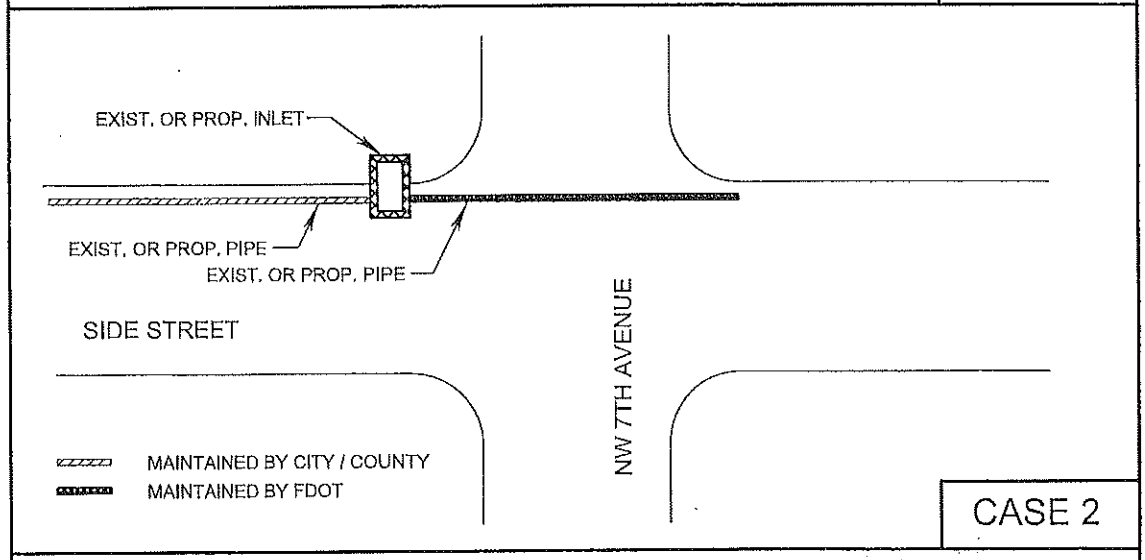
STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
Name: Debora M. Rivera, P.E.
Title: Director of Transportation Operations
Date: _____

Department Legal Review:

By: _____





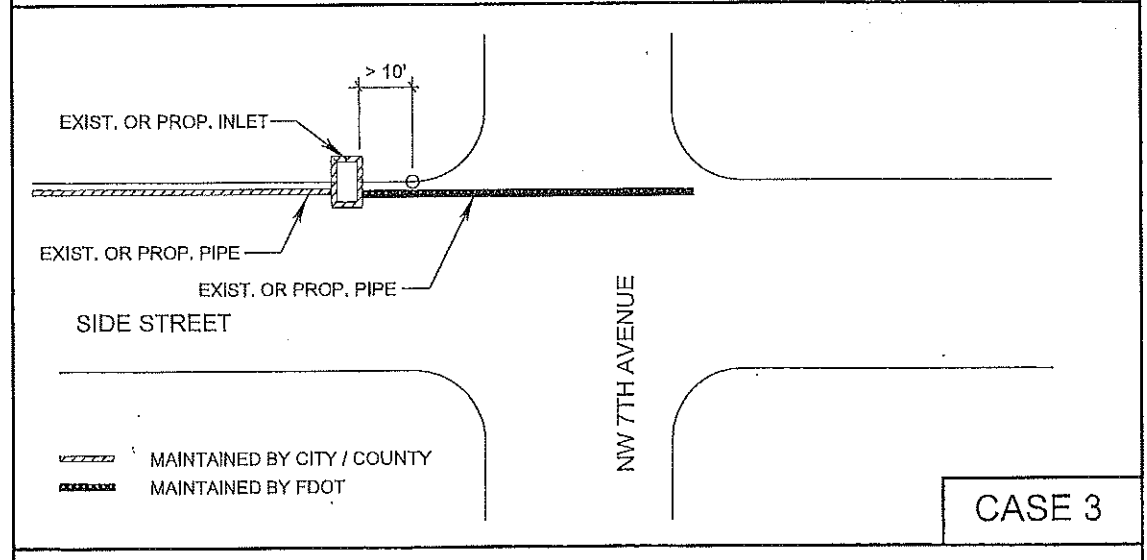


EXHIBIT A - OFF SYSTEM AGREEMENT