

Memorandum



Date: October 6, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

Agenda Item No. 8(N)(35)

From: Carlos A. Gimenez
Mayor

Resolution No. R-1002-20

Subject: Off-System Construction and Maintenance Agreement Between Miami-Dade County
and the Florida Department of Transportation for the Construction of Improvements
Along NW 116 Way/Hialeah Gardens Boulevard from Okeechobee Road to NW 122
Street

Recommendation

It is recommended that the Board of County Commissioners (Board) approve 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 116 Way/Hialeah Gardens Boulevard from Okeechobee Road to NW 122 Street (Project).

Scope

The Project is located in the City of Hialeah Gardens, in County Commission District 12, which is represented by Commissioner Jose "Pepe" Diaz.

Fiscal Impact/Funding Source

The Project is estimated to cost \$4,518,800 and will be funded and built by FDOT. The County is required to provide maintenance operations upon completion of the Project, within the County's right-of-way. The maintenance operations will be funded through the Department of Transportation and Public Works (DTPW) General Fund allocation at an estimated yearly cost of \$3,705.45.

Track Record/Monitor

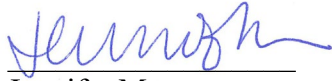
The Project will be assigned to Rene Idarraga, P.E., Chief, Construction Division, DTPW, who will be responsible for monitoring this Project for the County.

Background

FDOT is currently working on a project on SR 25/Okeechobee Road from east of NW 107 Avenue to east of NW 116 Way/Hialeah Gardens Boulevard. As part of the proposed improvements, FDOT is constructing roadway elements along NW 116 Way/Hialeah Gardens Boulevard from Okeechobee Road to NW 122 Street, within the County's right-of-way. The improvements to be constructed along NW 116 Way/Hialeah Gardens Boulevard from Okeechobee Road to NW 122 Street include, but are not limited to, roadway reconstruction, pavement markings, signage, drainage structures and lighting.

Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners
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In the event that the Project requires the acquisition of additional right-of-way, FDOT shall acquire such right-of-way in order to complete the Project at no cost to the County. The anticipated construction start date is December 2021.



Jennifer Moon
Deputy Mayor



MEMORANDUM (Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: October 6, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(N)(35)

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
- ☐ Statement of social equity 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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) 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(N)(35)
10-6-20

RESOLUTION NO. R-1002-20

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 NW 116
WAY/HIALEAH GARDENS BOULEVARD FROM
OKEECHOBEE ROAD TO NW 122 STREET; AND
AUTHORIZING THE COUNTY MAYOR OR COUNTY
MAYOR'S DESIGNEE TO EXECUTE THE SAME AND
EXERCISE THE PROVISIONS CONTAINED THEREIN

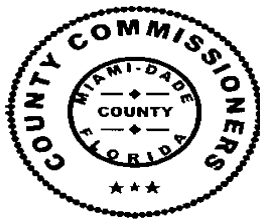
WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Off-System Construction and Maintenance Agreement between Miami-Dade County and the Florida Department of Transportation, for the construction of improvements along NW 116 Way/Hialeah Gardens Boulevard from Okeechobee Road to NW 122 Street, in substantially the form attached hereto and made a part hereof; and authorizes 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 **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **José "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman	aye		
Rebeca Sosa, Vice Chairwoman	aye		
Esteban L. Bovo, Jr.	aye	Daniella Levine Cava	aye
Jose "Pepe" Diaz	aye	Sally A. Heyman	aye
Eileen Higgins	aye	Barbara J. Jordan	aye
Joe A. Martinez	aye	Jean Monestime	aye
Dennis C. Moss	absent	Sen. Javier D. Souto	aye
Xavier L. Suarez	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 6th day of October, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



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

HARVEY RUVIN, CLERK

By: **Melissa Adames**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Hugo Benitez

HBO

OFF-SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT

Between

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

(“DEPARTMENT”)

and

MIAMI-DADE COUNTY, a municipal corporation 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 MIAMI-DADE 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 Work Program is Project Number FPID# 423251-5-52-01 on SR 25/Okeechobee Road from East of NW 107th Avenue to East of NW 116th Way/ Hialeah Gardens Boulevard, (the “Project”), a portion of which includes work on the following roads not on the State Highway System (NW 116th Way/ Hialeah Gardens Boulevard); and

C. The County is the holder of ownership rights to the following roads which are not on the State Highway System: (NW 116th Way/ Hialeah Gardens Boulevard); 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 FPID# 423251-5-52-01 on SR 25/ Okeechobee Road from a reconstruction project which includes widening and reconstruction of the existing roadway with concrete pavement, replacement of signals, pullboxes, new lighting, and new drainage, grade separation at SR-25 Okeechobee Road, new bridge from NW 116th Way to Okeechobee Road, replacement of bridges over the Miami Canal, and reconstruction of the frontage road with asphalt pavement. The Project includes improvements on NW 116th Way/ Hialeah Gardens Boulevard, a road not on the State Highway System, including roadway reconstruction, pavement markings, signage, drainage structures, and lighting referred to as the “Local Roadway Improvements”, within areas of reconstruction , (hereinafter referred to as the “Project Limits”) set forth in the following attachments:
 - a) NW 116th Way/ Hialeah Gardens Boulevard see Exhibit A

The Project shall further include all activities associated with, or arising out of, the construction of the Local Roadway Improvements. In the event that the Project requires the acquisition of additional right-of-way within the Project Limits, the Department shall acquire such right-of-way. The Department will secure any necessary approvals or permits from Miami-Dade County, if applicable. 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 of 30 calendar days. 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. The review process for the Project Design Plans will be deemed concluded when the Department has submitted 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 to all of the County’s comments that were submitted through the ERC. Once the review process is concluded, the County shall authorize its Department of Transportation and Public Works 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 Contractor will apply for a County permit with the latest set of plans including traffic control plans after the contract is let and executed. 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 (Virtual Review Tool 30 calendar days, Public Works Permit 25 business days) 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, upon identifying the need for a Major Modification, immediately notify the County of the required changes, prior to proceeding with the 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.

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. The 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. Additionally, the County agrees to fully cooperate with the Department in the removal of any encroachments or permitted improvements, at no cost to the County, located within the County's right of way, within the Project Limits, that are in conflict with the Project. The Department shall coordinate with the County for the removal of any such encroachments or permitted improvements which may be required as a result of the Project.
5. The Department may utilize federal funds to design and construct the Project, and as a result thereof, the County agrees to perpetually maintain the Local Roadway Improvements excluding Bridge 4 and Ramp "D". 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 markings, lighting, 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) pertaining to the construction of the Local Roadway improvements excluding Bridge 4 and Ramp D, if any, 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 always require its construction Contractor to maintain Commercial General Liability insurance providing continuous coverage for all work or operations performed under the construction contract during the construction. 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.
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 via email to the County's Director of the Department of Transportation and Public Works, 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 to 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 within the Project Limits during construction, commencing as of the first date of construction, shall be the responsibility of the Department's Contractor. After completion of construction, the County shall assume all maintenance responsibilities of the Local Roadway Improvements excluding Bridge 4 and Ramp D. Upon completion of construction, the Department is required to invite the County on the Final Inspection of the work within the Project Limits, and will incorporate legitimate County concerns that are within the scope of the contract into the final Project punch list to be corrected by the Contractor. Notice of Final Inspection shall be delivered via email to the Division Director of the County Road, Bridge and Canal Maintenance Division (Department of Transportation and Public Works), 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 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 and the Construction Project Administration Manual (CPAM).

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 Local Roadway Improvements, excluding Bridge 4 and Ramp D, and shall further accept the Local Roadway Improvements, excluding Bridge 4 and Ramp D. 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 or better condition than that which existed immediately prior to commencement of the construction of the Project.

Upon submission by the Department of a deed, with accompanying sketch and legal description, for the transfer to the County of any additional right-of-way acquired by the Department within the Project Limits, the County shall forthwith submit the same to the Board of County Commissioners ("BCC") for approval and acceptance of such additional right-of-way.

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 reasonably 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, as may be required.

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. Once construction of Local Roadway Improvements has commenced, if the Project is not funded by an annual appropriation or other means, the Department shall to submit to the County final as-built plans for the Local Roadway Improvements which have been constructed, and an engineering certification that such construction was completed in accordance with the plans.
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 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, Miami-Dade County Department of Transportation
and Public Works
701 NW 1st Court Suite 1700
Miami, FL 33136

To the Department:

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

21. The County, by and through Resolution No. _____, attached hereto as Exhibit _____ has duly authorized the execution and delivery is this Agreement and agrees to be bound by the terms hereunder, and has further authorized the Mayor or his designee to take all necessary steps to effectuate the terms of this Agreement.

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

MIAMI-DADE COUNTY

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

By: _____

Name: _____
Title: _____

Name: _____
Title: _____

Date: _____

Date: _____

Attest: _____

Name: _____
Title: County Clerk

Approved as to form and legality:

Department Legal Review:

By: _____

Name: _____
Title: County Attorney

