

MEMORANDUM

Agenda Item No. 8(N)(4)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: May 21, 2024

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving a
Maintenance Memorandum of
Agreement for the installation
and maintenance of a decorative
crosswalk on Florida Department
of Transportation ("FDOT")
public right of way between
Miami-Dade County and FDOT;
and authorizing the County
Mayor to execute the agreement
and exercise the provisions
contained therein

Resolution No. R-446-24

The accompanying resolution was prepared by the Transportation and Public Works Department and placed on the agenda at the request of Prime Sponsor Commissioner Micky Steinberg.



Geri Bonzon-Keenan
County Attorney

GBK/jp

Date: May 21, 2024

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava 
Mayor

Subject: Maintenance Memorandum of Agreement for Construction and Maintenance of a
Decorative Crosswalk on Florida Department of Transportation (FDOT) Public
Right of Way between Miami-Dade County and FDOT

Executive Summary

The purpose of this item is for the Board of County Commissioners (Board) to approve a Maintenance Memorandum of Agreement (MMOA) between Miami-Dade County (County) and Florida Department of Transportation (FDOT) for the construction and maintenance of a decorative crosswalk (“Non-Standard Improvement”) alongside State roadway NE 186 Street that is under the jurisdiction of FDOT. FDOT has requested that the County enter into a Maintenance Memorandum of Agreement to ensure that the Non-Standard Improvement is properly maintained. West Aventura TIC 1, LLC (“West Aventura”) is ultimately responsible for the Non-Standard Improvement under a Covenant of Construction within Right of Way recorded in Official Records Book 33553, Page 3009, of the Public Records of Miami-Dade County, Florida (the “Covenant”), which is attached hereto as **Exhibit A**. The proposed decorative crosswalk will provide for a safer and more visible condition for pedestrians and drivers along NE 186 Street. West Aventura has requested permission from FDOT to conduct and maintain the Non-Standard Improvement in FDOT’s right of way.

Recommendation

It is recommended that the Board approve the attached resolution authorizing the execution of the MMOA between the County and FDOT for the construction and maintenance of the Non-Standard Improvement. West Aventura has agreed to construct, maintain and repair the Non-Standard Improvement at its sole cost and expense, in accordance with the previously recorded Covenant.

Scope

This project is located in District 4, which is represented by Commissioner Micky Steinberg.

Delegation of Authority

The authority of the County or County Mayor’s designee to execute and implement the MMOA, including all the provisions contained therein, is consistent with those authorities granted under the Code of Miami-Dade County.

Fiscal Impact/Funding Source

The project will be solely funded and built by West Aventura. West Aventura shall be responsible for the costs of maintaining and repairing the Non-Standard Improvement after its construction.

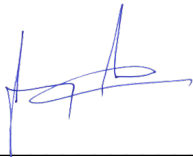
Track Record/Monitor

The project will be assigned to Javier Bustamante, Assistant Director, Transit Project Management and Support Services Division, Department of Transportation and Public Works, who will be responsible for monitoring this project for the County.

Background

On February 11, 2022, the County approved a site plan for the development of the first phase of a two-phase mixed-use project within the OJUS Urban Center pursuant to Administrative Site Plan Review No. A2021000041. The mixed-use project furthers the County's efforts of adding much needed housing and employment opportunities within close proximity to the County's mass transit facilities. West Aventura has requested permission from FDOT and the County to construct and maintain a decorative crosswalk in FDOT right of way adjacent to NE 186 Street. Upon completion of both phases of the project, there will be increased pedestrian traffic in the surrounding area. The proposed decorative crosswalk will enhance pedestrian safety by making the crosswalk more visible to oncoming traffic, thereby encouraging pedestrians and motorists to slow down and proceed with caution at this intersection.

FDOT has requested that the County enter into a Maintenance Memorandum of Agreement (MMOA) to ensure that the Non-Standard Improvement is properly maintained. This Board should be advised that Paragraph nine (9) of the MMOA is an indemnification provision wherein the County is obligated to indemnify FDOT in certain circumstances. This poses a potential risk to the County in the event the circumstances that would trigger indemnification under that paragraph were to occur. Nevertheless, West Aventura has already entered into a covenant with the County to provide for the maintenance and repair of this Non-Standard Improvement. In the West Aventura Covenant, West Aventura agrees to indemnify, save, and to hold the County harmless and to defend from any and all liability, including legal fees and court costs, that may arise by virtue of the County permitting the installation of the items in the public right of way. The West Aventura Covenant indemnification language reduces the potential risk posed by the MMOA indemnification paragraph. The MMOA is presented to this Board for approval.



Jimmy Morales
Chief Operations Officer

Exhibit A
West Aventura Covenant

CFN: 20230049148 BOOK 33553 PAGE 3009

DATE: 01/25/2023 09:24:11 AM
CLERK OF CIRCUIT & COUNTY COURTS, MIAMI-DADE COUNTY FL

To be recorded at: Miami-Dade County Courthouse East – 22 NW 1st ST, Miami, FL 33128 – 305 275 1155



Delivering Excellence Every Day

Department of Transportation and Public Works
111 NW First Street, 14th Floor
Miami, FL 33128

**COVENANT OF CONSTRUCTION
WITHIN RIGHT OF WAY**

WHEREAS, West Aventura TIC 1, LLC

Hereinafter referred to as the OWNER(S) of the following described property:

2380 and 233 ONE 187 Street, Unincorporated Miami-Dade County, Florida

Folio# 30-2204-001-0010 & 30-2204-001-0060

Property Address

Request(s) permission to install the item(s) listed below within the public right-of-way in accordance with the approved plans and specifications on file with the Department of Transportation and Public Works.

- a. Colored stamped concrete on portions of NE 24 Ave as shown on Exhibit A attached
- b. _____
- c. _____
- d. _____

IN CONSIDERATION of the approval and issuance of the permit by the Miami-Dade County Department of Transportation and Public Works, the Owner(s) agree(s) as follows:

- 1 To maintain and repair, when necessary, the above mentioned item(s) installed within the dedicated right of way. If it becomes necessary for the County to make repairs or maintain said item(s) without limitation, restoration of streets and sidewalks within public right of way by reason of the Owner's failure to do so, such expense shall be paid by the Owner or shall constitute a lien against the above described property until paid.
- 2 The Owner does hereby agree to indemnify, save and hold Miami-Dade County harmless and defend from any and all liability including legal fees and court costs which may arise by virtue of Miami-Dade County permitting the installation of these item(s) within the public right of way.
- 3 The Owner does hereby agree to remove or relocate their facilities at their own expense, within 60 days' notice by the Department of Transportation and Public Works to do so. Failure to comply with this notice will result in the County causing the item(s) to be removed and a lien being placed on the property and/or assessed against the owner for all costs incurred in the removal and disposal of the item(s).
- 4 The undersigned further agrees that these conditions shall be deemed a covenant running with the land in favor of Miami-Dade County and shall remain in full force and effect and be binding on the undersigned, his/her heirs and assigns, until such time as this obligation has been cancelled by an affidavit filed in the Public Records of Miami-Dade County, Florida by the Director of the Department of Transportation and Public Works (or fully authorized representative).
- 5 That all individual(s) signing this agreement have the legal authority to enter into this agreement

West Aventura TIC 1, LLC, a Florida limited liability company

By: GCLWA Holdings LLC, its Sole Member

Signature of Owner

PRINT NAME Eric Bell, Manager

STATE OF FLORIDA COUNTY OF MIAMI-DADE C0441106

Sworn to and subscribed before me this

day of January

IN WITNESS

☐ Personally known ☐ Produced Identification

Type of Identification Produced _____

Signature of Owner

PRINT NAME

STATE OF FLORIDA COUNTY OF MIAMI-DADE

Sworn to and subscribed before me this



PETER C. NINTCHEFF

Attorney at Law

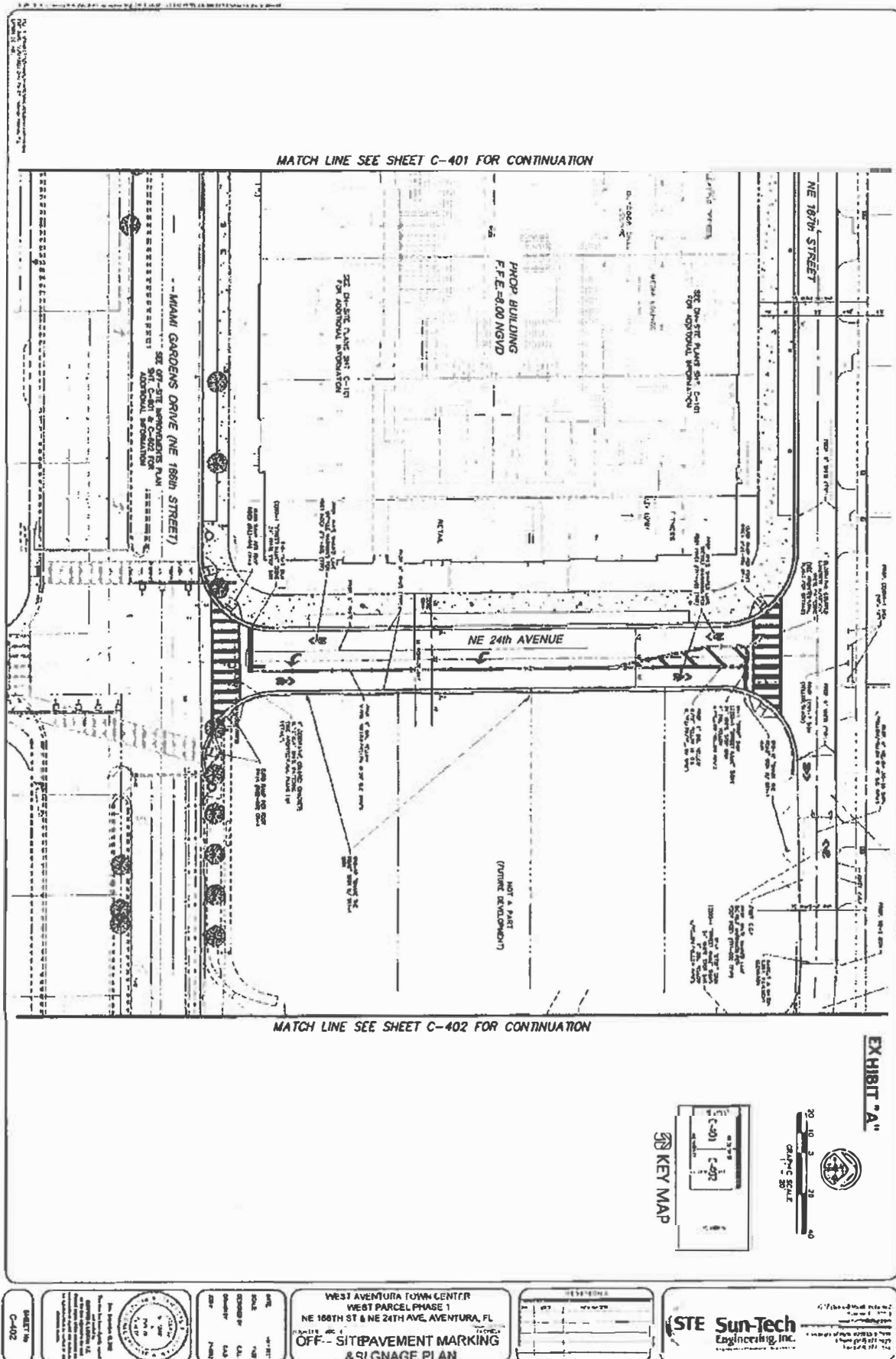
NOTARY PUBLIC, STATE OF OHIO

My Commission Has No Expiration Date

Notary Public Seal No. 47030.R.C.

02/13/2019

MDC004



Memorandum



Date: May 21, 2024

To: Eugene Love, Agenda Coordinator

From: Eulois Cleckley, Director
Department of Transportation and Public Works

Subject: Request to Process Late Departmental Agenda Item

I am requesting that the Maintenance Memorandum of Agreement for Construction and Maintenance of a Decorative Crosswalk on Florida Department of Transportation (FDOT) Public Right of Way between Miami-Dade County and FDOT, be added to the May 2024 Committee Cycle.

Although this item has not met the noticed deadline and has been provided to the Agenda Coordination Office late, this item placement is at the request of District 4.

Therefore, please process the item notwithstanding that the 3-day rule may be applicable to it. I am aware that this item is subject to approval for placement on the agenda by the appropriate committee chairperson as well as the BCC Chairman, and review by the Office of the County Attorney.

Nicole Tallman

Approved by Mayor or Mayor's Designee

A handwritten signature in blue ink, appearing to read "Nicole Tallman", written over a horizontal line.

Approved by Policy Director or Designee

Jimmy L. Morales

Print Name

A handwritten signature in blue ink, appearing to read "Jimmy L. Morales", written over a horizontal line.

Print Name

cc: Geri Bonzon-Keenan, County Attorneys
CAOagenda@miamidade.gov



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: May 21, 2024

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(N)(4)

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)(4)
5-21-24

RESOLUTION NO. _____ R-446-24

RESOLUTION APPROVING A MAINTENANCE
MEMORANDUM OF AGREEMENT FOR THE INSTALLATION
AND MAINTENANCE OF A DECORATIVE CROSSWALK ON
FLORIDA DEPARTMENT OF TRANSPORTATION ("FDOT")
PUBLIC RIGHT OF WAY BETWEEN MIAMI-DADE COUNTY
AND FDOT; AND AUTHORIZING THE COUNTY MAYOR OR
COUNTY MAYOR'S DESIGNEE TO EXECUTE THE
AGREEMENT 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:

Section 1. Incorporates the foregoing recitals and approves a Maintenance Memorandum of Agreement for the installation and maintenance of a decorative sidewalk on Florid Department of Transportation ("FDOT") public right of way between Miami-Dade County, Florida and FDOT, in substantially the form attached hereto and incorporated herein.

Section 2. Authorizes the County Mayor or County Mayor's designee to execute the agreement for and on behalf of Miami-Dade County, to exercise the provisions contained therein, and to take all actions necessary to effectuate same.

The foregoing resolution was offered by Commissioner **Eileen Higgins** ,
who moved its adoption. The motion was seconded by Commissioner **Oliver G. Gilbert, III**
and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	aye		
Anthony Rodríguez, Vice Chairman	absent		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	absent	Sen. René García	aye
Roberto J. Gonzalez	absent	Keon Hardemon	aye
Danielle Cohen Higgins	aye	Eileen Higgins	aye
Kionne L. McGhee	absent	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 21st day of May, 2024. 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Bruce Libhaber

**FLORIDA DEPARTMENT OF TRANSPORTATION
DECORATIVE CROSSWALK (PATTERNED PAVEMENT)
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH MIAMI-DADE COUNTY**

This **AGREEMENT**, entered into on _____, 2024, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT**, and **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida, hereinafter called the **COUNTY**, and collectively referred to as the **PARTIES**.

RECITALS:

- A. The **DEPARTMENT** has jurisdiction over and under **State Road (SR) 860 (Miami Gardens Drive) (NE 186th Street)**, which is located within the limits of the **COUNTY**; and
- B. The **COUNTY**, pursuant to **Permit Number 2022-A-691-00016**, has drafted design plans for improvements along SR-860 from NE 23rd Court to NE 24th Avenue, the limits of which are described in the attached Exhibit 'A' (the **PROJECT LIMITS**), which by reference shall become a part of this **AGREEMENT**; and
- C. The **COUNTY** or Permittee will install a decorative crosswalk (patterned pavement) at SR-860 and NE 24th Avenue, inside **DEPARTMENT** Right-of-Way, within the **PROJECT LIMITS**, in accordance with the design plans for Permit Number 2022-A-691-00016 (the "Project"); and
- D. It is the intent of the **PARTIES** for this **AGREEMENT** to supplement all existing Maintenance Memorandum of Agreement and existing Permits previously executed between the **DEPARTMENT** and the **COUNTY**; and
- E. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party with regards to the maintenance of the decorative crosswalk (patterned pavement) installed pursuant to the Project; and

F. The **COUNTY**, by Resolution No. _____, dated _____, attached hereto as Exhibit 'B', which by reference shall become a part of this **AGREEMENT**, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits contained herein and other good and valuable consideration, 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. ASSIGNMENT OF MAINTENANCE RESPONSIBILITIES

The **PARTIES** agree that the execution of this **AGREEMENT** shall constitute an assignment of all maintenance responsibilities pertaining to the decorative crosswalk (patterned pavement) (collectively the "**IMPROVEMENTS**") within the **PROJECT LIMITS** to the **COUNTY** upon the **DEPARTMENT's** acceptance of the executed Permit to the **COUNTY** or Permittee.

3. COUNTY'S MAINTENANCE RESPONSIBILITIES

So long as the **IMPROVEMENTS** remain in place, the **COUNTY** shall be responsible for the maintenance of the same. The **COUNTY** shall maintain the **IMPROVEMENTS** in accordance with all applicable **DEPARTMENT** guidelines, standards, and procedures, which shall include but shall not be limited to the Maintenance Rating Program Handbook, as may be amended from time to time. Additionally, with respect to the landscape, the **COUNTY** shall maintain same in accordance with the International Society of Arboriculture standards, guidelines and procedures, the latest edition of the "Maintenance Rating Program", and Index 546 of the latest **DEPARTMENT** Design Standards, as may be amended from time to time. The **COUNTY** shall further maintain the **IMPROVEMENTS** in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions. The **COUNTY's** maintenance obligations shall include but not be limited to:

3.1 General Requirements:

- a. Removing and disposing of litter from **PROJECT LIMITS** in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.
- b. Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described in the **AGREEMENT**.
- c. Maintaining a service log of all maintenance operations that sets forth the date of the maintenance activity, the location that was maintained, and the work that was performed.
- d. Submitting Lane Closure Requests to the **DEPARTMENT** when maintenance activities will require the closure of a traffic lane in the **DEPARTMENT's** right-of-way. Lane closure requests shall be submitted through the District Six Lane Closure Information System, to the **DEPARTMENT's** area Permit Manager and in accordance with the District Six Lane Closure Policy, as may be amended from time to time.

3.2 Pattern Pavement:

- a. Within sixty (60) days of project acceptance by the **DEPARTMENT**, all lanes of each patterned crosswalk shall be evaluated for surface friction. The friction test shall be conducted using either a locked wheel tester in accordance with FM 5-592 (Florida Test Method for Friction Measuring Protocol for Patterned Pavements) or a Dynamic Friction Tester in accordance with ASTM E1911. FM5-592 can be accessed at the following link:

<http://materials.dot.state.fl.us/smo/administration/resources/library/publications/fstm/Methods/fm5-592.pdf>

- b. The initial friction resistance shall be at least 35 obtained at 40 mph with a ribbed tire test (FN40R) or equivalent. Failure to achieve this minimum resistance shall require all deficient crosswalk areas to be removed to their full extent (lane-by-lane) and replaced with the same product installed initially. If the

DEPARTMENT determines that more than 50% of the lanes in the intersection require replacement, the entire intersection installation may be reconstructed with a different product on the Qualified Products List (QPL) or replaced with conventional pavement.

- c. Approximately one (1) year after project acceptance and every two (2) years thereafter and for the life of the adjacent pavement, only the outside traffic lane areas of each patterned crosswalk shall be tested for friction resistance in accordance with ASTM E274 or ASTM E1911. Friction resistance shall, at a minimum, have a FN40R value of 35 (or equivalent).
- d. The results of all friction tests shall be sent to the District's Warranty Coordinator with a cover letter either certifying that the crosswalks comply with the minimum friction criteria, or stating what remedial action will be taken to restore the friction.
- e. Failure to achieve the minimum resistance shall require all lanes of the crosswalk to be friction tested to determine the extent of the deficiency. All deficient areas shall be removed to their full extent (lane-by-lane) and replaced with the same product installed initially. If the **DEPARTMENT** determines that more than 50% of the lanes in the intersection require replacement, the entire intersection installation may be reconstructed with a different product on the QPL or replaced with conventional pavement.
- f. When remedial action is required in accordance with the above requirements, the **COUNTY** shall complete all necessary repairs at its own expense within ninety (90) days of the date when the deficiency was identified. No more than two (2) full depth patterned pavement repairs shall be made to an area without first resurfacing the underlying pavement to 1" minimum depth.
- g. The **DEPARTMENT** will not be responsible for replacing the treatment following any construction activities in the vicinity of the treatment.
- h. Should the **COUNTY** fail to satisfactorily perform any required remedial work in accordance with this

AGREEMENT, the **DEPARTMENT** reserves the right to replace the patterned pavement with conventional pavement (matching the adjacent pavement) and bill the **COUNTY** for this cost.

The **COUNTY** shall submit all services logs, inspections and surveys to the **DEPARTMENT** Warranty Coordinator as required in the above maintenance responsibilities.

The **DEPARTMENT** may, at its sole discretion, perform periodic inspection of the **IMPROVEMENTS** to ensure that the **COUNTY** is performing its duties pursuant to this **AGREEMENT**. The Department shall share with the **COUNTY** its inspection findings, and may use those findings as the basis of its decisions regarding maintenance deficiencies, as set forth in Section 4 of this **AGREEMENT**. The **COUNTY** is responsible for obtaining copies of all applicable rules, regulations, policies, procedures, guidelines, and manuals, and the Project Specification and Special Provisions, as may be amended from time to time.

4. MAINTENANCE DEFICIENCIES

If at any time it shall come to the attention of the **DEPARTMENT** that the **COUNTY's** responsibilities as established herein are not being properly accomplished pursuant to the terms of this **AGREEMENT**, the **DEPARTMENT** may, at its option, issue a written notice, in care of the County Director (or designee), to notify the **COUNTY** of the maintenance deficiencies. From the date of receipt of the notice, the **COUNTY** shall have a period of thirty (30) calendar days, within which to correct the cited deficiency or deficiencies. Receipt is determined in accordance with Section 5 of this **AGREEMENT**.

If said deficiencies are not corrected within this time period, the **DEPARTMENT** may, at its option, proceed as follows:

- a. Maintain the **IMPROVEMENTS**, or a part thereof, and invoice the **COUNTY** for expenses incurred; or
- b. Terminate this **AGREEMENT** in accordance with Section 7, remove, abandon or place out of service any or all the **IMPROVEMENTS** located within the **PROJECT LIMITS**, and charge the **COUNTY** the reasonable cost of such removal.

5. 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
1000 Northwest 111th Avenue, Room 6205
Miami, Florida 33172-5800
Attn: District Maintenance Engineer

To the COUNTY: Department of Transportation and Public Works
701 Northwest 1st Court, Suite 1700
Miami, Florida 33136
Attn: Director, Miami-Dade County

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.

6. REMOVAL, RELOCATION OR ADJUSTMENT OF THE IMPROVEMENTS

- a. The **PARTIES** agree that the **IMPROVEMENTS** addressed by this **AGREEMENT** may be removed, relocated or adjusted at any time in the future, by the **DEPARTMENT**. In the event the **DEPARTMENT** intends to relocate or adjust the **IMPROVEMENTS**, copies of all plans will be provided to the **COUNTY**. The **COUNTY's** maintenance responsibilities will survive after the relocation or adjustment, as long as the materials remain within the **PROJECT LIMITS**.

7. TERMINATION

This **AGREEMENT** is subject to termination under any one of the following conditions:

- a. By the **DEPARTMENT**, if the **COUNTY** fails to perform its duties under Section 3 of this **AGREEMENT**, following the thirty (30) days written notice, as specified in Section 4 of this **AGREEMENT**.
- b. In accordance with Section 287.058(1)(c), Florida Statutes, the **DEPARTMENT** shall reserve the right to unilaterally cancel this **AGREEMENT** if the **COUNTY** refuses

to allow public access to any or all documents, papers, letters, or other materials made or received by the **COUNTY** pertinent to this **AGREEMENT** which are subject to provisions of Chapter 119, of the Florida Statutes.

- c. If mutually agreed to by both parties, upon thirty (30) days advance notice. An agreement to terminate shall be valid only if made in writing and executed with the same formalities as this **AGREEMENT**.
- d. By the **DEPARTMENT**, if the **DEPARTMENT** determines within its sole discretion that there is inadequate maintenance that poses a risk of a safety hazard to the public or financial liability to the **DEPARTMENT**.

8. TERMS

- a. The effective date of this **AGREEMENT** shall commence upon execution by the **PARTIES** and shall continue so long as the **IMPROVEMENTS** remain in place until termination as set forth in Section 7.

- b. E-Verify

The **COUNTY** shall:

- i. 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. 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.
(Executive Order Number 2011-02)

The **COUNTY** shall insert the above clause into any contract entered into by the **COUNTY** with vendors or contractors hired by the **COUNTY** for purposes of performing its duties under this **AGREEMENT**.

- c. 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 hereof that are not merged herein and superseded hereby.
- d. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT**.
- e. This **AGREEMENT** shall be governed by and constructed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the **AGREEMENT**.
- f. 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.
- g. 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**.
- i. The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.
- j. No term or provision of this **AGREEMENT** shall be interpreted for or against either Party because the Party or its legal representative drafted the provision.
- k. The **DEPARTMENT** is a state agency, self-insured and subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. 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.

9. INDEMNIFICATION

Subject to Section 768.28, Florida Statutes, as may be amended from time to time, the **COUNTY** shall promptly indemnify, defend, save and hold harmless the **DEPARTMENT**, its officers, agents, representatives and employees from any and all losses, expenses, fines, fees, taxes, assessments, penalties, costs, damages, judgments, claims, demands, liabilities, attorneys fees, (including regulatory and appellate fees), and suits of any nature or kind whatsoever caused by, arising out of, or related to the **COUNTY's** negligent exercise or of its responsibilities as set out in this **AGREEMENT**, including but not limited to, any negligent act, negligent action, negligence or omission by the **COUNTY**, its officers, agents, employees or representatives in the performance of this **AGREEMENT**, whether direct or indirect, except that neither the **COUNTY** nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages caused or resulting from the negligence of the **DEPARTMENT**.

The **COUNTY's** obligation to indemnify, defend and pay for the defense of the **DEPARTMENT**, or at the **DEPARTMENT's** option, to participate and associate with the **DEPARTMENT** in the defense and trial of any claim and any related settlement negotiations, shall be triggered immediately upon the **COUNTY's** receipt of the **DEPARTMENT's** notice of claim for indemnification. The notice of claim for indemnification shall be deemed received if the **DEPARTMENT** sends the notice in accordance with the formal notice mailing requirements set forth in Section 5 of this **AGREEMENT**. The **DEPARTMENT's** failure to notify the **COUNTY** of a claim shall not release the **COUNTY** of the above duty to defend and indemnify the **DEPARTMENT**.

The **COUNTY** shall pay all costs and fees related to this obligation and its enforcement by the **DEPARTMENT**. The indemnification provisions of this section shall survive termination or expiration of this **AGREEMENT**, but only with respect to those claims that arose from acts or circumstances which occurred prior to termination or expiration of this **AGREEMENT**.

The **COUNTY's** evaluation of liability or its inability to evaluate liability shall not excuse the **COUNTY's** duty to

defend and indemnify the **DEPARTMENT** under the provisions of this section. Only an adjudication or judgment, after the highest appeal is exhausted, specifically finding the **DEPARTMENT** was negligent shall excuse performance of this provision by the **COUNTY**.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

MIAMI-DADE COUNTY:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY: _____
County Mayor

BY: _____
District Director of
Transportation Operations

ATTEST: _____ (SEAL)
County Clerk

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: _____
County Attorney

BY: _____
District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

Below are the limits of the roadway improvements to be maintained under this **AGREEMENT**.

State Road Number: 860

Local Street Name: Miami Gardens Drive
NE 186th Street

Agreement Limits: NE 23rd Court to NE 24th Avenue

County: Miami-Dade

EXHIBIT 'B'

MIAMI-DADE COUNTY RESOLUTION

To be herein incorporated once ratified by the Board of County Commissioners.