

**FLORIDA DEPARTMENT OF TRANSPORTATION  
ARTERIAL DYNAMIC MESSAGE SIGN  
MAINTENANCE MEMORANDUM OF AGREEMENT  
WITH THE  
TOWN OF MIAMI LAKES**

This **AGREEMENT**, entered into on \_\_\_\_\_, 20\_\_, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **TOWN OF MIAMI LAKES**, a municipal corporation of the State of Florida, hereinafter called the **TOWN**, and collectively referred to as the **PARTIES**.

**RECITALS:**

- A. The **TOWN** has jurisdiction over **NW 154<sup>th</sup> Street (Miami Lakes Drive)**; and
- B. The **DEPARTMENT**, as part of the continual updating of the State of Florida Highway System and for the purpose of providing information to the motorist, has installed two Arterial Dynamic Message Signs within the corporate limits of the **TOWN**; and
- C. The **DEPARTMENT**, pursuant to **TOWN** Permit # WKC2017-3058, has drafted design plans and has installed two Arterial Dynamic Message Signs, and associated components (the **IMPROVEMENTS**), on NW 154<sup>th</sup> Street (Miami Lakes Drive), 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
- D. At the request of the **TOWN**, the **DEPARTMENT** agreed to modify the paint of the Arterial Dynamic Message Signs, and the **TOWN** has agreed that the painting system of the Arterial Dynamic Message Signs (the **PAINTING SYSTEM**) within the **PROJECT LIMITS** shall be maintained by the **TOWN** in accordance with Section 3 of this **AGREEMENT**; 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 painting system for the Arterial Dynamic Message Sign structures installed pursuant to the Project; and

F. The **TOWN**, 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. DEPARTMENT RESPONSIBILITIES**

The **PARTIES** agree that the execution of this **AGREEMENT** shall constitute an assignment of all maintenance responsibilities pertaining to the **PAINTING SYSTEM** for the Arterial Dynamic Message Sign structures within the **PROJECT LIMITS** to the **TOWN** in perpetuity upon the **DEPARTMENT'S** release of its contractor from further warranty work and responsibility. The **DEPARTMENT** will continue to inspect and maintain the Arterial Dynamic Message Sign structural elements and their associated communication components.

**3. TOWN'S MAINTENANCE RESPONSIBILITIES**

So long as the **IMPROVEMENTS** remain in place, the **TOWN** shall be responsible for the maintenance of the same. The **TOWN** shall maintain the **PAINTING SYSTEM** 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. The **TOWN** shall further maintain the **PAINTING SYSTEM** in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions. The **TOWN'S** maintenance obligations shall include but not be limited to:

**3.1 General Requirements:**

- a. 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.

- b. 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 Painted Arterial Dynamic Message Sign Structures:**

- a. Maintaining the surface paint of the painted overhead Arterial Dynamic Message Sign structures and all other painted hardware components in an aesthetically pleasing condition.
- b. Addressing all painted surface deficiencies identified in the **DEPARTMENT'S** Inspection Reports within the time recommended on each report.
- c. Following the manufacturer's recommendation to properly restore the steel surfaces and paint system when addressing all identified deficiencies, including removal of graffiti and matching existing signal color per manufacturer's recommendations.
- d. Maintaining a log of all work performed on each painted overhead Arterial Dynamic Message Sign structures in a manner that is easy to understand and monitor.

The **TOWN** 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 painted overhead Arterial Dynamic Message Sign structures to ensure that the **TOWN** is performing its duties pursuant to this **AGREEMENT**. The Department shall share with the **TOWN** 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 **TOWN** 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 **TOWN'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 **TOWN MANAGER**, to notify the **TOWN** of the maintenance deficiencies. From the date of receipt of the notice, the **TOWN** 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 Arterial Dynamic Message Signs **PAINTING SYSTEM**, or a part thereof and invoice the **TOWN** for expenses incurred; or
- b. Terminate this **AGREEMENT** in accordance with Section 7, remove any or all of the Arterial Dynamic Message Sign **PAINTING SYSTEM** within the **PROJECT LIMITS**, and charge the **TOWN** 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 111 Avenue, Room 6205  
Miami, Florida 33172-5800  
Attn: District Maintenance Engineer

**To the TOWN:** Town of Miami Lakes  
6601 Main Street  
Miami Lakes, Florida 33014  
Attention: Town Manager

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 ARTERIAL DYNAMIC MESSAGE SIGNS**

- a. The **PARTIES** agree that the Arterial Dynamic Message Signs addressed by this **AGREEMENT** may be removed, relocated or adjusted at any time in the future, at the **DEPARTMENT'S** sole discretion. In the event that the **DEPARTMENT** relocates or adjusts the Arterial Dynamic Message Signs, the **TOWN'S** maintenance responsibilities will survive the relocation or adjustment, as long as the materials remain within the TOWN limits.

## **7. TERMINATION**

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

- a. By the **DEPARTMENT**, if the **TOWN** 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 **TOWN** refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the **TOWN** 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. If the **DEPARTMENT** removes the Arterial Dynamic Message Sign Structures

## **8. ADDITIONAL TERMS**

- a. The effective date of this **AGREEMENT** shall commence upon execution by the **PARTIES**. This **AGREEMENT** shall continue in perpetuity or until termination as set forth in Section 7.

b. E-Verify

The **TOWN** 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 **TOWN** shall insert the above clause into any contract entered into by the **TOWN** with vendors or contractors hired by the **TOWN** 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 **TOWN** 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 **TOWN'S** exercise or attempted exercise of its responsibilities as set out in this **AGREEMENT**, including but not limited to, any act, action, neglect or omission by the **TOWN**, its officers, agents, employees or representatives in any way pertaining to this **AGREEMENT**, whether direct or indirect, except that neither the **TOWN** nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the sole negligence of the **DEPARTMENT**.

The **TOWN'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 **TOWN'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 **TOWN** of a claim shall not release the **TOWN** of the above duty to defend and indemnify the **DEPARTMENT**.

The **TOWN** 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 **TOWN's** evaluation of liability or its inability to evaluate liability shall not excuse the **TOWN'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 solely negligent shall excuse performance of this provision by the **TOWN**.



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

TOWN OF MIAMI LAKES:

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION:

BY: \_\_\_\_\_  
TOWN Manager / Mayor

BY: \_\_\_\_\_  
District Director of  
Transportation Operations

ATTEST: \_\_\_\_\_ (SEAL)  
TOWN Clerk

ATTEST: \_\_\_\_\_  
Executive Secretary

LEGAL REVIEW:

BY: \_\_\_\_\_  
TOWN Attorney

BY: \_\_\_\_\_  
District Chief Counsel

**EXHIBIT 'A'**

**PROJECT LIMITS**

Below are the limits of the Arterial Dynamic Message Signs to be maintained under this **AGREEMENT**.

**State Road Number:** NW 154<sup>th</sup> Street (Miami Lakes Drive)

**Agreement Limits:** Station 103+58 (east of SR-826) and  
Station 161+00 (west of SR-826)

**County:** Miami-Dade

***EXHIBIT 'B'***

**TOWN OF MIAMI LAKES RESOLUTION**

To be herein incorporated once ratified by the **TOWN** Council.