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**CITY OF MARATHON, FLORIDA
RESOLUTION 2007-21**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE A MAINTENANCE AGREEMENT WITH FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) REGARDING PERPETUAL MAINTENANCE OF SOMBRERO BEACH ROAD AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Florida Department of Transportation (FDOT) is scheduled to begin construction of road improvements on Sombrero Beach Road from Avenida Primiceria to Sombrero Blvd.. (Hereinafter PROJECT LIMITS) in this fiscal year; and

WHEREAS, it is FDOT's standard practice to require municipalities to sign a maintenance agreement on projects funded by FDOT for perpetual maintenance; and

WHEREAS, by executing the attached agreement as exhibit "A" all drainage system maintenance responsibilities pertaining to the roadway improvements constructed within the project limits will be assigned solely to the City in perpetuity and at no cost to the FDOT.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, that:

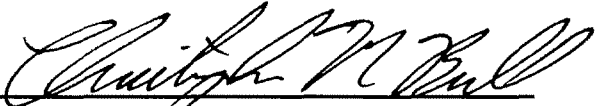
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. Council authorizes the City Manager to execute the agreement with FDOT, attached as exhibit A.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 13th day of February, 2007.


THE CITY OF MARATHON, FLORIDA



Christopher M. Bull, Mayor

AYES: Mearns, Pinkus, Tempest, Worthington, Bull
NOES: None
ABSENT: None
ABSTAIN: None

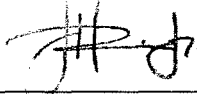
ATTEST:

_____

Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE
CITY OF MARATHON, FLORIDA ONLY:**



City Attorney

**FLORIDA DEPARTMENT OF TRANSPORTATION
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH
CITY OF MARATHON**

This **AGREEMENT**, entered into this 16th day of February, 2007, by and between the **FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **CITY OF MARATHON**, a municipal corporation of and existing under the Laws of the State of Florida, hereinafter called the **CITY**.

RECITALS:

WHEREAS, the **CITY** performs the routine maintenance of **Sombrero Beach Road** within the limits of the **CITY**; and

WHEREAS, the **DEPARTMENT** is constructing roadway improvements on **Sombrero Beach Road** from **Avenida Primiceria** to **Sombrero Boulevard** (hereinafter **PROJECT LIMITS**) under **DEPARTMENT** Financial Project Number 410648-1, the scope of services of which is more accurately described in the attached Exhibit 'A', which by reference hereto shall become a part hereof; and

WHEREAS, the **CITY**, by Resolution No. 2007-21, dated February 13, 2007, attached hereto as Exhibit 'B', which by reference hereto shall become a part hereof, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. DEPARTMENT RESPONSIBILITIES

1.1. ASSIGNMENT

The **DEPARTMENT** and the **CITY** agree that, by executing this **AGREEMENT**, all maintenance responsibilities pertaining to the roadway improvements constructed within the **PROJECT LIMITS** will be assigned to the **CITY** in perpetuity and at no cost to the **DEPARTMENT**.

2. CITY'S MAINTENANCE RESPONSIBILITIES

The CITY shall be solely responsible for the maintenance and preservation of the roadway improvements constructed within the PROJECT LIMITS.

2.1 DRAINAGE

- 2.1.1. To maintain the drainage system to ensure proper functionality and to pay for the associated costs of its operation and maintenance.
- 2.1.2. To remove and dispose of all waste/debris that may clog the drainage system.
- 2.1.3. To keep the drainage system clean and in good order at all times.
- 2.1.4. To inspect the drainage system at least once a year, ideally twice a year, if possible, but more frequently before and/or after heavy storm events are expected to pass or severe weather conditions (i.e., hurricanes, tropical storms, tropical depressions).

2.2. LIGHTING

- 2.2.1. To maintain the lighting system to ensure proper functionality and to pay for the associated costs of its operation and maintenance, including the timely replacement of burned out bulbs.
- 2.2.2. To keep the lighting system in good order at all times.
- 2.2.3. To inspect the lighting system at least once a year, ideally twice a year, if possible, but more frequently before and/or after heavy storm events are expected to pass or severe weather conditions (i.e., hurricanes, tropical storms, tropical depressions).

2.3. ROADWAY PROPER AND SHARED USED PATH

- 2.3.1. To maintain the roadway proper and shared used path to ensure proper functionality and to pay for the associated costs of its operation and maintenance, including: pothole repairs as needed, pavement repairs as needed, regular street sweeping.
- 2.3.2. To remove and dispose of all waste/debris that may litter the roadway proper and shared used path.
- 2.3.3. To keep the roadway proper and shared used path clean and in good order at all times.
- 2.3.4. To inspect the roadway proper and shared used path at least once a year, ideally twice a year, if possible, but more frequently before and/or after heavy storm events are expected to pass or severe weather conditions (i.e., hurricanes, tropical storms, tropical depressions).

3. AMENDMENTS

This AGREEMENT may be amended in writing if mutually agreed to by both parties.

4. MAINTENANCE DEFICIENCIES

If, at any time while the terms of this AGREEMENT are in effect, it shall come to the attention of the DEPARTMENT'S DISTRICT MAINTENANCE ENGINEER that the CITY'S responsibility as established herein or a part thereof is not being properly accomplished pursuant to the terms of this AGREEMENT, said DISTRICT MAINTENANCE ENGINEER may, at his option, issue a written notice, in care of the CITY MANAGER, to place the CITY on notice regarding its maintenance deficiencies. Thereafter, the CITY shall have a period of thirty (30) calendar days within which to correct the cited deficiency or deficiencies. If said deficiencies are not corrected within this time period, the DEPARTMENT may, at its option, proceed as follows:

- 4.1. Maintain the roadway improvement areas declared deficient with DEPARTMENT and/or independent contractor's materials, equipment and personnel. The actual cost for such work will be charged to the CITY.

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 registered mail or 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 6214
Miami, Florida 33172-5800
Attention: District Maintenance Engineer

To the CITY: City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050
Attention: City Manager

6. TERMINATION

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

6.1. In accordance with Section 287.058(1)c), Florida Statutes, the DEPARTMENT shall reserve the right to unilaterally cancel this AGREEMENT if the CITY refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the CITY pertinent to this AGREEMENT which are subject to provisions of Chapter 119, of the Florida Statutes.

6.2. Only if mutually agreed to by both parties with a six (6) month written notice.

7. INDEMNIFICATION

Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. For the purpose of liability, both parties are covered by the provisions of section 768.28, Florida Statutes, as may be amended from time to time, and this AGREEMENT shall not be deemed or construed as an indemnity or a waiver of sovereign immunity by either party.

8. TERMS

8.1. The terms of this AGREEMENT shall commence upon execution by all parties. This AGREEMENT shall continue in perpetuity or until termination as set forth in Section 6.

8.2. This writing embodies the entire AGREEMENT and understanding between the parties hereto and there are not other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

8.3. This AGREEMENT is nontransferable and nonassignable in whole or in part without the prior written consent of the DEPARTMENT.

8.4. This AGREEMENT, regardless of where executed, shall be governed by and constructed in accordance with the laws of the State of Florida.

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

CITY OF MARATHON:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY: Michael Huto
City Manager

BY: [Signature]
District Secretary

ATTEST: Diane Clavier
City Clerk

ATTEST: [Signature]
Executive Secretary

LEGAL REVIEW:

BY: [Signature]
City Attorney

BY: [Signature]
District General Counsel

EXHIBIT 'A'

PROJECT SCOPE OF SERVICES

Sombrero Beach Road is being widened and the roadway milled and resurfaced from Avenida Primiceria to just north of Sombrero Boulevard. As part of these roadway improvements, a new drainage system, lighting system, and a new shared used path will be constructed.

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

Agreement Limits: Sombrero Beach Road from Avenida Primiceria
to
Sombrero Boulevard

County: Monroe

EXHIBIT 'B'

CITY RESOLUTION