

**RESOLUTION NO. 04-228**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA APPROVING THE MEMORANDUM OF AGREEMENT BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION AND THE TOWN OF MIAMI LAKES FOR TURF AND LANDSCAPE MAINTENANCE AT THE INTERSECTION OF NW 154<sup>th</sup> STREET AND STATE ROAD 826; AUTHORIZING TOWN OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Florida Department of Transportation (“FDOT”) controls the roadside areas and median strips (“Areas”) throughout the Florida Highway System; and

**WHEREAS**, the Town of Miami Lakes (the “Town”) has approached FDOT about maintaining the Areas at the intersection of NW 154<sup>th</sup> Street and State Road 826 (the “Intersection”) attractively landscaped; and

**WHEREAS**, Section 287.058(1)(d), Florida Statutes, allows the State to reimburse municipalities who elect to maintain State-owned roads located within their boundaries; and

**WHEREAS**, FDOT has agreed to reimburse the Town for the landscaping at the Intersection pursuant to a Memorandum of Agreement (the “Agreement”); and

**WHEREAS**, the Town Council finds that the approval of the Agreement is in the best interests of the Town.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF MIAMI LAKES, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are true and correct and incorporated herein by this reference

**Section 2. Approval of Agreement.** The Agreement between the Florida Department of Transportation and the Town of Miami Lakes for turf and landscape maintenance, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is approved.

**Section 3. Authorization of Town Officials.** The Town Manager and Town Attorney are authorized to take all action necessary to implement the terms and conditions of the Agreement.

**Section 4. Authorization of Funds Expenditure.** The Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Agreement.

**Section 5. Execution of Agreement.** The Town Manager is authorized to execute the Agreement on behalf of the Town.

**Section 6. Effective Date.** This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 11<sup>th</sup> day of May, 2004.

Motion to adopt by Simon, second by Collins.

FINAL VOTE AT ADOPTION

Mayor Wayne Slaton	<u>Yes</u>
Vice Mayor Roberto Alonso	<u>Yes</u>
Councilmember Mary Collins	<u>Yes</u>
Councilmember Robert Meador	<u>Yes</u>
Councilmember Michael Pizzi	<u>Yes</u>
Councilmember Nancy Simon	<u>Yes</u>

Councilmember Peter Thomson

yes.

Wayne Slaton  
Wayne Slaton  
MAYOR

ATTEST:

Beatris M. Arguelles  
Beatris M. Arguelles, CMC  
TOWN CLERK

Approved as to form and legality for the use  
and benefit of the Town of Miami Lakes only:

Weiss, Serota, Helfman, Pastoriza, Guedes  
Cole & Boniske, P.A.  
TOWN ATTORNEY

**DEPARTMENT OF TRANSPORTATION**  
**TURF AND LANDSCAPE MAINTENANCE**  
**MEMORANDUM OF AGREEMENT**  
**WITH**  
**THE TOWN OF MIAMI LAKES**

This **AGREEMENT**, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the **STATE OF FLORIDA**, Department of Transportation, a component agency of the State of Florida, hereinafter called the **DEPARTMENT** and the **TOWN OF MIAMI LAKES**, a municipal corporation of the State of Florida, existing under the Laws of the State of Florida, herein after called the **TOWN**.

**WITNESSETH**

**WHEREAS**, as a part of the continual updating of the State of Florida Highway System, the **DEPARTMENT** for the purpose of safety has created roadside areas and median strips on that part of the State Highway System described by Attachment "A", which by reference hereto shall become a part hereof, within the corporate limits of the **TOWN** and

**WHEREAS**, the **TOWN** hereto is of the opinion that said median strips and roadside areas shall be attractively landscaped with various flora; and

**WHEREAS**, the parties hereto mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party; and

**WHEREAS**, the **TOWN** by Resolution No. 04-228 dated May 11, 2004, attached hereto as Attachment "C", 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. TOWN'S MAINTENANCE RESPONSIBILITY**

The **TOWN** shall be responsible for the maintenance of all

Contract No.: B-D960  
Financial Number:41670917201

landscaped and/or turfed areas within the **DEPARTMENT'S** right-of-way having the limits described by Attachment "A". The **TOWN** shall be responsible for performing the work described below with a minimum frequency of twelve (12) times per year:

- 1.1. Mow, cut and/or trim and edge the grass or turf in accordance with the latest edition of the State of Florida "Guide for Roadside Mowing" and the latest edition of the "Maintenance Rating Program".
- 1.2. Properly prune all plants which includes plant and tree trimmings in accordance with the latest edition of the "Maintenance Rating Program". Pruning such parts thereof which may present a visual or other safety hazard for those using or intending to use the right-of-way.
- 1.3. Remove and dispose dead, diseased or otherwise deteriorated plants.
- 1.4. Keep litter removed from roadside and median strips.
- 1.5. Remove and dispose of all trimmings, roots, branches, litter, etc., resulting from the activities described by (1.1) through (1.4) inclusively as described above.

## 2. WORK SCHEDULE

The **TOWN** shall submit a schedule to the **DEPARTMENT** containing the dates of when the **TOWN** is planning to perform the mowing work. In addition, before the **TOWN** starts the work, the **DEPARTMENT** shall be notified via fax of the state road(s) and day(s) in which the **TOWN** will be working. The fax shall be sent to the attention of the "North Dade Maintenance Engineer", at fax number (305) 650-0067.

## 3. NATURAL DISASTERS

The **TOWN** shall not be responsible for the clean-up, removal and disposal of debris from the **DEPARTMENT'S** right of way having limits described by Attachment "A", or subsequent amended limits mutually agreed to in writing by both parties following a natural disaster (i.e. hurricane, tornados, etc.). However, the cost of any cycle or part thereof that could be impaired by any such event may be deducted from the payment to the **TOWN**.

Contract No.: B-D960  
Financial Number:41670917201

4. **MAINTENANCE DEFICIENCIES**

If, at any time while the terms of this **AGREEMENT** are in effect, it shall come to the attention of the **DISTRICT MAINTENANCE ENGINEER** that the **TOWN'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 **TOWN MANAGER**, to place said **TOWN** on notice thereof. Thereafter the **TOWN** 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 median or roadside area declared deficient with **DEPARTMENT** and/or a Contractor's material, equipment and personnel. The actual cost for such work will be deducted from payment to the **TOWN** or

4.2. Terminate this **AGREEMENT**.

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 DEPARTMENT:** Florida Department of Transportation  
1000 Northwest 111th Avenue, Room 6214  
Miami, Florida 33172-5800  
Attention: District Maintenance Engineer

**To TOWN:** TOWN of MIAMI LAKES  
6853 Main Street  
Miami Lakes, Florida 33014  
Attention: TOWN Manager

6. **LANDSCAPE MODIFICATION**

It is understood between the parties hereto that the landscaping covered by this **AGREEMENT** may be removed,

Contract No.: B-D960  
Financial Number:41670917201

relocated or adjusted at any time in the future as found necessary by the **DEPARTMENT** in order that the adjacent state road be widened, altered or otherwise changed and maintained to meet with future criteria or planning of the **DEPARTMENT**.

**7. METHOD OF COMPENSATION**

In accordance with requirements of Section 287.058(1)(d), Florida Statutes, the **DEPARTMENT** agrees to pay the **TOWN** quarterly (each three month period) compensation for the cost of maintenance as described under Subitems (1.1) through (1.5).

The lump sum payment will be in the amount of \$846.32 dollars per quarter for a total appropriation of \$3,385.29 dollars per year.

In accordance with Section 287.058(1)(a), Florida Statutes, the **TOWN** shall submit the quarterly invoice/bill in detail sufficient for proper preaudit and postaudit thereof.

**8. VENDOR RIGHTS**

Section 215.422(5), Florida Statutes, requires the Department to include a statement of vendor (Contractor) rights. Contractors are hereby advised of the following:

Contractors providing goods and services to an agency should be aware of the following time frames. Upon receipt, an agency has 5 working days to inspect and approve the goods and services, unless the bid specifications, purchase order or contract specifies otherwise. An agency has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved, by the Department of Transportation.

If a payment is not made within 40 days, a separate interest penalty at the rate established pursuant to Section 55.03(1) Florida Statutes will be due and payable, in addition to the invoice amount, to the Contractor. The interest penalty provision applies after a 35 day time period to health care providers, as defined by rule. Interest penalties of less than

Contract No.: B-D960  
Financial Number:41670917201

one dollar will not be enforced unless the Contractor requests payment.

Invoices which have to be returned to a Contractor because of Contractor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department of Transportation.

A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for Contractors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted by calling the State Comptroller's Hotline, 1-800-848-3792.

9. **PAYMENT ADJUSTMENT**

In the event temporary work by the **DEPARTMENT** forces or by other Contractors temporarily prevent the **TOWN** from performing the work described in this **AGREEMENT**, the **DEPARTMENT** shall deduct from the lump sum payment the acreage of the affected area and only compensate the **TOWN** for the actual work it performs.

The **DEPARTMENT** shall initiate this procedure only if the temporary work described in this section is for a period of one (1) month or longer. Adjustment to the **TOWN'S** payment shall also be done as noted in Item Three (3). In the event this **AGREEMENT** is terminated as established by Item Ten (10) herein, no payment will be prorated for the quarter in which termination occurs for the work that has been completed.

10. **TERMINATION**

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

- 10.1. In the event the **DEPARTMENT** exercises the option identified by Item Four (4) of this **AGREEMENT**.
- 10.2. As mutually agreed to by both parties.
- 10.3. In accordance with Section 287.058(1)(c), Florida Statutes, the **DEPARTMENT** shall reserve the right to

Contract No.: B-D960  
Financial Number:41670917201



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.

## 11. TERMS

11.1. The terms of this **AGREEMENT** shall only commence when the **DEPARTMENT** issues the **TOWN** the Notice To Proceed Letter.

11.2. In accordance with Section 287.058(1)(e), Florida Statutes, this **AGREEMENT** is for a period of one (1) year beginning on the date stated in the Notice To Proceed letter.

11.3. In accordance with Section 287.0582, Florida Statutes; AThe State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.≡

To comply with Section 287.0582, F.S., the Department shall only appropriate the annual amount of **\$3,385.29** at the beginning of each Department Fiscal Year.

## 12. RENEWAL

In accordance with Section 287.058(1)(f), Florida Statutes, this **AGREEMENT** may be renewed on a yearly basis for a maximum of two (2) years after the initial contract or for a period no longer than the term of the original contract, whichever period is longer, only if mutually agreed to in writing by the **DEPARTMENT** and the **TOWN**, subject to the same terms and conditions set forth in this **AGREEMENT**, and said renewals shall be contingent upon satisfactory performance evaluations by the **DEPARTMENT** and subject to the availability of funds.

## 13. ATTACHMENT "A" AMENDMENT

Contract No.: B-D960  
Financial Number:41670917201

It is further understood that Attachment "A" may be amended or changed at any time, as mutually agreed to in writing by both parties. Payment as specified in Item Seven(7) above shall reflect such amendment or change.

**14. TIME EXTENSION**

In accordance with Section 287.012(10), Florida Statutes, this **AGREEMENT** may be extended if mutually agreed to in writing by both parties, for a period not to exceed six (6) months and shall be subject to the same terms and conditions set forth in this **AGREEMENT**; provided the **DEPARTMENT** may, in its discretion, grant a proportional increase in the total dollar amount based on the method and rate established herein. There shall be only one extension of this **AGREEMENT**.

**15. ADDITIONAL LANDSCAPING**

The **TOWN** may construct additional landscaping within the limits of the right-of-ways identified as a result of this document, subject to the following conditions:

- 15.1. Plans for any new landscaping shall be subject to approval by the **DEPARTMENT**. The **TOWN** shall not change or deviate from said plans without written approval by the **DEPARTMENT**.
- 15.2. All landscaping shall be developed and implemented in accordance with appropriate state safety and road design standards;
- 15.3. All requirements and terms established by this **AGREEMENT** shall also apply to any additional landscaping installed under this item;
- 15.4. The **TOWN** agrees to complete, execute and comply with the requirements of the **DEPARTMENT'S** standard permit provided as Attachment "B" (not to actual size) to this **AGREEMENT** with by reference hereto shall be a part of hereof;
- 15.5. No change will be made in the payment terms established under Item Seven (7) of this **AGREEMENT** due to any increase in cost to the **TOWN** resulting

from the installation and maintenance of landscaping added under this item;

- 15.6. In the event this **AGREEMENT** is terminated as established under Item Ten (10) herein, the **TOWN** agrees to accept full responsibility for all maintenance within the entire area(s) defined by plans and permits defined and established as a result of this item. The **TOWN** shall provide this maintenance at no cost to the **DEPARTMENT**.
16. This writing embodies the entire **AGREEMENT** and understanding between the parties hereto and there are not other agreements and understanding, oral or written reference to the subject matter hereof that are not merged herein and superseded hereby.
17. This **AGREEMENT** is nontransferable and nonassignable in whole or in part without consent of the **DEPARTMENT**.
18. This **AGREEMENT**, regardless of where executed shall be governed by, and constructed according to the laws of the State of Florida.
19. Nothing in this **AGREEMENT** shall be construed to violate the provisions of Section 339.135(6)(a), of the Florida Statutes (1997), which provides 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 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 a contract for periods exceeding one 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 of an amount in excess of \$25,000 and which have a term for a period of more than one year.

Contract No.: B-D960  
Financial Number:41670917201

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

LANDSCAPING AGREEMENT WITH THE TOWN OF MIAMI LAKES.

TOWN OF MIAMI LAKES

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

BY:   
TOWN Manager

BY: \_\_\_\_\_  
District Secretary

ATTEST:   
TOWN Clerk (Seal)

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

APPROVED AS TO LEGAL FORM:

BY:   
TOWN Attorney

BY: \_\_\_\_\_  
District General Counsel

# **ATTACHMENT "A"**

Below is the acreage of the areas of the intersection of SR-826 (Palmetto Expressway) and NW 154<sup>th</sup> Street (Miami Lakes Dr.) to be maintained by the TOWN of MIAMI LAKES under this **AGREEMENT**.

**1. South Side:**

Slope Mowing	0.794 Acres
Large Machine Mowing	2.391 " "

**2. Median:**

Small Machine Mowing	0.130 Acres
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**3. North Side:**

Large Machine Mowing	1.196 Acres
Slope Mowing	0.040 "

<b>Total Acreage:</b>	<b>4.551 Acres</b>
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# ATTACHMENT "B"

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION  
SPECIAL PERMIT

District Six  
6/95

DATE: \_\_\_\_\_ PERMIT NO.: \_\_\_\_\_  
SECTION NO.: \_\_\_\_\_ STATE ROAD NO.: \_\_\_\_\_  
COUNTY: \_\_\_\_\_ MILEPOST FROM: \_\_\_\_\_ TO: \_\_\_\_\_  
STATE PROJECT NO.: \_\_\_\_\_ (if applicable) RECORD NO.: \_\_\_\_\_

APPLICANT: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
TOWN: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_  
TELEPHONE NO.: \_\_\_\_\_

Applicant requests permission from the State of Florida Department of Transportation, hereinafter called the Department, to construct, operate, and maintain the facility shown in the accompanying engineering as described here:

Location of Construction, Street Name, and Nearest Intersection:

1. Is the proposed work within the corporate limits of a municipality: Yes ( ) No ( )  
Name of municipality: \_\_\_\_\_ Local Government Contact: \_\_\_\_\_
2. Prior to filing this application, the location of all existing utilities, both aerial and underground, has been ascertained, and the accurate locations are shown on the drawings (as applicable). A letter of notification was mailed on \_\_\_\_\_ to the following utilities/municipalities: \_\_\_\_\_
3. It is expressly stipulated that this permit is a license for permissive use only and that the construction within and/or upon public property pursuant to this permit shall not operate to create or vest any property right in said holder.
4. Whenever it is determined by the Department that it is necessary for the construction, repair, improvement, maintenance, safe and/or efficient operation, alteration, or relocation of any or all portion of said highway and/or transportation facility; the Permittee shall immediately remove any and all installed facilities from said highway and/or transportation facility, or reset or relocate thereon as required by the Department at the Permittee's expense.
5. All work shall meet Department's Roadway and Traffic Design Standards, Specifications for Road and Bridge Construction, and other applicable criteria in effect at the time of permit issuance. The work shall be performed under the inspection supervision of \_\_\_\_\_, Permit/Maintenance Engineer located at \_\_\_\_\_, Telephone No. \_\_\_\_\_. This designated engineer shall be notified forty-eight (48) hours prior to the pre-construction meeting and again immediately before commencement of work. All material and equipment shall be subject to inspection by the designated engineer or his authorized representative.
6. All Department property shall be restored to its original condition as far as practical in keeping with Department Specifications, and in a manner satisfactory to the Department, within thirty (30) days of the installation of the permitted work, unless otherwise approved by the Department.
7. A drawing covering details of this work shall be made a part of this permit. This drawing shall include plan, profile, and cross sections as appropriate, and may be required to bear the seal of a professional engineer licensed in the State of Florida. As built drawings are required: Yes ( ) No ( )
8. The Permittee shall commence actual construction in good faith within \_\_\_\_\_ days from the date of said permit approval and shall complete construction within \_\_\_\_\_ days from the commencement of work unless the permittee shows good cause for delay and the Department approves an extension. No extension beyond one (1) year from the date of issuance of this permit will be granted.
9. This construction and maintenance shall not interfere with the property and rights of a prior Permittee.
10. Special Conditions and Instructions by the Department:

11. It is understood and agreed that the rights and privileges herein set out are granted only to the extent of the State's right, title, and interest in the land to be entered upon and used by the Permittee, his heirs, assigns, and successors in interest, and the Permittee will, at all times, assume all risk of and indemnify, defend, and save harmless the State of Florida and the Department from and against any and all loss, damage, cost, or expense arising in any manner on account of the exercise or attempted exercise by said Permittee of the aforesaid rights and privileges.
12. During construction through Department acceptance of the permitted work, all safety regulations of the Department shall be observed and the holder must take measures, including placement and display of safety devices, that may be necessary in order to safely conduct the public through the project area in accordance with the Department's current edition of the Roadway and Traffic Design Standards, Index Series

Contract No.: B-D960  
Financial Number: 41670917201

LANDSCAPE AGREEMENT

- 600, and the Manual of Uniform Traffic Control Devices.
13. In case of non-compliance with the Department's requirements in effect as of the approved date of this permit, this permit is void and the work will be brought into compliance or removed from the right-of-way at no cost to the Department.

Submitted and Agreed to by: \_\_\_\_\_ Corporate Seal  
Signature of Permittee  
Name and Title (typed) \_\_\_\_\_ Attested \_\_\_\_\_

Recommended for approval: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
District Permit Engineer or Authorized Representative

Contract No.: B-D960  
Financial Number: 41670917201

***ATTACHMENT "C"***

***ATTACH TOWN RESOLUTION***

Contract No.: B-D960  
Financial Number:41670917201

LANDSCAPE AGREEMENT