RESOLUTION NO. 2014- 134

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY OF HIALEAH, TO EXECUTE A TURF AND LANDSCAPE MAINTENANCE JOINT PARTICIPATION AGREEMENT WITH THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, FOR THE MAINTENANCE OF TURF AND LANDSCAPE ON DESIGNATED STATE ROADS WITHIN THE CORPORATE LIMITS OF THE CITY OF HIALEAH, FOR THE TERM OF ONE YEAR AND WITH AN OPTION TO RENEW, IN AN AMOUNT NOT TO EXCEED $142,867.53, IN SUBSTANTIAL CONFORMITY WITH THE AGREEMENT ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1".

WHEREAS, the State of Florida, Department of Transportation having jurisdiction over State roads has created median strips of the State Highway System within the corporate limits of the City of Hialeah as part of a continual State of Florida Highway System;

WHEREAS, the State of Florida, Department of Transportation has agreed to reimburse the City of Hialeah for the maintenance of turf and landscape of said median strips within the State of Florida, Department of Transportation's right-of-way, under the terms of the Agreement attached hereto and incorporated herein as Exhibit "1";

WHEREAS, the parties are authorized to enter into this Agreement pursuant to Section 339.08 (e) and 339.12, Florida Statutes; and

WHEREAS, it is in the best interest of the health, safety and welfare of the City of Hialeah to enter into this Turf And Landscape Maintenance Joint Participation Agreement to ensure the safety of the residents of the City as well as to improve the aesthetic value of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City of Hialeah, to execute a Turf and Landscape

Maintenance Joint Participation Agreement with the State of Florida, Department of Transportation, for the maintenance of turf and landscape in certain designated State roads, as more particularly described in the Agreement, for the term of one year, set to commence when the State of Florida, Department of Transportation provides the City of Hialeah with a Notice to Proceed, and with an option to renew, in an amount not to exceed $142,867.53 in substantial conformity with the Agreement attached hereto and made a part hereof as Exhibit "1".

PASSED and ADOPTED this 13 day of November, 2014.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 21 day of November, 2014.

Marbelys Fatio, City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

Lorena E. Bravo, Acting City Attorney

Resolution was adopted by a 6-0-1 vote with Council Members Caragol, Casáls-Muñoz, Garcia-Martinez, Gonzalez, Hernandez, & Lozano voting "Yes", & Councilmember Cue-Fuente absent.

S: DDP LEGISLATURE RESO 2014 TurfandLandscapeMaint.FDOT-RESO.docx

CONTRACT # ____

TURF AND LANDSCAPE MAINTENANCE JOINT PARTICIPATION AGREEMENT BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION AND THE CITY OF HIALEAH

This Agreement, is made and entered into this ____ day of _____, 20__, by and between the State of Florida Department of Transportation, a component agency of the State of Florida, hereinafter referred to as the 'DEPARTMENT', and the City of Hialeah, a municipal corporation of the State of Florida, hereinafter referred to as the 'CITY'.

RECITALS:

WHEREAS, the DEPARTMENT has jurisdiction and maintains State Road (S.R.) 25, S.R. 823, S.R. 826 (Service Roads), S.R. 916, S.R. 932, S.R. 953, S.R. 944, and S.R. 934 in the CITY; and

WHEREAS, the DEPARTMENT, as part of the continual updating of the State of Florida Highway System and for the purpose of safety, has created median strips on the State Highway System within the corporate limits of the CITY; and

WHEREAS, the DEPARTMENT, at the CITY's request, has agreed to reimburse the CITY for the maintenance of turf and landscape, hereinafter referred to as the 'PROJECT', and

WHEREAS, the CITY recognizes that said median strips areas contain turf and landscape, which shall be maintained in accordance with Exhibit "A", 'Maintenance Responsibilities', which is herein incorporated by reference; and

WHEREAS, the DEPARTMENT has programmed funding for the PROJECT under Financial Project Number **252310-2-78-02**, and has agreed to reimburse the CITY for turf and landscape maintenance elements which are outlined in the attached Exhibit "B", 'Project Limits & Financial Summary', which is herein incorporated by reference; 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 parties are authorized to enter into this Agreement pursuant to **Section 339.08(e) and 339.12, Florida Statutes (F.S.);**

NOW, THEREFORE, in consideration of the premises, the mutual covenants and other valuable considerations contained herein, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. INCORPORATION OF RECITALS

EXHIBIT

1

The foregoing recitals are true and correct and are incorporated into the body of this Agreement, as if fully set forth herein.

2. GENERAL REQUIREMENTS

a. The CITY shall submit this Agreement to its CITY Council for ratification or approval by resolution. A copy of said resolution is attached hereto as Exhibit "C", 'CITY's Resolution', and is herein incorporated by reference.

b. The CITY shall not commence the PROJECT until a Notice to Proceed has been provided from the DEPARTMENT, which shall become the effective date of this Agreement and shall not precede the date provided on page one (1) of the Agreement.

c. The CITY shall be responsible for the maintenance of all areas that have turf and landscape within the DEPARTMENT's right-of-way as described in Exhibit "A", 'Maintenance Responsibilities'.

d. The CITY shall be responsible for performing the required maintenance with a minimum frequency of *eighteen (18) times per year for: Slope Mowing, Small Machine Mowing, Weed Control Manual, and Edging & Sweeping, and twelve (12) times per year for: Landscape Maintenance, Litter Removal.*

e. All turf and landscape maintenance shall be in accordance with the latest edition of the State of Florida "Guide for Roadside Mowing" and the latest edition of the "Maintenance Rating Program", and Index 546 of the latest FDOT Design Standards.

f. The CITY shall submit a work schedule to the DEPARTMENT. In addition, before the CITY starts the work, the DEPARTMENT shall be notified, via fax or e-mail, of the state road(s) and the day(s) in which the CITY will be working. The fax or e-mail shall be sent to the attention of the North Miami-Dade Maintenance Engineer, at 305-640-7200 keith.jimmerson@dot.state.fl.us . The CITY shall not start working until the DEPARTMENT has advised, in writing, that the submitted work schedule has been approved.

g. The CITY shall not be responsible for the clean-up, removal and disposal of debris from the DEPARTMENT's right of way following a natural disaster (i.e. hurricane, tornados, etc.). However, the cost of any cycle or part thereof impaired by any such event may be deducted from the DEPARTMENT's affected quarterly payment to the CITY.

h. It is understood between the parties hereto that all the landscaping covered by this Agreement may be removed, 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.

i. The CITY shall not plant additional landscaping within the limits of the PROJECT, without prior written approval by the DEPARTMENT, in accordance with Florida Administrative Code Rule 14-40.003. Such approval shall be in the form of a separate written agreement that will require the CITY to properly construct and maintain the additional landscaping without compensation from the DEPARTMENT.

j. This Agreement shall not obligate the DEPARTMENT to pay the CITY to maintain any additional landscaping, planted after the effective date of this Agreement, within the limits of the PROJECT, and shall not obligate the CITY to maintain any such additional landscaping.

3. FINANCIAL PROVISIONS

a. Eligible PROJECT costs may not exceed ONE HUNDRED FORTY TWO THOUSAND EIGHT HUNDRED SIXTY SEVEN DOLLARS AND FIFTY THREE CENTS ($142,867.53), as outlined in Exhibit "B", 'Project Limits & Financial Summary'.

b. The DEPARTMENT agrees to pay the CITY for the herein described services at a compensation as detailed in this Agreement.

c. The CITY shall furnish the services with which to maintain the PROJECT LIMITS. Said PROJECT consists of services as detailed in Exhibit "A" of this Agreement.

d. Payment shall be made only after receipt and approval of goods and services unless advanced payments are authorized by the DEPARTMENT's Comptroller under **Section 334.044(29), F.S.**, or by the Department of Financial Services under **Section 215.422(14), F.S.**

e. The CITY shall provide the following quantifiable, measurable and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. Said deliverables consists of (list deliverables):

i. Small Machine Mowing

ii. Weed Control Manual

iii. Slope Mowing

iv. Edging & Sweeping

v. Landscape Maintenance

vi. Litter Removal

f. Invoices shall be submitted by the CITY in detail sufficient for a proper pre-audit and post audit thereof, based on the quantifiable, measurable and verifiable units

of deliverables as established in Section c above and Exhibit "B". Deliverables must be received and accepted in writing by the DEPARTMENT's Project Manager prior to payments.

g. Supporting documentation must establish that the deliverables were received and accepted in writing by the CITY and that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Section c has been met.

h. Travel costs will not be reimbursed.

i. The CITY providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt, the DEPARTMENT has five (5) working days to inspect and approve the goods and services. The DEPARTMENT has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

j. If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to **Section 55.03(1), F.S.**, will be due and payable, in addition to the invoice amount, to the CITY. Interest penalties of less than one (1) dollar will not be enforced unless the CITY requests payment. Invoices have to be returned to the CITY because of CITY 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.

k. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for the CITY who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at 850-413-5516 or by calling the Division of Consumer Services at 1-877-693-5236.

l. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include the CITY's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.

m. In the event this contract is for services in excess of $25,000.00 and a term for a period of more than 1 year, the provisions of **Section 339.135(6)(a), F.S.**, are hereby incorporated:

"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 such 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 TWENTY FIVE THOUSAND DOLLARS ($25,000.00) and which have a term for a period of more than 1 year."

n. The DEPARTMENT's obligation to pay is contingent upon an annual appropriation by the Florida Legislature.

o. E-verify:

The CITY/Contractors or Vendors:

i. shall 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. shall 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.

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

4. COMMUNICATIONS

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 DEPARTMENT: Florida Department of Transportation
1000 NW 111th Avenue, Room 6205
Miami, Florida 33172-5800
Attention: District Maintenance Engineer

To CITY: City of Hialeah
5601 East 8th Avenue
Hialeah, FL 33013
Attention: City Mayor

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.

5. INVOICING

   a. The CITY shall submit quarterly invoices for DEPARTMENT review, approval, and payment in accordance with this Agreement. Quarterly payments will be made upon invoice approval in an amount not to exceed one fourth of the eligible PROJECT costs. Each invoice shall include proof that the areas under this Agreement were maintained using specified frequencies, at minimum. The supporting documents showing proof of work can be properly executed payroll, or time records, or Contractor's invoices, or vouchers evidencing in proper detail the nature and propriety of the charges.

   b. In the event temporary work by the DEPARTMENT's forces or by other Contractors temporarily prevent the CITY from performing the work described in this Agreement, the DEPARTMENT shall deduct from the affected quarterly payment(s) the acreage affected area and only compensate the CITY for the actual work it performs.

      i. The DEPARTMENT shall initiate this procedure only if the temporary work prevents the CITY from performing it work for a period of one (1) month or longer.

   c. In the event this Agreement is terminated as established in Section 8 herein, payment will be prorated within the quarter in which termination occurs. The prorated payment shall be for approved work meeting the requirements stipulated in this Agreement.

6. MAINTENANCE DEFICIENCIES

   If the District Maintenance Engineer determines that the CITY is not accomplishing its responsibilities under this Agreement, said District Maintenance Engineer may issue written notice, in care of the CITY on notice thereof. 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:

   a. Maintain the median or roadside area(s) declared deficient with DEPARTMENT and/or a Contractor's material, equipment and personnel. The actual cost for such work will be deducted from the DEPARTMENT's affected quarterly payment to the CITY; or

   b. Terminate this Agreement.

7. EXPIRATION/RENEWAL

   This Agreement is for a term of one (1) year beginning on the date provide in the Notice to

Proceed; and may be renewed twice, only if mutually agreed to in writing by the DEPARTMENT and the CITY. Any such renewal shall be subject to the same terms and conditions set forth in this Agreement, and shall be contingent upon both satisfactory CITY performance evaluations by the DEPARTMENT and the availability of funds.

This Agreement may be extended if mutually agreed 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. There shall be only one (1) extension of this Agreement.

8. TERMINATION

This Agreement, or part hereof, is subject to termination under any one of the following conditions:

a. In the event the DEPARTMENT exercises the option identified by Section 6 of this Agreement.

b. As mutually agreed by both parties.

c. In accordance with **Section 287.058(1)(c), F.S.**, 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 F.S.

9. ENTIRE AGREEMENT

This Joint Participation Agreement is the entire Agreement between the parties hereto, and it may be modified or amended only by mutual consent of the parties in writing.

10. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of Florida.

11. AMENDMENT

This Agreement may be amended by mutual agreement of the DEPARTMENT and the CITY expressed in writing, executed and delivered by each party.

12. INVALIDITY

If any part of this Agreement shall be determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, if such remainder continues to conform to the terms and requirements of applicable law.

13. INDEMNIFICATION

Subject to Section 768.28, Florida Statutes, as may be amended from time to time, the CITY 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 CITY'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 CITY, its officers, agents, employees or representatives in any way pertaining to this agreement, whether direct or indirect, except that neither the CITY 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 CITY'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 CITY'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 CITY of a claim shall not release the CITY of the above duty to defend and indemnify the DEPARTMENT.

The CITY 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 CITY's evaluation of liability or its inability to evaluate liability shall not excuse the CITY'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 CITY.

----------THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK----------

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the day and year above written.

CITY OF HIALEAH:

BY: _____
CITY MAYOR

ATTEST: _____
(SEAL) CITY CLERK

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION:

BY: _____
DISTRICT DIRECTOR OF TRANSPORTATION OPERATIONS

ATTEST: _____
(SEAL) EXECUTIVE SECRETARY

LEGAL REVIEW:

_____
CITY ATTORNEY

_____
DISTRICT CHIEF COUNSEL

Exhibit "A"
Maintenance Responsibilities

The CITY shall be responsible for the maintenance of all turf and landscape areas within the DEPARTMENT's right of way on State Road (S.R.) 25, S.R. 823, S.R. 826 (Service Roads), S.R. 916, S.R. 932, S.R. 953, S.R. 944, and S.R. 934 , 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, the CITY shall maintain the all turf and landscape areas in accordance with the International Society of Arboriculture standards, the latest FDOT Design Standard, guidelines, and procedures, as may be amended from time to time. The CITY's maintenance obligations shall include but not be limited to:

a. 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".

b. Properly prune all plants, which include, but not limited to, plant and tree trimmings, in accordance with the latest edition of the "Maintenance Rating Program" and Index 546 of the latest FDOT Design Standards.

c. Fertilizing, insecticide, pesticide, herbicide and watering will be required to maintain the current landscape and turf in its current healthy condition.

d. Pruning such parts thereof which may present a visual or other safety hazard for those using or intending to use the right-of-way.

e. Remove and properly dispose of litter from roadside and median strips.

f. Removing and properly disposing of dead, diseased or otherwise deteriorated plants in their entirety, and replacing those that fall below the standards set forth in all applicable DEPARTMENT guidelines, standards and procedures as may be amended from time to time.

g. All work by the CITY shall be executed on the roadway under a traffic control plan in accordance with DEPARTMENT's latest edition of the "FDOT Design Standards".

h. Maintaining a service log of all maintenance operation that sets forth the date of the maintenance activity, the location that was maintained, and the work that was performed.

i. Submitting Lane Closure Request to the DEPARTMENT when maintenance activities will require the closure of a traffic lane in the DEPARTENT'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.

FDOT Financial Project Number: *252310-2-78-02*

County: *Miami-Dade*

FDOT Project Manager: *Keith Jimmerson, P.E. 305-640-7200*

CITY Mayor: *Carlos Hernandez/ City Mayor*

Exhibit "B"
Project Limits & Financial Summary

Below are the PROJECT limits and acreage of the areas to be maintained by the CITY under this Agreement.

[redacted]	[redacted]	[redacted]	To
25	Okeechobee Rd.	Palmetto Expressway	NW 36 St.
823	Red Rd.	Okeechobee Rd.	W 78th St.
826	E. Services Rd.	Okeechobee Rd.	NW 138th St.
826	W. Service Rd.	NW 138th St.	NW 103th St.
916	NW 138th St.	Palmetto Expressway	NW 57 Ave.
932	NW 103 Rd St.	Palmetto Expressway	SCL Overpass at RR Tracks
953	LeJeune Rd.	Okeechobee Rd.	NW 119th St.
934	Hialeah Expressway	Okeechobee Rd.	E. 6 Ave.
944	Hialeah Drive	E. 4 Ave.	E. 10 Ave.

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Total
Slope Mowing (E104-4-2)	9.191	AC	18	165.438	$35.00	**$5,790.33**
Mowing Small Machine (E104-4-3)	33.962	AC	18	611.316	$35.00	**$21,396.06**
Weed Control Manual (Weed Eater, Mowing) (E104-50)	7.653	AC	18	137.754	$200.00	**$27,550.80**
Litter Removal (E110 30)	40.092	AC	12	481.104	$10.00	**$4,811.04**
Edging & Sweeping (E 110 32 1)	52.325	PM	18	941.85	$10.00	**$9,418.50**
Landscape Maintenance (E580 3 2)	5.132	AC	12	61.584	$1,200.00	**$73,900.80**
[redacted]						**$142,867.53**

TOTAL ANNUAL AMOUNT ELIGIBLE FOR REIMBURSEMENT: $142,867.53

Exhibit "C"
City of Hialeah's Resolution

To be herein incorporated once approved by the CITY Council.