

RESOLUTION NO. 2009-9

A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO EXECUTE THE FLORIDA DEPARTMENT OF TRANSPORTATION IRRIGATION MAINTENANCE MEMORANDUM OF AGREEMENT WITH THE VILLAGE OF BISCAYNE PARK ASSIGNING ALL MAINTENANCE RESPONSIBILITIES PERTAINING TO THE IRRIGATION WITHIN S.R. 915/NE 6TH AVENUE FROM NE 113TH STREET TO NE 121ST STREET TO THE VILLAGE IN PERPETUITY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the State of Florida Department of Transportation (hereinafter "Department") has jurisdiction over S.R. 915/NE 6th Avenue from NE 113th Street to NE 121st Street, within the limits of the Village of Biscayne Park as part of the State of Florida Highway System; and

WHEREAS, the Department has drafted design plans for improvements on S.R. 915/NE 6th Avenue in accordance with Department Contract #T-6212, the limits of which are hereinafter described in Exhibit "A", attached hereto and incorporated herein; and

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

WHEREAS, the Village Commission of the Village of Biscayne Park deems it to be in the best interests of its citizens to authorize the appropriate Village officials to execute the Florida Department of Transportation Irrigation Maintenance Memorandum of Agreement with the Village of Biscayne Park assigning all maintenance responsibilities pertaining to the irrigation within S.R. 915/NE 6th Avenue from NE 113th Street to NE 121st Street to the Village in perpetuity;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, THAT:

Section 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and hereby made a specific part of this Resolution upon adoption hereof.

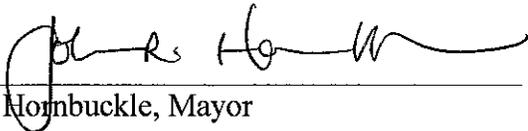
Section 2. The appropriate Village officials are hereby authorized to execute the Florida Department of Transportation Irrigation Maintenance Memorandum of Agreement with the Village of Biscayne Park assigning all maintenance responsibilities pertaining to the irrigation within S.R.

915/NE 6th Avenue from NE 113th Street to NE 121st Street to the Village in perpetuity, attached hereto and incorporated herein as Exhibit "B".

Section 4. This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this ___ 22nd ___ day of ___ June ____, 2009.

**The foregoing resolution upon being
Put to a vote, the vote was as follows:**



John Hornbuckle, Mayor

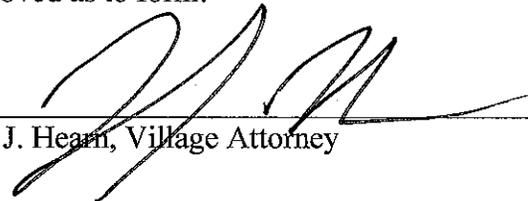
Mayor Hornbuckle ___ yes ___
Vice Mayor Mallette ___ yes ___
Commissioner Bernard ___ no ___
Commission Morris ___ yes ___
Commissioner Anderson ___ yes ___

Attest:



Ann Harper, Village Clerk

Approved as to form:



John J. Hearn, Village Attorney

**FLORIDA DEPARTMENT OF TRANSPORTATION
IRRIGATION
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
VILLAGE OF BISCAYNE PARK**

This **AGREEMENT**, entered into this ____ day of _____, 20__, by and between the **FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **VILLAGE OF BISCAYNE PARK**, a municipal corporation of and existing under the Laws of the State of Florida, hereinafter called the **VILLAGE**.

RECITALS:

WHEREAS, the **DEPARTMENT** has jurisdiction over **State Road (S.R.) 915/NE 6th Avenue from NE 113th Street to NE 121st Street**, within the limits of the **VILLAGE**, as part of the State of Florida Highway System; and

WHEREAS, the **DEPARTMENT** has drafted design plans for improvements on S.R. 915/NE 6th Avenue in accordance with **DEPARTMENT** Contract # T-6212, the limits of which, hereinafter **PROJECT LIMITS**, are described in the attached Exhibit 'A', which by reference hereto shall become a part hereof; 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 **VILLAGE**, by Resolution No. 2009-9, dated June 22, 2009, 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

a. Assignment

The **DEPARTMENT** and the **VILLAGE** agree that, by executing this **AGREEMENT**, all maintenance responsibilities

pertaining to the irrigation within the **PROJECT LIMITS** will be assigned to the **VILLAGE** in perpetuity.

2. VILLAGE'S MAINTENANCE RESPONSIBILITIES

The **VILLAGE** shall be solely responsible for the maintenance and preservation of the irrigation within the **PROJECT LIMITS**.

- a. Ensure that the irrigation system is fully functional by performing routine and regular observations of irrigation performance; identifying damage and/or malfunctions; repairing and/or replacing broken or missing irrigation equipment; and adjusting spray heads to eliminate overspray of water onto paved areas. All costs associated with water use will be the responsibility of the **VILLAGE**.

The above-named functions to be performed by the **VILLAGE** may be subject to periodic inspections by the **DEPARTMENT** at its sole discretion. Such inspection findings will be shared with the **VILLAGE** and shall be the basis of all decisions regarding reworking or agreement termination. The **VILLAGE** shall not change or deviate from said plans without written approval of the **DEPARTMENT**.

3. MAINTENANCE DEFICIENCIES

If, at any time while the terms of this **AGREEMENT** are in effect, it shall come to the attention of the **DEPARTMENT** that the **VILLAGE's** responsibility as established herein or a part thereof is 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 **VILLAGE MANAGER**, to place the **VILLAGE** on notice regarding its maintenance deficiencies. Thereafter, the **VILLAGE** 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 irrigation system, or a part thereof, with **DEPARTMENT** or contractor's personnel and invoice the **VILLAGE** for expenses incurred; or
- b. Terminate the **AGREEMENT** in accordance with Section 6 of this **AGREEMENT** and remove, by **DEPARTMENT** or contractor's

personnel, all of the irrigation installed under this **AGREEMENT** or any preceding agreements and charge the **VILLAGE** the reasonable cost of such removal.

4. 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 6205
Miami, Florida 33172-5800
Attention: District Maintenance Engineer

To the VILLAGE: Village of Biscayne Park
640 NE 114th Street
Biscayne Park, Florida 33161
Attention: Village Manager

5. IRRIGATION SYSTEM

- a. It is understood between the parties hereto that the irrigation 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**. The **VILLAGE** shall be given sixty (60) calendar days notice to remove said irrigation after which time the **DEPARTMENT** may remove same.
- b. The **VILLAGE** may construct additional irrigation within the **PROJECT LIMITS** identified as a result of this document, subject to the following conditions:
 - i. Plans for any new and/or additional materials shall be subject to approval by the **DEPARTMENT**. The **VILLAGE** shall not change or deviate from said plans without written approval by the **DEPARTMENT**.
 - ii. All irrigation shall be developed and implemented in accordance with appropriate state safety and road design standards.

whole or in part without the prior written consent of the DEPARTMENT.

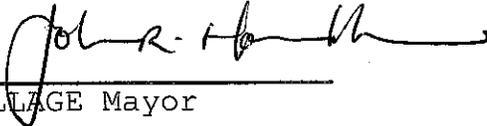
- e. This **AGREEMENT**, regardless of where executed, shall be governed by and constructed in accordance with the laws of the State of Florida.

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

VILLAGE OF BISCAYNE PARK:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY: _____


VILLAGE Mayor

BY: _____

District Secretary

ATTEST: _____


VILLAGE Clerk

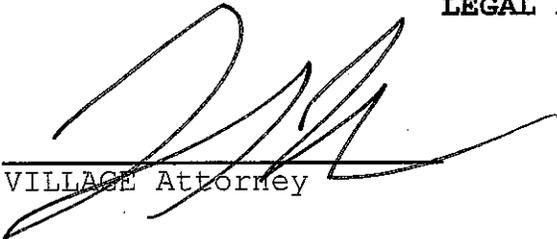
(SEAL)

ATTEST: _____

Executive Secretary

LEGAL REVIEW:

BY: _____


VILLAGE Attorney

BY: _____

District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

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

State Road Number: 915/ NE 6th Avenue
Agreement Limits: From NE 113th Street to NE 121st Street
County: Miami-Dade

EXHIBIT 'B'

VILLAGE OF BISCAYNE PARK RESOLUTION

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