

RESOLUTION NO. 2009-8 (Revised)

A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO EXECUTE THE LOCALLY FUNDED AGREEMENT BETWEEN THE VILLAGE OF BISCAYNE PARK AND THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION WHICH WILL ALLOW THE DEPARTMENT TO PERFORM CURB WORK IN THE MEDIAN LOCATED ON S.R. 915/NE 6TH AVENUE FROM NE 113TH STREET TO NE 121ST STREET; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the State of Florida Department of Transportation (hereinafter "Department") has jurisdiction over and maintains the S.R. 915/NE 6th Avenue corridor within the corporate limits of the Village of Biscayne Park; and

WHEREAS, the Department has agreed to install type "D" curbs on all median bullnoses, raised pavement markers around bullnoses, an irrigation system, conduits with pull boxes for future use, removal of trees (including tree stumps) within medians, and re-grading of existing material and sodding (for pavement stabilization only as necessary), on S.R. 915/NE 6th Avenue from NE 113th Street to NE 121st Street, subject to the terms and conditions detailed in the Agreement; and

WHEREAS, the Village has agreed to fund the increased costs, under Financial Project Number 426407-1-52-01, associated with the installation of type "D" curbs on all median bullnoses, raised pavement markers around bullnoses, an irrigation system, conduits with pull boxes for future use, removal of trees (including tree stumps) within medians, and re-grading of existing material and sodding (for pavement stabilization only as necessary), on S.R. 915/NE 6th Avenue from NE 113th Street to NE 121st Street, as detailed in Exhibit "A", attached hereto and incorporated herein; 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 Locally Funded Agreement between the Village of Biscayne Park and the State of Florida Department of Transportation which will allow the Department to perform curb work in the median located on S.R. 915/NE 6th Avenue from NE 113th Street to NE 121st Street;

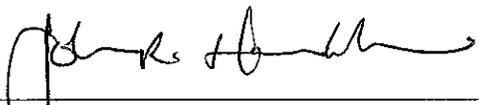
NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, THAT:

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 Locally Funded Agreement between the Village of Biscayne Park and the State of Florida Department of Transportation which will allow the Department to perform curb work in the median located on S.R. 915/NE 6th Avenue from NE 113th Street to NE 121st Street, attached hereto and incorporated herein as Exhibit "B".

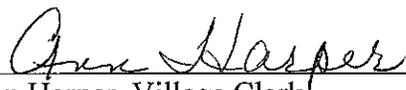
Section 4. This Resolution shall become effective upon adoption.

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



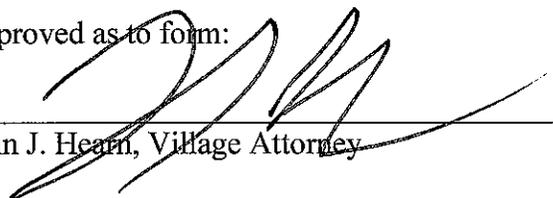
John Hornbuckle, Mayor

Attest:



Ann Harper, Village Clerk

Approved as to form:



John J. Hearn, Village Attorney

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

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

EXHIBIT 'A'

SCOPE OF SERVICES

The PROJECT work consists of the installation of type "D" curbs on all median bullnoses, raised pavement markers around bullnoses, an irrigation system, conduits with pull boxes for future use, removal of trees (including tree stumps) within medians, and re-grading of existing material and sodding (for pavement stabilization), on S.R. 915/NE 6th Avenue from NE 113th Street to NE 121st Street in the VILLAGE.

S.R. 915/NE 6th Avenue is the primary road running South-North through the VILLAGE. The total length of this section of the State Road is approximately 0.6 miles. S.R. 915 is a State Urban Minor Arterials connecting Downtown Miami to Miami Gardens. The roadway improvement proposed will improve American Disability Act (ADA) compliance and pedestrian safety.

PROJECT LIMITS: S.R. 915/NE 6th Avenue from NE 113th Street to NE 121st Street

DEPARTMENT Financial Project Number: 426407-1-52-01

COUNTY: Miami-Dade

DEPARTMENT Project Manager: Daniel Iglesias, P.E. 305-470-5266

VILLAGE Project Manager: Frank R. Spence, Village Manager; 305-899-8000

EXHIBIT 'B'
FINANCIAL SUMMARY

The DEPARTMENT's Work Program allocates the following funding, programmed under Financial Project Number 426407-1-52-01, for PROJECT completion:

<u>Fiscal Year:</u>	<u>Amount:</u>	<u>Fund Type:</u>
2008/2009	\$74,073.00	Federal Stimulus Funds (FSSU)
2008/2009	<u>\$36,000.00</u>	Local Funds (LF)
TOTAL:	\$110,073.00	

VILLAGE OF BISCAIYNE PARK FINANCIAL RESPONSIBILITY: \$36,000.00

EXHIBIT 'C'

VILLAGE OF BISCAYNE PARK RESOLUTION

To be attached hereto and incorporated herein once ratified by the VILLAGE Commission.

EXHIBIT "A"

SCOPE OF SERVICES

The PROJECT work consists of the installation of type "D" curbs on all median bullnoses, raised pavement markers around bullnoses, an irrigation system, conduits with pull boxes for future use, removal of trees (including tree stumps) within medians, and re-grading of existing material and sodding (for pavement stabilization only as necessary), on S.R. 915/NE 6th Avenue from NE 113th Street to NE 121st Street in the VILLAGE.

S.R. 915/NE 6th Avenue is the primary road running South-North through the VILLAGE. The total length of this section of the State Road is approximately 0.6 miles. S.R. 915 is a State Urban Minor Arterials connecting Downtown Miami to Miami Gardens. The roadway improvement proposed will improve American Disability Act (ADA) compliance and pedestrian safety.

PROJECT LIMITS: S.R. 915/NE 6th Avenue from NE 113th Street to NE 121st Street

DEPARTMENT Financial Project Number: 426407-1-52-01

COUNTY: Miami-Dade

DEPARTMENT Project Manager: Daniel Iglesias, P.E. 305-470-5266

VILLAGE Project Manager: Frank R. Spence, Village Manager; 305-899-8000

LOCALLY FUNDED AGREEMENT

THIS LOCALLY FUNDED AGREEMENT (hereinafter 'Agreement') is made and entered into this ____ day of _____, 20__, between the **VILLAGE OF BISCAYNE PARK**, a municipal corporation of the State of Florida, hereinafter referred to as the 'VILLAGE', and the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION** a component agency of the State of Florida, hereinafter referred to as the 'DEPARTMENT'.

RECITALS:

WHEREAS, the DEPARTMENT has jurisdiction over and maintains the State Road (S.R.) 915/NE 6th Avenue corridor within the corporate limits of the VILLAGE; and

WHEREAS, the DEPARTMENT has agreed to install type "D" curbs on all median bullnoses, raised pavement markers around bullnoses, an irrigation system, conduits with pull boxes for future use, remove trees (including tree stumps) within medians, and re-grade existing material and sod (for pavement stabilization), on S.R. 915/NE 6th Avenue from NE 113th Street to NE 121st Street, subject to the terms and conditions detailed in this Agreement; and

WHEREAS, the VILLAGE shall fund the increased costs, under Financial Project Number 426407-1-52-01, associated with the installation of type "D" curbs on all median bullnoses, raised pavement markers around bullnoses, an irrigation system, conduits with pull boxes for future use, removal of trees (including tree stumps) within medians, and re-grading of existing material and sodding (for pavement stabilization), on S.R. 915/NE 6th Avenue from NE 113th Street to NE 121st Street, hereinafter collectively called the 'PROJECT', and as detailed in the attached Exhibit "A", "Scope of Services", which is herein incorporated by reference; and

WHEREAS, the parties are authorized to enter into this Agreement pursuant to **Sections 334.044(7) and 339.12 (2006), Florida Statutes**, and authorize its officers to do so.

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

1. **Recitals.** The Recitals to this Agreement are true and correct and are incorporated herein by reference and made a part hereof.
2. **General Requirements**
 - (a) A true and correct copy of the Resolution of the VILLAGE Commission approving this Agreement is attached hereto as Exhibit "C", 'VILLAGE OF BISCAYNE PARK RESOLUTION', and is incorporated herein by reference.
 - (b) The DEPARTMENT will administer and construct the PROJECT in accordance with the signed and sealed PROJECT plans and as detailed in the attached Exhibit "A", 'Scope of Services'. The DEPARTMENT will complete the PROJECT utilizing the funds provided by the VILLAGE.
 - (c) The VILLAGE will provide funding to the DEPARTMENT, in the aggregate amount of THIRTY SIX THOUSAND DOLLARS (\$36,000.00), for the PROJECT, subject further to the provisions in Section 3 of this Agreement and as outlined in the attached Exhibit "B", "Financial Summary", which is herein incorporated by reference.
 - (d) The DEPARTMENT Contractor will not commence work on the PROJECT until VILLAGE funding for the PROJECT is on deposit with the DEPARTMENT.
 - (e) Upon the receipt, authorization and encumbrance of funding received from the VILLAGE as a result of this Agreement, the DEPARTMENT Contractor will commence work on the PROJECT.

3. Financial Provisions.

- (a) The VILLAGE agrees that it will, no later than fourteen (14) calendar days after the DEPARTMENT's execution of this Agreement, furnish the DEPARTMENT an advance deposit in the amount of THIRTY SIX THOUSAND DOLLARS (\$36,000.00) for full payment of the estimated PROJECT cost for Locally Funded Project Number 426407-1-52-01. The advance deposit shall be the total estimated PROJECT cost plus allowances. The DEPARTMENT may utilize this deposit for payment of the costs of the PROJECT.
- (b) If the accepted bid amount plus allowances is in excess of the advance deposit amount, the VILLAGE will provide an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT or prior to posting the accepted bid, whichever is earlier, so that the total deposit is equal to the bid amount plus allowances. The DEPARTMENT will notify the VILLAGE as soon as it becomes apparent the accepted bid amount, plus allowances, is in excess of the advance deposit amount. However, failure of the DEPARTMENT to so notify the VILLAGE shall not relieve the VILLAGE from its obligation to pay for its full participation on final accounting as provided herein below. If the VILLAGE cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT's PROJECT manager indicating when the deposit will be made. The VILLAGE understands the request and approval of the additional time could delay the PROJECT, and additional costs may be incurred due to a delay of the PROJECT.

- (c) If accepted bid amount plus allowances is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the bid amount plus allowances if such refund is requested by the VILLAGE in writing.
- (d) Should PROJECT modifications or changes to bid items occur that increase the VILLAGE's share of total PROJECT costs, the VILLAGE will be notified by the DEPARTMENT accordingly. The VILLAGE agrees to provide, without delay, in advance of additional work being performed, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund its share of the PROJECT. The DEPARTMENT shall notify the VILLAGE as soon as it becomes apparent the actual costs will overrun the award amount. However, failure of the DEPARTMENT to so notify the VILLAGE shall not relieve the VILLAGE from its obligation to pay for its full participation during the PROJECT and on final accounting as provided herein below. Funds due from the VILLAGE during the PROJECT not paid within forty (40) calendar days from the date of the invoice are subject to an interest charge at a rate established pursuant to **Section 55.03, Florida Statutes (F.S.)**.
- (e) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred and sixty (360) days of final payment to the Contractor. The DEPARTMENT considers the PROJECT complete when final payment has been made to the Contractor, not when the construction work is complete. All PROJECT cost records and accounts shall be subject to audit by a representative of the VILLAGE for a period of three (3) years after final close out of the PROJECT. The VILLAGE will be notified of the final cost. Both parties agree that in the event final accounting of total PROJECT

costs pursuant to the terms of this agreement is less than the total deposit to date, a refund of the excess will be made by the DEPARTMENT to the VILLAGE. If the final accounting is not performed within three hundred and sixty (360) days, the VILLAGE is not relieved from its obligation to pay.

- (f) In the event the final accounting of total PROJECT costs is greater than the total deposits to date, the VILLAGE will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The VILLAGE agrees to pay interest at a rate as established pursuant to **Section 55.03, F.S.**, on any invoice not paid within forty (40) calendar days until the invoice is paid.
- (g) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit.

- 4. **Effective Date of this Agreement.** This Agreement shall become effective upon execution by the VILLAGE and the DEPARTMENT and as of the date set forth on page one (1) hereof.
- 5. **Provisions Separable.** The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.
- 6. **Amendment of Agreement.** This Agreement may only be amended by mutual agreement of the DEPARTMENT and the VILLAGE, expressed in writing and executed and delivered by each.
- 7. **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made

and received when delivered (personally, by courier service such as Federal Express, or by other messenger) against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below:

- (a) If to the VILLAGE: Village of Biscayne Park
640 NE 114th Street
Biscayne Park, FL 33161
Attention: Frank R. Spence, Village Manager
Ph.: 305-899-8000

- (b) If to the DEPARTMENT: Florida Department of Transportation
1000 NW 111 Avenue, Room 6202B
Miami, Florida 33172-5800
Attention: Michelle L. Meaux, JPA Coordinator

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

- 8. **Entire Agreement.** This Agreement, including its attached Exhibits, contain the sole and entire Agreement between the parties with respect to such subject matter and supersede any and all other prior written or oral agreements between them with respect to such subject matter.

- 9. **Binding Effect.** This Agreement shall be binding upon the parties and their respective representatives, successors and assigns.

- 10. **Waiver.** Waiver by either party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

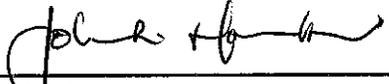
- 11. **Captions.** The captions contained in this Agreement are inserted only as a matter of convenience or reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.

12. **Absence of Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to (a) confer upon any entity or person other than the parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third party beneficiary or otherwise except as specifically provided in this Agreement; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement.
13. **Other Documents.** The parties shall take all such actions and execute all such documents which may be reasonably necessary to carry out the purposes of this Agreement, whether or not specifically provided for in this Agreement; provided that the parties further acknowledge that certain additional actions by the VILLAGE may require approval by the VILLAGE Council, and, to the extent such approval is required by applicable law, obtaining such approval shall be a condition to the obligations of the VILLAGE under this Section.
14. **Governing Law.** This Agreement and the interpretation of its terms shall be governed by the laws of the State of Florida, without application of conflicts of law principles. Venue for any judicial, administrative or other action to enforce or construe any term of this Agreement or arising from or relating to this Agreement shall lie exclusively in Miami-Dade County, Florida.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year first above written, VILLAGE OF BISCAYNE PARK, signing by and through its VILLAGE Mayor, and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, signing by and through its District Secretary, each duly authorized to execute same.

VILLAGE OF BISCAYNE PARK:

**STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION:**

BY: 

VILLAGE MAYOR

BY: _____
DISTRICT SECRETARY

ATTEST: 
(SEAL) VILLAGE CLERK

ATTEST: _____
(SEAL) EXECUTIVE SECRETARY

LEGAL REVIEW:



VILLAGE ATTORNEY

DISTRICT CHIEF COUNSEL