

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Margaret Wu, Economic Development Manager

PREPARED BY: **Margaret Wu**

SUBJECT: Resolution

AFFECTED DISTRICT: Townwide

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN TO EXECUTE A MAINTENANCE AGREEMENT BETWEEN THE TOWN OF DAVIE AND THE MARINA MILE ASSOCIATION FOR A PORTION OF STATE ROAD 84 (MARINA MILE) WITHIN THE TOWN OF DAVIE LIMITS

REPORT IN BRIEF: The purpose of Maintenance Agreement Exhibit B is to transfer the buoy maintenance responsibility to the Marina Mile 84 Association once the Marina Mile Beautification project is completed. There will be one buoy placed in the Town of Davie S.R. 84 median. The maintenance Agreement states that the Marina Mile Association will be responsible for all future installation, maintenance, and repair to the buoy.

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT: Does not require a budget

RECOMMENDATION(S): Motion to Approve

ATTACHMENT(S): Resolution and Maintenance Agreement Exhibit A

RESOLUTION NO _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN TO EXECUTE A MAINTENANCE AGREEMENT BETWEEN THE TOWN OF DAVIE AND THE MARINA MILE 84 ASSOCIATION, FOR A PORTION OF STATE ROAD 84 (MARINA MILE) WITHIN THE TOWN OF DAVIE LIMITS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS the Marina Mile 84 Association agrees, for itself and any successors or assigns, to install, maintain, repair, and replace the “decorative structure/sign” in paragraph 1 of the AGREEMENT. The parties agree that the structure is a marine buoy, to be used as a sign to identify the City of Fort Lauderdale, Broward County, City of Dania, TOWN, and the Marina Mile 84 Association. The Marina Mile 84 Association accepts complete responsibility and agrees to perform all Town of Davie obligations identified in the D.O.T. Agreement until such time as the buoy is removed, All costs of any kind associated with the buoy, including its initial installation, shall be at the Marina Mile 84 Association’s sole cost and expense; and

WHEREAS, the Marina Mile 84 Association agrees to indemnify, hold harmless and defend the Town of Davie, including its officers, employees and agents, in connection with any claim of any kind by any person arising directly or indirectly from the existence, maintenance, repair or replacement of the buoy, arising out of the terms of this Agreement. Nothing contained herein is to be construed as a waiver by the Town of Davie of its rights of sovereign immunity, nor construed to bestow any rights whatsoever upon any third party; and

WHEREAS, in exchange for such commitments, the Marina Mile 84 Association acknowledges and agrees that the Town of Davie has cooperated with the Marina Mile 84 Association in its “Marina Mile” State Road 84 beautification project and that such cooperation forms a substantial part of the consideration for the Agreement, which consideration was exchanged between the parties; and

WHEREAS, the Marina Mile 84 Association defaults in any of its obligations as to the buoy, the Town of Davie reserves the right to have it removed at the Marina Mile 84 Association’s expense and

all costs of removal, storage or any disposition of it will be borne solely by the Marina Mile 84 Association; and

WHEREAS, either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or delivered by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. Notice shall be deemed given on the day on which personally served, or if by mail, on the date of actual receipt. The place for giving notice shall remain the same as set forth in this Agreement until changed in writing in the manner provided in this Section; and

WHEREAS, the Town of Davie desires to enter into this Agreement and authorizes its officers to do so.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The appropriate Town officials are hereby authorized to execute the proposed Agreement between the Town of Davie and the State of Florida Department of Transportation, a copy of which is attached hereto as Exhibit "A", on behalf of the Town.

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2005.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2005

EXHIBIT A

MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2005 by and between the **TOWN OF DAVIE**, a Florida municipal corporation, hereinafter called the **TOWN** and the Marina Mile 84 Association, Inc., a non-profit Florida corporation, hereinafter called the **ASSOCIATION**.

In consideration of the mutual terms, conditions, promises, covenants and payments set forth in this **AGREEMENT**, the sufficiency and receipt of which are acknowledged, the **TOWN** and Contractor agree as follows:

1. A copy of an Agreement executed by the TOWN and the Florida Department of Transportation ("D.O.T."), dated _____, 2005 and entitled "District Four (4) Maintenance Memorandum of Agreement" is attached and incorporated by this reference. The ASSOCIATION agrees, for itself and any successors or assigns, to install, maintain, repair and, if necessary, replace the "decorative structure/sign" identified in paragraph 1 of the AGREEMENT. The parties agree that the structure is a marine buoy, to be used as a sign to identify the City of Fort Lauderdale, Broward County, City of Dania, TOWN, and the ASSOCIATION. The ASSOCIATION accepts complete responsibility and agrees to perform all TOWN obligations identified in the D.O.T. Agreement and this AGREEMENT until such time as the buoy is removed. All costs of any kind associated with the buoy, including its initial installation, shall be at the ASSOCIATION's sole cost and expense.

2. The ASSOCIATION agrees to indemnify, hold harmless and defend the TOWN, including its officers, employees and agents, in connection with any claim of any kind by any person arising directly or indirectly from the existence, maintenance, repair or replacement of the buoy, or arising out of the terms of this Agreement. Nothing contained herein is to be construed as a waiver by the Town of its rights of sovereign immunity, nor construed to bestow any rights whatsoever upon any third party.

3. In exchange for such commitments, the ASSOCIATION acknowledges and agrees that the TOWN has cooperated with the ASSOCIATION in its "Marina Mile" State Road 84 beautification project and that such cooperation forms a substantial part of the consideration for this AGREEMENT, which consideration was exchanged between the parties.

4. If the ASSOCIATION defaults in any of its obligations as to the buoy, the TOWN reserves the right to have it removed at the ASSOCIATION's expense and all costs of removal, storage or any disposition of it will be borne solely by the ASSOCIATION.

5. If either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or delivered by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. Notice shall be deemed given on the day on which personally served, or if by mail, on the date of actual receipt. The place for giving notice shall remain the same as set forth in this AGREEMENT until changed in writing in the manner provided in this Section. For the present, the parties designate the following:

For Town of Davie:

Christopher Kovanes
Interim Town Administrator
6591 Orange Drive
Davie, FL 33314

With a copy to:

Monroe Kiar, Town Attorney
6191 S.W. 45th Street, Suite 615A
Davie, FL 33314

For Association:

William Bigger
P.O. Box 280
Fort Lauderdale, FL 33302

6. Severance. In the event this AGREEMENT or any portion of this AGREEMENT is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

7. Applicable Law and Venue. This AGREEMENT shall be interpreted and construed in accordance with and governed by the law of the State of Florida. Venue for litigation concerning this AGREEMENT shall be in Broward County, Florida.

8. Attorneys' Fees. If either the TOWN or ASSOCIATION is required to incur attorneys' fees and costs to enforce this Agreement, the prevailing party in any litigation shall recover all of its attorneys' fees and costs at both trial and appellate levels.

9. Amendments. No modification, amendment, oral statement, representation, understanding or alteration in or from the terms or conditions contained in this AGREEMENT shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by both the TOWN and the ASSOCIATION.

10. Termination. The TOWN reserves the right to terminate this AGREEMENT upon five (5) days' advance written notice.

11. Insurance. The ASSOCIATION shall provide insurance if and as required by the Town Risk Manager, with limits, coverages and subject to such conditions as specified in writing by the Risk Manager.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

TOWN OF DAVIE
A Florida Municipal Corporation

ATTEST:

TOWN CLERK

MAYOR/COUNCILMEMBER

APPROVED FOR FORM AND
CORRECTNESS:

BY: _____
TOWN ATTORNEY

TOWN ADMINISTRATOR

ASSOCIATION:

Marina Mile 84 Association, Inc. a Florida non-profit corporation

By: _____
PRESIDENT

PRINT NAME

By: _____
SECRETARY

PRINT NAME

CORPORATE SEAL:

STATE OF FLORIDA

COUNTY OF Broward

BEFORE ME, on November 16, 2004, personally appeared William B. Bigler, as President, and Margaret A. Croxton, as Secretary, respectively, of Marina Mile 84 Association, Inc., a Florida non-profit corporation and acknowledged execution of the foregoing AGREEMENT for the use and purposes mentioned in it and that the instrument is the act and deed of the Contractor.

My Commission Expires:



Margaret Chea Wu
My Commission DD116620
Expires May 12, 2006

Margaret Chea Wu
Notary Public, State of Florida at Large