

**FLORIDA DEPARTMENT OF
TRANSPORTATION PUMP STATION AND
DRAINAGE SYSTEMS MAINTENANCE
MEMORANDUM OF AGREEMENT WITH THE
CITY OF KEY
WEST**

This **AGREEMENT**, entered into on _____, 20__, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **CITY OF KEY WEST**, a municipal corporation of the State of Florida, hereinafter called the **CITY**, and collectively referred to as the **PARTIES**.

RECITALS:

- A. The **DEPARTMENT** has jurisdiction over State Road (SR) A1A (South Roosevelt Boulevard) from Berth Street to the end of Smathers Beach, which is located within the limits of the **CITY**; and
- B. The **PARTIES** to this **AGREEMENT** ("**PARTIES**") mutually recognize that it is in the best interest of the Public to improve **SR-A1A (South Roosevelt Boulevard) from Berth Street to the end of Smathers Beach**, the limits of which are described in the attached Exhibit 'A' (the **PROJECT LIMITS**), which by reference shall become a part of this **AGREEMENT**; and
- C. The **DEPARTMENT**, pursuant to Contract #E6L20 ("**PROJECT**"), will design, develop and construct permanent roadway and drainage improvements along the **PROJECT LIMITS**, within **DEPARTMENT right of way** and a portion of **CITY** owned property; and
- D. The **PROJECT** will generally consist of roadway resurfacing and rehabilitation, sidewalks, drainage infrastructure, HAWK beacons, signage, and pavement markings; and
- E. The **PARTIES** have agreed during the design phase that a pump station will be required to adequately discharge storm water flows from the **PROJECT** limits; and
- F. The **PARTIES** have agreed that designing the pump station to

accommodate a certain amount of resilience to potential Sea Level Rise is prudent; and

- G. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party with regards to the maintenance of the pump station improvements (referred to herein as the "**IMPROVEMENTS**") built pursuant to the Project; and
- H. The **IMPROVEMENTS** are more particularly defined in Exhibit 'B'; and
- I. The **CITY**, by Resolution No. _____, dated _____, attached hereto as Exhibit 'C', which by reference shall become a part of this **AGREEMENT**, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits contained herein and other good and valuable consideration, the **PARTIES** covenant and agree as follows:

1. RECITALS

The recitals in this **AGREEMENT** are true and correct, and are incorporated herein by reference and made a part hereof.

2. ASSIGNMENT OF MAINTENANCE RESPONSIBILITIES

The **PARTIES** agree that the execution of this **AGREEMENT** shall constitute an assignment of all maintenance responsibilities pertaining to the **IMPROVEMENTS** within the **PROJECT LIMITS** to the **CITY** upon the **DEPARTMENT'S** release of its contractor from further warranty work and responsibility.

3. CITY'S MAINTENANCE RESPONSIBILITIES

So long as the **IMPROVEMENTS** remain in place, the **CITY** shall be responsible for the maintenance of the same, within **DEPARTMENT** and **CITY** right-of-way.

The **CITY** shall maintain the **IMPROVEMENTS** 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. The **CITY** shall further maintain the **IMPROVEMENTS** in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions. The **CITY'S** maintenance obligations shall include but not be limited to:

3.1 General Requirements:

Removing and disposing of litter from **PROJECT LIMITS** in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.

a. Maintaining a service log of all maintenance operations that sets forth the date of the

maintenance activity, the location that was maintained, and the work that was performed.

- b. Submitting Lane Closure Requests to the **DEPARTMENT** when maintenance activities will require the closure of a traffic lane in the **DEPARTMENT'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.

3.2 Pump Station System:

As of the date set forth in Section 2 of this **AGREEMENT**, the **CITY** agrees to operate, and routinely and periodically maintain the pump structure system located within the **PROJECT LIMITS**, including all utility payments. The pump structure system includes the entire pump station, including but not limited to all the pollution control structures, all pipes connecting the pollution control structures, pump control panel, panel concrete pad, generator, generator pad, electrical components, fences, as shown in **Exhibit 'B'**.

The **CITY'S** maintenance responsibilities for the pump structure system shall include, but not be limited to, the following:

- a. Periodically inspecting and maintaining the pump structure system and all its associated features (electrical, mechanical, generator, etc.) in accordance with the manufacturer's minimum care and maintenance requirements, and in accordance with the Project Plans and Specifications, but never less than once per contractual year.
- b. Adhering to the safety precautions prescribed by the manufacturer and enumerated in the Project Plans and Specifications.
- c. Complying with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as the same may be amended from time to time.
- d. Maintaining a service log of all maintenance activities. Those maintenance activities that are not documented in a service log shall be deemed to

not have been performed. Service logs shall be kept at the pump station premises for review, as needed. Submit service logs to the **DEPARTMENT** once per contractual year.

- e. Scheduling and implementing minor repairs. Minor repairs shall include any repairs that are a part of or incident to the routine maintenance of the Structures as set forth in this **AGREEMENT**. Minor repairs shall include, but shall not be limited to, the routine overhaul of the pump motors. CITY'S responsibility of minor repair costs shall be limited to \$10,000 per occurrence.
- f. Notifying the **DEPARTMENT** of all needed major repairs. The **CITY** must notify the **DEPARTMENT** as soon as the need for a major repair is discovered. A major repair is deemed discovered if the **CITY** or its agent knew or should have known of the need for a major repair. Major repairs shall only include a complete replacement of the Structures, the pump motors, or the impellers. The **DEPARTMENT**, however, shall not be responsible for the following major repairs:
 - i. Any major repairs that are needed as a result of the **CITY'S** failure to perform its maintenance responsibilities pursuant to this **AGREEMENT**, or
 - ii. Any major repairs that are the result of a negligent act of the **CITY** in performing its maintenance responsibilities pursuant to this **AGREEMENT**.
- g. The major repairs listed under Section 3.2 (f)i. and 3.2 (f)ii. shall be the sole responsibility of the **CITY**.

The **CITY** shall have readily available a back-up generator ready to be mobilized to the pump station within one (1) hour in the event power is lost and the main generator is not functioning.

The **CITY** shall submit all services logs, inspections and surveys to the **DEPARTMENT** Warranty Coordinator as required in the above maintenance responsibilities.

The **DEPARTMENT** may, at its sole discretion, perform periodic inspection of the **IMPROVEMENTS** to ensure that the **CITY** is performing its duties pursuant to this **AGREEMENT**. The Department shall share with the **CITY** its inspection findings, and may use those findings as the basis of its decisions regarding maintenance deficiencies, as set forth in Section 4 of this **AGREEMENT**. The **CITY** is responsible for keeping current copies of all applicable rules, regulations, policies, procedures, guidelines, and manuals, and the Project Specification and Special Provisions, as may be amended from time to time.

4. MAINTENANCE DEFICIENCIES

If at any time it shall come to the attention of the **DEPARTMENT** that the **CITY'S** responsibilities as established herein are 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 **CITY MANAGER**, to notify the **CITY** of the maintenance deficiencies. From the date of receipt of the notice, the **CITY** shall have:

- a. A period of ten (10) calendar days to notify the **DEPARTMENT** of any potential delays due to the procurement of replacement parts and provide a repair schedule to the **DEPARTMENT**; otherwise
- b. a period of thirty (30) calendar days, within which to correct the cited deficiency or deficiencies.

Receipt is determined in accordance with Section 5 of this **AGREEMENT**.

If said deficiencies are not corrected within this time period, the **DEPARTMENT** may, at its option, proceed as follows:

- a. Maintain the **IMPROVEMENTS**, or a part thereof and invoice the **CITY** for expenses incurred; or
- b. Terminate this **AGREEMENT** in accordance with Section 7, remove any or all of the **IMPROVEMENTS** located within the **PROJECT LIMITS**, and charge the **CITY** the reasonable cost of such removal.

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 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
Attn: District Maintenance Engineer

To the CITY: City of Key West
1300 White Street
Key West, FL 33040
Attention: City Manager/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.

6. REMOVAL, RELOCATION OR ADJUSTMENT OF THE IMPROVEMENTS

- a. The **PARTIES** agree that the **IMPROVEMENTS** addressed by this **AGREEMENT** may be removed, relocated or adjusted at any time in the future, at the **DEPARTMENT'S** sole discretion. In the event that the **DEPARTMENT** relocates or adjusts the **IMPROVEMENTS**, the **CITY'S** maintenance responsibilities will survive the relocation or adjustment, as long as the materials remain within the **PROJECT LIMITS**.
- b. In the event that the **DEPARTMENT** is required to replace the **IMPROVEMENTS** at any time as part of maintenance activities, a roadway project, or related construction activities, the **DEPARTMENT** shall replace in kind, and the **CITY'S** maintenance obligations under this **AGREEMENT** shall terminate. However, the **CITY** may, with the approval of the **DEPARTMENT**, make upgrades at its sole cost and expense with the understanding that the **CITY** shall assume all maintenance obligations for the upgrades, and enter into a new maintenance agreement.

7. TERMINATION

In addition to the provisions of Section 6(b) hereunder, this **AGREEMENT** is subject to termination under any one of the following conditions:

- a. By the **DEPARTMENT**, if the **CITY** fails to perform its duties under Section 3 of this **AGREEMENT**, following the thirty (30) days written notice, as specified in Section 4 of this **AGREEMENT**.
- b. In accordance with Section 287.058(1)(c), Florida Statutes, 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** unless the records are exempt from Section 24(a) of Article I of the State Constitution and Section 119.07(1), of the Florida Statutes.
- c. If mutually agreed to by both parties, upon thirty (30) days written advance notice. An agreement to terminate shall be valid only if made in writing and executed with the same formalities as this **AGREEMENT**.

Prior to termination of the **AGREEMENT** under this Section , the **CITY** shall, at its sole cost and expense, remove all the **IMPROVEMENTS** and restore the area in accordance with the **DEPARTMENT'S** guidelines, standards, and procedures, and to the satisfaction of the **DEPARTMENT**, and shall further any remaining **IMPROVEMENTS**, and restore the area to the same or similar condition as existed prior to the installment of the **IMPROVEMENTS**, in accordance with the **DEPARTMENT'S** guidelines, standards, and procedures, and to the satisfaction of the **DEPARTMENT**.

8. TERMS

- a. The effective date of this **AGREEMENT** shall commence upon execution by the **PARTIES** and shall continue so long as the **IMPROVEMENTS** remain in place until termination as set forth in Section 7.

b. E-Verify

The **CITY** shall:

- i. 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. 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. (**Executive Order Number 2011-02**)

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**.

- c. This writing embodies the entire **AGREEMENT** and understanding between the **PARTIES** hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
- d. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT**.
- e. This **AGREEMENT** shall be governed by and constructed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the **AGREEMENT**.
- f. Venue for any and all actions arising out of or in connection to the interpretation, validity, performance or breach of this **AGREEMENT** shall lie exclusively in a state court of proper jurisdiction in Leon County, Florida.
- g. A modification or waiver of any of the provisions of this **AGREEMENT** shall be effective only if made in

writing and executed with the same formality as this **AGREEMENT**.

- i. The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.
- j. No term or provision of this **AGREEMENT** shall be interpreted for or against either Party because the Party or its legal representative drafted the provision.
- k. The **DEPARTMENT** is a state agency, self-insured and subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. Nothing in this **AGREEMENT** shall be deemed or otherwise interpreted as waiving the **DEPARTMENT'S** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

9. 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 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

Maintenance Memorandum of Agreement between Florida Department of Transportation and City of Key West

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 subject to the limitations of Section 768.28 Florida Statutes **CITY** shall pay all costs and reasonable attorney's 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**.

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

CITY OF KEY WEST:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY: _____

CITY Manager

BY: _____

District Director of
Transportation Operations

ATTEST: _____ (SEAL)
CITY Clerk

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: _____

CITY Attorney

BY: _____

District Chief Counsel

EXHIBIT 'A'
(PROJECT LIMITS)

Below are the limits of the **IMPROVEMENTS** to be maintained by the **CITY** under this **AGREEMENT**.

State Road Number: A1A

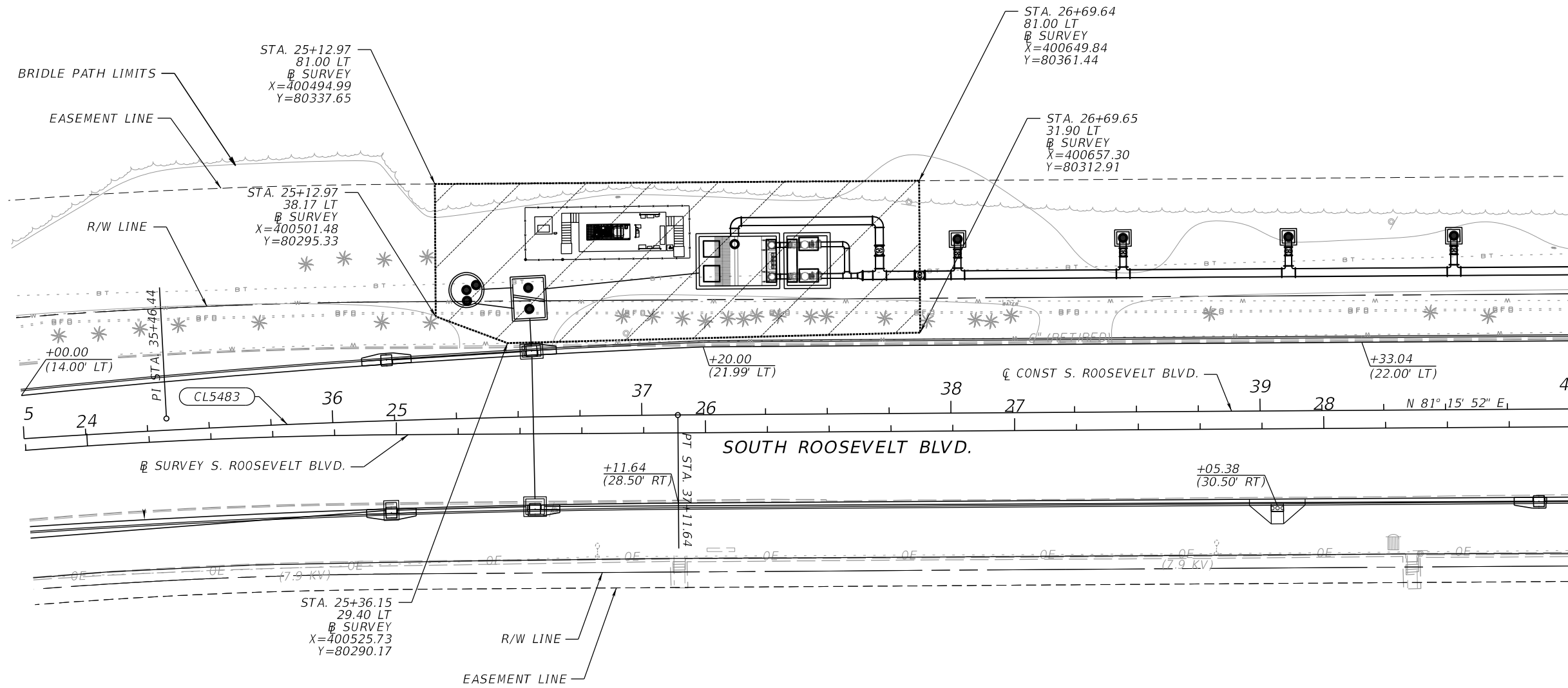
Local Street Names: South Roosevelt Boulevard Drive

Agreement Limits: South Roosevelt Boulevard Bertha Street to the end of Smathers Beach (Refer to Exhibit 'B')

County: Monroe

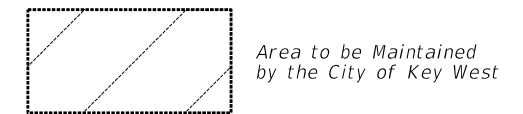
EXHIBIT 'B
(MAINTENANCE AGREEMENT LIMITS)

OUTSTANDING FLORIDA WATER/SALT PONDS



OUTSTANDING FLORIDA WATER/ATLANTIC OCEAN

LEGEND



REVISIONS				JOLIE CERVERA, P.E. P.E. LICENSE NUMBER 86966 METRIC ENGINEERING, INC. 13940 SW 136th STREET - SUITE 200 MIAMI, FLORIDA - 33186	STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION			PUMP STATION MAINTENANCE RESPONSIBILITY BOUNDARY	Exhibit B
DATE	DESCRIPTION	DATE	DESCRIPTION		ROAD NO.	COUNTY	FINANCIAL PROJECT ID		
					SR A1A	MONROE	250548-8-52-01		

EXHIBIT 'C'
(CITY OF KEY WEST RESOLUTION)