

**FLORIDA DEPARTMENT OF TRANSPORTATION
LANDSCAPE, IRRIGATION AND TURF
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
CITY OF KEY WEST**

This **AGREEMENT**, entered into on February, 8 , 2023 , 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) 5, SR-A1A, (US-1) from North/South Roosevelt Boulevard to the Cow Key Channel Bridge**, which is located within the limits of the **CITY**; and
- B. The **CITY** has drafted design plans for beautification on SR-5 / SR-A1A, from North/South Roosevelt Boulevard to the Cow Key Channel Bridge, 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 **CITY** will construct landscape, irrigation and turf in accordance with the design plans corresponding to Financial Project ID 450501-1-74-01 (the "Project"), as approved by the **DEPARTMENT**; and
- D. It is the intent of the **PARTIES** for this **AGREEMENT** to supplement all existing Maintenance Memorandum of Agreement and existing Permits previously executed between the **DEPARTMENT** and the **CITY** with respect to the area defined in Exhibit 'A'; and
- E. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the **CITY's** responsibilities with regards to the landscape, irrigation and turf along the medians within the **PROJECT LIMITS**; and

F. The **CITY**, by Resolution No. 21-194, dated September 14th, 2021 attached hereto as Exhibit 'B', 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. DEPARTMENT RESPONSIBILITIES

The **PARTIES** agree that the execution of this **AGREEMENT** shall constitute an assignment of all maintenance responsibilities pertaining to the existing and proposed landscape, irrigation and turf (the "**IMPROVEMENTS**") within the **PROJECT LIMITS** to the **CITY** upon the **DEPARTMENT's** acceptance of the **CITY's** work.

3. CITY'S MAINTENANCE RESPONSIBILITIES

So long as the **IMPROVEMENTS** remain in place, the **CITY** shall be responsible for the maintenance of the same, at **CITY's** sole cost and expense. The **CITY** shall maintain all 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. Additionally, the **CITY** shall maintain the landscape in accordance with the International Society of Arboriculture standards, guidelines and procedures, the latest edition of the "Maintenance Rating Program", and Index 546 of the latest **DEPARTMENT** Design Standards as may be amended from time to time. The **CITY** shall further maintain the landscape, turf and hardscape in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions. The **CITY's** maintenance obligations for all the **IMPROVEMENTS** shall include but not be limited to:

3.1 General Requirements:

- a. 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.
- b. Removing and disposing of all trimmings, roots, branches, litter, repairs, and any other debris resulting from the activities described by 3.2.
- c. 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 Landscape and all Associated Improvements:

- a. Mowing, cutting and/or trimming and edging the grass and turf within the **PROJECT LIMITS**. Install sod/grass matching the adjacent areas so there is no exposed ground/soil.
- b. Pruning all plant materials, which include trees, shrubs and ground covers, and parts thereof, including all material from private property encroaching into the **DEPARTMENT'S** Right-of-Way.
- c. All pruning and trimming will follow the Maintenance Rating Program Handbook which specifically requires no encroachment of trees, tree limbs or vegetation in or over travel way (or clear zone) lower than 14.5 feet, or lower than 10 feet over sidewalks.
- d. 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 the Project Plans and in the Project Specifications, incorporated herein by reference, and all applicable **DEPARTMENT** guidelines, standards and procedures, as may be amended from time to time. All replacement

materials shall be in accordance with the Project Plans and the Project Specifications and Special Provisions.

- e. Mulching all plant beds and tree rings.
- f. Repairing irrigation systems and associated components as needed. Paying for all water use and all costs associated therewith.
- g. Removing and disposing of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials.
- h. Watering and fertilizing all plants as needed to maintain the plant materials in a healthy and vigorous growing condition.
- i. Removing and disposing of litter from roadside and median strips in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.

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.

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 obtaining 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 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**. In the event of an involuntary destruction of the **IMPROVEMENTS**, the **CITY** will have sixty (60) days to correct the cited deficiency or deficiencies pursuant to this section.

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 landscaping 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. The **DEPARTMENT** shall notify the **CITY** as soon as practicable of any such removal, relocation or adjustment of the **IMPROVEMENTS**. This notification is not subject to the notice provisions of Paragraph 5 of this **AGREEMENT**. In the event that the **DEPARTMENT** relocates or adjusts the **IMPROVEMENT**, the **CITY's** maintenance responsibilities will survive the relocation or adjustment, as long as the materials remain within the Project Limits.

7. TERMINATION

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** which are subject to provisions of Chapter 119, of the Florida Statutes.
- c. If mutually agreed to by both parties, upon thirty (30) days advance notice. An agreement to terminate shall be valid only if made in writing and executed with the same formalities as this **AGREEMENT**.

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. 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.
- c. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT**.
- d. 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**.
- e. 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.
- f. 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.
- l. The **CITY** is a municipal corporation, 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 **CITY'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**. This obligation shall be limited to a maximum amount of the sovereign immunity limits of liability prescribed in 768.28, Florida Statutes, as said limits may modified by statutory amendment (currently \$200,000 per person or \$300,000 per occurrence), and the **CITY** will have no further obligation to defend or hold harmless the **DEPARTMENT** in the event said limits are paid or are otherwise exhausted. Nothing contained herein shall be construed to alter or waive the City's sovereign immunity under 768.28, Florida Statutes. The **DEPARTMENT** acknowledges that indemnification by the **CITY** may be unenforceable under Florida law, and that the **CITY** does not waive any legal defense based on the unenforceability of such indemnification position.

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**.

Subject to the limitations of Section 768.28, Florida Statutes, the **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: [Signature]
City Manager/Mayor

BY: [Signature]
District Director of
Transportation Operations

ATTEST: [Signature] (SEAL)
City Clerk

ATTEST: [Signature]
Executive Secretary

LEGAL REVIEW:

BY: [Signature]
City Attorney

BY: [Signature]
District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

Below are the limits of the landscape, irrigation and turf to be maintained under this **AGREEMENT**.

State Road Number: 5 and SR-A1A (US-1)

Agreement Limits: North/South Roosevelt Boulevard to
the Cow Key Channel Bridge
Median Only

County: Monroe

EXHIBIT 'B'

CITY OF KEY WEST RESOLUTION

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

RESOLUTION NO. 21-194

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING A SUBMISSION TO THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) OF A GRANT APPLICATION FOR RIGHT-OF-WAY BEAUTIFICATION GRANT FOR THE U.S. 1 ENTRANCE TO KEY WEST (THE TRIANGLE), IN THE AMOUNT OF UP TO \$100,000.00 FOR THIS GRANT CYCLE; AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY DOCUMENTS UPON CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the US 1 entrance to Key West (known as "The Triangle"), needs aesthetic improvement, and the City of Key West seeks grant funding in support of such improvements, in exchange for providing ongoing maintenance of those improvements; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That submission to FDOT of an application for right-of-way Beautification for the entrance to Key West (commonly known as "The Triangle") is hereby authorized in an amount of up to \$100,000.00.

Section 2: As a condition of receiving beautification grant funds, the City would agree to accept maintenance responsibility for such improvements within the project limits.

Section 3: That the City Manager is authorized to execute the grant application and agreements and related documents associated with the grant, upon the advice and consent of the City Attorney.

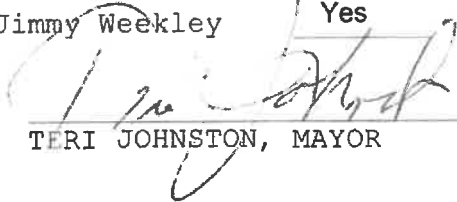
Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 14th day of September, 2021.

Authenticated by the Presiding Officer and Clerk of the Commission on 15th day of September, 2021.

Filed with the Clerk on September 15, 2021.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>


TERI JOHNSTON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK