

**LANDSCAPE MAINTENANCE AND INSTALLATION AGREEMENT**  
**BETWEEN**  
**MONROE COUNTY AND**  
**THE CITY OF KEY WEST**

THIS Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between MONROE COUNTY, (hereinafter, "COUNTY") and, THE CITY OF KEY WEST (hereinafter, "CITY") for the CITY to maintain, at the CITY'S expense, landscaping within the area specified below.

WHEREAS, the COUNTY has jurisdiction over and maintains Flagler Avenue as part of the County Secondary Road System; and

WHEREAS, the CITY seeks to install landscape improvements consisting of five poinciana trees within the median of the right-of-way of Flagler Avenue from Kennedy Drive to South Roosevelt Boulevard, (hereinafter, "PROJECT") and the CITY has agreed to maintain the trees planted by the City or its contractor after completion of the PROJECT at its expense; and

NOW THEREFORE, for and in consideration of the mutual benefits to the COUNTY and CITY, the parties covenant and agree as follows:

**1. PROJECT SCOPE OF WORK AND REQUIREMENTS**

1.1 The CITY and its Contractors hereby assures the COUNTY, that prior to submitting this Agreement, it has:

- a) Ascertained the location of all existing utilities, both aerial and underground and confirmed that plantings will not impact existing utilities; and
- b) Complied with all permit requirements from the appropriate agencies (county, municipality, etc.) in connection with the activities described herein.

1.2 The CITY will maintain all trees planted by the City or its contractor so that they do not impact or restrict the public's use of the travel lanes, including the bicycle lanes or any drainage structures that are maintained by the COUNTY. Maintenance will include but not necessarily be limited to the following:

- a) maintain trees planted by the City or its contractor so that sight triangles at driveways and roadway intersections are not obstructed and roadway signage is not obstructed;
- b) maintain trees at a height that is acceptable to overhead utility owners;
- c) as needed, sweep up leaves or buds that drop from trees so that plant material does not clog drainage structures;
- d) ensure that trees planted by the City or its contractor will not obstruct utility owners' access to existing utilities for maintenance purposes
- e) The CITY and/or its contractors will coordinate and cooperate with utilities or contractors who obtain approval from Monroe County to perform work on the County right-of-way.

1.3 The CITY will be solely responsible for any and all parties who perform the tree installation and/or maintenance of improvements within the County right-of-way and the County will in

no way be responsible or liable for any injury caused by the tools, materials, or equipment used by the CITY and its Contractors.

1.4 If installation has been properly completed, and maintenance by the CITY is not in compliance with section 1.2, the COUNTY may take action to maintain the landscaping or a part thereof, with COUNTY staff or Contractor's personnel and invoice the CITY for expenses incurred, or

The COUNTY may terminate the Agreement, in which case the CITY shall at its own expense and within thirty (30) days after written notice by the COUNTY, remove all of the landscaping that the COUNTY directs be removed and return the right-of-way to its original condition.

1.5 The above-named functions to be performed by the CITY, shall be subject to periodic inspections by the COUNTY. The CITY shall not change or deviate from the proposed planting scope without written approval of the COUNTY.

1.6 The CITY may utilize its employees or third parties to accomplish its obligations under this Agreement. However, the CITY remains responsible for proper performance under this Agreement and shall take all steps necessary to ensure that its employees or third parties perform as required under this Agreement.

1.7 It is understood between the parties hereto that the landscaping covered by this Agreement may be removed, relocated or adjusted by the COUNTY at any time in the future as determined to be necessary by the COUNTY in order to widen, alter or otherwise change the county road to meet with future criteria or planning of the COUNTY. The CITY shall be given thirty (30) calendar days' notice to remove said trees after which time the COUNTY may remove the same at the CITY's expense.

1.8 Designated personnel as directed by the COUNTY'S engineer or his/her designee may inspect and evaluate this PROJECT.

1.9 If at any time after the CITY has assumed maintenance responsibility for the trees planted by the City or its contractor it shall come to the attention of the COUNTY that the planted trees or a part thereof is not properly maintained pursuant to the terms of this Agreement, the COUNTY'S Engineer or his/her designee may issue a written notice to the CITY that a deficiency or deficiencies exist(s). Upon receipt of the notice, the CITY shall have a period of thirty (30) calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the COUNTY may at its option either take action to maintain the planted trees or part thereof with COUNTY staff or its Contractor's personnel and invoice the CITY for expenses incurred, which the CITY shall promptly reimburse the county for the costs, or the COUNTY may terminate the Agreement, in which case the CITY shall at its own expense and within thirty (30) days after written notice by the COUNTY, remove the trees planted by the City or its contractor that the COUNTY directs be removed and return the right-of-way to its original condition.

- 1.10 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

## **2. PROJECT COST**

- 2.1 The CITY agrees, at the CITY'S expense, to maintain the trees planted by the City or its contractor-within the median and within the right of way; The CITY is solely responsible for all costs incurred in carrying out the Project as described herein. It is understood by the parties that the COUNTY is to incur no cost for the project or maintenance thereof.
- 2.2 There are no third-party beneficiaries to this Agreement, and no contractor or sub-contractor or any other person or entity that shall look to COUNTY for payment.
- 2.3 The CITY shall not cause any liens or encumbrances to attach to any portion of the COUNTY right-of-way.

## **3. EFFECTIVE DATE AND TERM; TERMINATION**

- 3.1 The term of this AGREEMENT commences upon execution. The CITY shall notify or cause the COUNTY's Engineer or his/her designee to be notified a minimum of 48 hours, excluding Saturday, Sunday, and legal holidays, prior to starting installation of the tree work in the right-of-way, unless said Engineer or his/her designee waives this period in writing. When the COUNTY through said Engineer or his designee issues a Notice to Proceed, the CITY may proceed with the project.
- 3.2 This Agreement shall continue in perpetuity unless terminated by the CITY or COUNTY as set forth below.
- 3.3 Termination shall be done in writing giving the other party thirty (30) days' notice.
- 3.4 Upon notice of termination by either party, all trees planted by the City or its contractor shall be removed by the CITY and the COUNTY'S right-of-way returned to its original condition. If, after thirty (30) days, the trees planted by the City or its contractor have not been removed, the COUNTY may, at its option remove the trees; return the right-of-way to its original condition with the COUNTY staff or Contractor's personnel and the CITY shall promptly reimburse the COUNTY upon receipt of an invoice for the reasonable values of such work.
- 3.5 The COUNTY may terminate the AGREEMENT, in which case the CITY shall at its own expense and within thirty (30) days after written notice by the COUNTY, remove the planted trees that the COUNTY directs be removed and return the right-of-way to its original condition. The CITY will own such materials as it removes, and the COUNTY shall own any materials remaining. The COUNTY may, in its discretion, remove, relocate or adjust the trees, with the CITY being responsible for the cost of any removal. Upon COUNTY action under one of the above options and upon direction of the COUNTY, the CITY shall cease installation and maintenance activities under this AGREEMENT.

#### **4. INSURANCE AND INDEMNIFICATION**

- 4.1 The CITY shall keep in force during the period of this Agreement public liability insurance, property damage insurance and worker's compensation insurance through an insurance policy(ies) or the CITY'S self-insurance program.
- 4.2 Subject to F.S. 768.28, Florida Statutes, The CITY covenants and agrees to indemnify, hold harmless and defend COUNTY, from any and all claims for bodily injury, including death, personal injury, and property damage, including damage to property owned by Monroe County, and any other losses, damages, and expenses of any kind, including attorney's fees, court costs and expenses, which arise out of, in connection with, or by reason of maintenance or installation of the Project provided by under this Agreement. Nothing contained herein shall be deemed to waive CITY'S sovereign immunity limits provided in Section 768.28 Florida Statutes.

This indemnification shall survive the expiration or earlier termination of the Agreement.

- 4.3 When the COUNTY receives a notice of claim for damages that may have been caused by the CITY in the performance of services pursuant to this Agreement, the COUNTY will immediately forward the claim to CITY, and the COUNTY will evaluate the claim and report their findings to each other within seven working days and will jointly discuss options in defending the claim. After reviewing the claim, the COUNTY will determine whether to require the participation of the CITY in the defense of the claim or to require that the CITY defend the COUNTY in such claim pursuant to this section. The COUNTY'S failure to notify the CITY of a claim shall not release the CITY from any of the requirements of this section. The COUNTY and the CITY will pay their own costs for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs, but if the verdict determines that there is joint responsibility, the costs and liability for damages will be shared in the same percentage as that judicially established.

#### **5. NOTICES**

- 5.1 All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to COUNTY:           Roman Gastesi, Jr.  
                                  County Administrator  
                                  Monroe County Historic Gato Bldg.  
                                  1100 Simonton Street  
                                  Key West, Florida 33040

With a copy to:         Christine Limbert-Barrows  
                                  Assistant County Attorney

P.O. Box 1026  
Key West, Florida 33041-1026

If to CITY: James Scholl  
City Manager  
City of Key West  
P.O. Box 1409  
Key West, Florida 33041

With a copy to: Shawn Smith, Esq.  
City Attorney  
City of Key West  
P.O. Box 1409  
Key West, Florida

5.2 Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service.

**6. GOVERNING LAW AND VENUE.**

This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida applicable to contract made and to be performed entirely in the State. In the event that any cause of action or administration proceeding is instituted for the enforcement or interpretation of this Agreement, the Parties agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida, lower Keys Division of the Circuit Court or the Southern District of Florida. Venue for any suits or actions of any kind and any mediation shall be in and governed by the rules of the 16<sup>th</sup> Judicial Circuit Court in Monroe County, Florida. This Agreement shall not be subject to arbitration.

**7. SEVERABILITY.**

If any term or provision of the Agreement is found to be illegal or unenforceable, the remainder of the Agreement will remain in full force and effect and such term or provision will be deemed stricken.

**8. PUBLIC RECORDS.**

The CITY shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the CITY in conjunction with this Agreement. Failure by the CITY to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the COUNTY.

**9. INDEPENDENT CONTRACTOR.**

The CITY and the COUNTY agree that the CITY, its employees, contractors, subcontractors, consultants, and sub consultants are not agents of the COUNTY as a result of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

**10. NON-WAIVER OF SOVEREIGN IMMUNITY.**

Nothing herein shall be construed as a waiver of either party's sovereign immunity.

**11. ENTIRE AGREEMENT.**

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.

**12. ASSIGNMENT.**

This AGREEMENT may not be assigned or transferred by the CITY in whole or part without the consent of the COUNTY.

**13. PUBLIC ENTITY CRIME.**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**14. NON-DISCRIMINATION.**

The parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VII of the Civil Rights Act of 1964 (PL 88-352), which prohibits discrimination in employment on the basis of race, color, religion, sex, and national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC § 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC §§ 6101-6107), which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to

nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, §§ 523 and 527 (42 USC §§ 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC §§ 12101), as amended from time to time, relating to nondiscrimination in employment on the basis of disability; 10) Monroe County Code Chapter 14, Article II, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

**15. COMPLIANCE WITH LAWS.**

The CITY will comply with all laws, ordinances, and governmental rules and regulations which apply to its activities on the property. The CITY will obtain all necessary permits and or authorization as may be required by the regulatory agencies.

**16. BINDING EFFECT.**

The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and the CITY and their respective legal representatives, successors, and assigns.

**17. ADJUDICATION OF DISPUTES OR DISAGREEMENTS.**

COUNTY and CITY agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

**18. COOPERATION.**

In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, COUNTY and CITY agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. COUNTY and CITY specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

**19. SURVIVAL OF PROVISIONS.**

Any terms or conditions of this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

**20. COUNTERPARTS.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals the day and year first above written.

(SEAL)  
KEVIN MADOK, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor/Chairperson

ATTEST:

CITY OF KEY WEST, FLORIDA

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor