

MEMORANDUM OF UNDERSTANDING BETWEEN
STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,
DIVISION OF RECREATION AND PARKS
AND
CITY OF KEY WEST, FLORIDA

FORT ZACHARY TAYLOR HISTORIC STATE PARK

THIS MEMORANDUM OF UNDERSTANDING, hereinafter referred to as “MOU,” is hereby made and entered into on this _____ day of _____, 2015, by and between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, acting through the DIVISION OF RECREATION AND PARKS, pursuant to Delegations of Authority DEP 150, DRP 26, dated April 1, 2003, hereinafter referred to as "DIVISION" and City of Key West, Florida, a municipal corporation, hereinafter referred to as “CITY”.

WITNESSETH

WHEREAS, Fort Zachary Taylor Historic State Park (park), located in Key West, Florida, is owned in fee-simple by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Trustees); and

WHEREAS, the park is a unit of the Florida State Park System managed by DIVISION under Trustees’ Lease 2923 for the purpose of preserving, developing, improving, operating, maintaining and otherwise managing said lands for public outdoor recreational, park, conservation, and related purposes; and

WHEREAS, on February 17, 1984, the United States Government granted an easement, hereinafter referred to as the Existing Access Easement (Exhibit A) to DIVISION over the Truman Annex property for a fifty-year period for “the construction, installation, operation, maintenance, repair, and replacement of a road and contact station for access to the Park”; and

WHEREAS, the road built within the access easement area, hereinafter referred to as the “Existing Access Road,” is currently the only road that provides public access to the park; and

WHEREAS, on December 3, 2002, the United States Government conveyed a portion of the Truman Annex property to the City of Key West as part of the Defense Base Closure and Realignment (BRAC) process, thereby resulting in DIVISION now possessing easement rights over U.S. Government and CITY properties; and

WHEREAS, CITY is designing a redevelopment project known as the Truman Waterfront Park for CITY's portion of the Truman Annex property in accordance with CITY's approved Truman Waterfront Master Plan that was adopted by the City Commission on May 6, 2014, which is attached hereto as Exhibit B and incorporated by reference; and

WHEREAS, CITY's Truman Waterfront Park project will require the park access road to be realigned and the park's entrance and ranger station to be relocated; and

WHEREAS, the realignment of the park access road will result in the construction of a new park access road, hereinafter referred to as the "New Access Road"; and

_____ WHEREAS CITY must also design a secure access for adjacent USN property which includes redesign of the Truman Waterfront Master Plan and agrees to design and permit a portion of the New Access Road on state park property at City's expense to better coordinate the design project, and

WHEREAS, CITY and DIVISION desire this MOU to establish an agreed-upon plan for maintaining continuous, safe public access to the park while concurrently minimizing interference with the construction of Truman Waterfront Park.

NOW THEREFORE, in mutual consideration of the covenants and conditions stated herein, DIVISION and CITY do hereby agree as follows:

1. TERM: This MOU is for a period of ten (10) years commencing on the execution date of this MOU, unless extended in writing by both parties to this MOU.
2. City will coordinate its revision of the Truman Waterfront Master Plan with the Division and will make all necessary efforts to ensure the form, function and appearance and of the new park entrance meets Florida state park standards and is acceptable to the Division.
3. Within 2 years of the execution of this MOU, CITY and DIVISION will concurrently complete design plans and obtain all necessary permitting related to the New Access Road and new park entrance, respectively.
4. City's design and permitting shall include a portion of the New Access Road extending into state park property to the midline of the existing pedestrian bridge connecting US Navy property across the state land, and centered on the centerline of the pedestrian bridge (see Exhibit C).
5. City's design and permitting shall meet the following 5 design criteria:
 - A. All work will be carefully coordinated with design work being accomplished by DIVISION'S consultant.
 - B. All turning radii on the New Access Road will be sufficient to accommodate semi trucks with trailers, pickup trucks and 'fifth-wheel' camper trailers, school buses and full-sized recreational vehicles.

C. Design shall provide a means for vehicles to turn around outside the park property (such as a cul-de-sac) for vehicles that arrive after the park gate has closed.

D. Bicycle-pedestrian facilities shall be provided for alternative access to the state park. At minimum this will consist of dedicated incoming and outgoing bike lanes on the park road.

E. Design work shall be such that City's project and Division's project may be integrated into single a construction a contract or contracts, to the greatest extent possible.

6. CITY shall develop a traffic control plan that details how public access to the park will be maintained during the construction of the New Access Road and park entrance and ranger station. CITY shall afford DIVISION an opportunity to review and comment on the traffic control plan at least thirty (30) days prior to the commencement of any construction activities.

7. CITY shall construct the New Access Road after DIVISION completes its design plans and the permitting process for DIVISION's new park entrance and ranger station. Until CITY's construction of the New Access Road and DIVISION's construction of the new park entrance and ranger station are both completed and open for public use, CITY shall not interrupt, block, or otherwise impede safe public access to the park along the Existing Access Road to the existing park entrance.

8. CITY will grant DIVISION a short-term easement for ingress and egress over CITY's property in order to accommodate only those activities reasonably related to DIVISION's construction of the new park entrance and ranger station.

9. Upon CITY's completion of the New Access Road, CITY's opening of the New Access Road to the public, and DIVISION's completion of DIVISION's new park entrance and ranger station, CITY shall grant DIVISION an easement for ingress and egress over the New Access Road subject to terms and conditions mutually agreeable to DIVISION and CITY.

10. Only after DIVISION has completed construction of the new park entrance and ranger station, and CITY has granted DIVISION an easement for ingress and egress over the New Access Road, shall DIVISION vacate, release, and relinquish that portion of the Existing Access Easement which encumbers CITY's property.

11. Both parties agree to coordinate procurement and contracting of construction services where appropriate to reduce mobilization and construction costs related to this project.

12. CITY and DIVISION are subdivisions as defined in section 768.28, Florida Statutes, and each party agrees to be fully responsible for the respective acts and omissions of its agent or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any manner arising out of this Agreement or any other contract.

13. AMENDMENTS: No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this MOU and executed by DIVISION and CITY.

14. ENTIRE AGREEMENT: This MOU incorporates, includes and supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this MOU that are not contained in this MOU. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms and conditions contained herein shall be effective unless contained in a written document in accordance with Paragraph 11 above.

14. ASSIGNMENT: This MOU is personal to DIVISION and CITY and may not be transferred or assigned by either party without the prior written approval of the other party.

16. TRIPLICATE ORIGINALS: This MOU is executed in triplicate originals each of which for all purposes shall be considered an original.

17. TERMINATION: In the event either party fails or refuses to comply with the provisions and conditions herein set forth or in the event either party violates any of the provisions and conditions herein, the other party, shall give notice that curative action must be completed within thirty (30) days. In the event that the matter is not resolved within the thirty (30) day curative period, the party giving notice may elect to terminate this MOU by means of a letter of termination. In the event that this MOU is terminated by either party, all rights inuring to the other party or its successors shall cease upon the effective date of the letter of termination.

18. NOTICE: All notices given under this MOU shall be in writing and shall be served by certified mail to the last address of the party to whom notice is to be given, as designated by such party in writing. DIVISION and CITY hereby designate their address as follows:

CITY: City of Key West, Florida
P.O. 1409
Key West, FL 33041
Attention: City Manager

GRANTOR: State of Florida Department of Environmental Protection
Division of Recreation and Parks

Office of Park Planning

3900 Commonwealth Boulevard

Mail Station 525

Attention: Lewis Scruggs, Environmental Administrator

19. PARTIAL INVALIDITY: If any term, covenant, condition or provision of this MOU shall be ruled by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

20. The State of Florida's and DIVISION's performance and obligation to pay under this MOU (contract) is contingent upon an annual appropriation by the Legislature.

The parties have caused this MOU to be executed on the day and year first above written.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, DIVISION OF
RECREATION AND PARKS

By: _____
Lewis P. Scruggs, Environmental Administrator
Office of Park Planning

CITY OF KEY WEST, FLORIDA
a municipal corporation

By: _____
Craig Cates, Mayor

Consented to by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida on
this _____ day of _____, 2015.

_____(SEAL)
Cheryl McCall, Chief
Bureau of Public Land Administration,
Division of State Lands,
State of Florida Department of Environmental
Protection, as agent and on behalf of the Board of
Trustees of the Internal Improvement Trust
Fund of the State of Florida

Approved for Form and Legality

DEP Attorney