

**AMENDMENT
TO
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH
THE CITY OF KEY WEST, FLORIDA
DATED FEBRUARY 22, 2011**

THIS AMENDMENT, made and entered into this ___ day of _____, by and between the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida (the "Department"), and the CITY OF KEY WEST, a municipal corporation of the State of Florida (the "City") (each, a "Party" and collectively, the "Parties").

RECITALS:

WHEREAS, the Department, under Department Contracts T-6060 and T-6232, installed trees along S.R. 5/North Roosevelt Boulevard from Eisenhower Drive (MP 1.337) to SR-A1A/South Roosevelt (MP 3.927) in Monroe County, Florida; and

WHEREAS, on February 22, 2011, the Department and the City entered into a Maintenance Memorandum of Agreement ("MMOA") wherein and the City agreed to perpetually maintain the trees and tree grates; and

WHEREAS, the Parties now desire to add four (4) additional palm trees under FM _____ (Contract No. _____) and amend certain terms of the MMOA; and

WHEREAS, the City, by Resolution No. _____, dated _____, attached hereto as Exhibit "A", and made a part hereof, desires to enter into this Amendment and authorizes its officers to do so.

NOW, THEREFORE, in consideration of the mutual benefits set forth herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. The recitals to this Amendment are true and correct and are hereby incorporated herein by reference and made a part hereof.
2. The Department will install four (4) additional palm trees in the location shown in Exhibit "B", attached hereto and made a part hereof, for which the City shall be responsible for maintaining in perpetuity in accordance with the terms and conditions of the MMOA.

3. All references to “tree grates” in the MMOA are hereby deleted and replaced with “tree grates and bonded aggregate surfacing.”
4. The following language is added to Section 5 of the MMOA:
 - c. The City shall perform routine and regular inspections of the bonded aggregate surfaces to ensure that the surface is fully functional; identifying damage and/or malfunctions in the surfaces; and repairing and/or replacing damaged bonded aggregate surfaces to ensure surfaces are maintained in accordance with all applicable Department guidelines, standards, and all applicable American with Disabilities Act (ADA) requirements, as amended from time to time.
 - d. The City shall conduct annual condition surveys of the bonded aggregate surfaces for gaps, settlement, drop-offs and other deficiencies described in this Agreement for the life of the bonded aggregate. The City shall ensure and document in this survey that the surface friction of the bonded aggregate surface meets or exceeds the surface friction of the existing concrete sidewalk areas.
 - e. Gaps within the bonded aggregate surfaces shall not exceed a quarter (1/4) of an inch. Gaps at the interface (perimeter) between the bonded aggregate surfaces and the adjacent concrete sidewalk(s) shall not exceed a quarter (1/4) of an inch. This requirement also applies to adjacent areas of existing concrete sidewalk(s) that have been impacted by the trees planted within the bonded aggregate surfaces.
 - f. Differential settlement within the bonded aggregate surfaces shall not exceed a quarter (1/4) of an inch in depth. Differential settlement at the interface (perimeter) between the bonded aggregate surfaces and the adjacent concrete sidewalk(s) shall not exceed a quarter (1/4) of an inch in depth. This requirement also applies to adjacent areas of existing concrete sidewalk(s) that have been impacted by the trees planted within the bonded aggregate surfaces.
 - g. When remedial action is required in accordance with the above requirements, the City at its own expense shall complete all necessary repairs within ninety (90) days of the date the deficiency is identified.
5. Except as modified in this Amendment, all other terms and conditions of the MMOA remain unchanged and are hereby confirmed and ratified by the Department and the City. Where the terms of this Amendment conflict with the definitions, provisions or terms of the MMOA, this Amendment shall control.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Amendment,
by the duly authorized signatory of each Party.

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: _____

Legal review:

Name: _____

By: _____

Title: _____

Attest:

By: _____

Executive Secretary

CITY OF KEY WEST

By: _____

Legal review:

Name: _____

By: _____

Title: _____

Attest:

By: _____

Keri O'Brien, City Clerk