STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

625-010-10 ROADWAY DESIGN OGC - 08/17

COMMUNITY AESTHETIC FEATURE AGREEMENT

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writing executed by both Parties to this Agreement.

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Stat	e Road/Local Road	SK5	Section No		CAF	1 NO		
("Ag	This Community Ae veen the State of Florida jency"). The Departmer "Parties."	a, Departme		"Department") and			
			RECI	TALS				
A.	The Agency has reque Identification Marker] clocated on State Road 4000 Overseas HW	ommunity a Local Road	esthetic feature on the	at certain righ	-	d by th	e Depar	tment which is
B.	The Department agree public, result in positive			-	-			
C.	The Parties agree to the Agreement.	ne installatio		•	subject to the	terms a	and cond	itions in this
			AGREI	EMENT				
	1. <u>TERM.</u> Te") and continue through ier date as provided in the	Oct. 1 2045		d as the lifesp	oan of the Proj	ect, un	less term	ninated at an

2. PROJECT DESCRIPTION. The Project is a [CHOOSE ONE: ☐ Public Art, ☑ Local Identification Marker], as more fully described in the plans in Exhibit "A", attached and incorporated in this Agreement.

one hundred eighty (180) days of the Effective Date of this Agreement, the Department may immediately terminate this Agreement. This Agreement may only be renewed for a term no longer than the original term of this Agreement upon a

3. FUNDING OF THE PROJECT. The Agency has agreed by resolution to approve the Project and to fund all costs for the design, installation, and maintenance of the Project, and such resolution is attached and incorporated in this Agreement as Exhibit "D". The Department shall not be responsible for any costs associated with the Project. All improvements funded, constructed, and installed by the Agency shall remain the Agency's property. However, this permissive use of the Department's right-of-way where the Project is located does not vest any property right, title, or interest in or to the Agency for the Department's right-of-way.

4. DESIGN AND CONSTRUCTION STANDARDS AND REQUIRED APPROVALS.

a. The Agency is responsible for the design, construction, and maintenance of the Project in accordance with all applicable federal, state and local statutes, rules and regulations, including the Department standards and specifications. A professional engineer, registered in Florida, shall provide the certification that all design and construction for the Project meets the minimum construction standards established by the Department and applicable Florida Building Code construction standards. The Agency shall submit all plans or related construction documents, cost estimates, project schedule, and applicable third party agreements to the Department for review and approval prior to installation of the Project. The Agency is responsible for the preparation of all design plans for the Project, suitable for reproduction on 11 inch by 17 inch sheets, together with a complete set of specifications covering all construction requirements for the Project. A copy of the design plans shall be provided to the Department's District Design Engineer, located at _______.

The Department will review the plans for conformance to the Department's requirements and feasibility. The Department review shall not be considered an adoption of the plans nor a substitution for the engineer's responsibility for the plans. By review of the plans, the Department signifies only that such plans and improvements satisfies the Department's requirements, and the Department expressly

disclaims all other representations and warranties in connection with the plans, including, but not limited to the integrity, suitability, or fitness for the intended purpose or whether the improvements are constructed in accordance with the plans. The Department's review of the plans does not relieve the Agency, its consultants or contractors of any professional or other liability for the plans. All changes required by the Department shall be made by the Agency and final corrected plans shall be provided to the Department within thirty (30) days.

- b. The Agency shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility. Section 337.403, Florida Statutes, shall determine whether the utility bears the costs of utility work. The Agency shall bear the costs of utility work not required to be borne by the utility by Section 337.403, Florida Statutes.
- c. The Agency shall be responsible for monitoring construction operations and the maintenance of traffic ("MOT") throughout the course of the Project in accordance with the latest edition of FDOT Standard Specifications, Section 102. The Agency is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of FDOT Design Standards, Index 600 series. Any MOT plan developed by the Agency that deviates from FDOT Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.
- d. The Agency is responsible for obtaining all permits that may be required by any federal, state, or local agency.
- e. Prior to commencing the Project, the Agency shall request a Notice to Proceed from the Department's Construction Project Manager, <u>Eric Augst</u>, at (305) 809 3964 or from an appointed designee.
- f. The Agency is authorized, subject to the conditions in this Agreement, to enter Department's right-of-way to install the Project (see attached Exhibit "B" Special Provisions). The Parties agree that this Agreement creates a permissive use only. Neither the granting of permission to use Department's right-of-way nor the placing of facilities upon Department's right-of-way shall operate to create or vest any property right in or to the Agency. The Agency shall not acquire any right, title, interest, or estate in the Department's right-of-way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Agency's use, occupancy or possession of the Department's right-of-way.
- g. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction and throughout the maintenance term of the Project. If the Department determines that a condition exists which threatens the public's safety, the Department may, at its discretion, cause the Project to cease and/or immediately have any potential hazards removed from its right-of-way at the sole cost, expense, and effort of the Agency. Should the Agency fail to remove the safety hazard within thirty (30) days, the Department may remove the safety hazard at the Agency's sole cost, expense, and effort.
- h. The Agency shall be responsible to ensure that construction of the Project is performed in accordance with the approved construction documents, and that it will meet all applicable federal, state, and local standards and that the work is performed in accord with the Terms and Conditions contained in Exhibit "C".
- i. The Agency shall notify the Department a minimum of forty eight (48) hours before beginning the Project within the Department's right-of-way. The Agency shall notify the Department should installation be suspended for more than five (5) working days.
- j. Upon completion of the Project, the Agency shall notify the Department in writing of the completion of the installation of the Project. For all design work that originally required certification by a Professional Engineer, the notification shall contain a Responsible Professional's Certification of Compliance, signed and sealed by the responsible professional for the project, the form of which is attached to this

Agreement as Exhibit "E". The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation. The Agency and its contractors shall remove their presence, including, but not limited to, all of the Agency or its contractor's/ subcontractor's/ consultant's/ subconsultant's property, machinery, and equipment from the Department's right-of-way and shall restore those portions of the Department's right-of-way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project, at Agency's sole cost and expense.

- k. If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification to the Agency. The Agency shall have thirty (30) days from the date of receipt of the Department's written notice to complete the Project and provide the Department with written notice of the same ("Notice of Completion"). If the Agency fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department may: 1) provide the Agency with written authorization granting additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Agency's sole cost and expense, without Department liability to the Agency for any resulting loss or damage to property, including but not limited to machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice within thirty (30) days of the date of the invoice.
- I. Upon completion of the Project, the Agency shall be responsible for the perpetual maintenance of the Project, including all costs. The maintenance schedule shall include initial defect, instantaneous damage and deterioration components. The initial defect maintenance inspection should be conducted, and any required repairs performed during the construction phase. The instantaneous damage maintenance inspection should be conducted sixty (60) to ninety (90) days after placement and is intended to identity short term damage that does not develop over longer time periods. The deterioration maintenance inspection shall be conducted on regular, longer term intervals and is intended to identify defects and damages that occur by naturally occurring chemical, physical or biological actions, repeated actions such as those causing fatigues, normal or severe environmental influences, abuse or damage due to other causes. Deterioration maintenance shall include, but is not limited to, the following services:

Frequency: 2-4 times per year (or after storm event)

Task: Power wash & gentle scrub w/ mild soap and water to remove bird droppings, moss, graffiti, Etc. & inspect for cracks or erosion

m.	The Agency shall, within thirty (30) days after expiration or to Project and restore the right-of-way to its original condition pits obligation to remove the Project and restore the right-of-way to its original condition pits obligation to remove the Project and restore the right-of-way to deposit, letter of credit, or performance bond in the amount of restoration deposit, letter of credit, or bond shall be maintain of this Agreement and evidence of the deposit, letter of credit pepartment on an annual basis. A waiver of the deposit, letter with approval from the District Maintenance Engineer for the	rior to the Project. vay by providing a of \$ 2000 ed by the Agency it, or bond shall be ter of credit, or bor	The Agency shall secure removal and restoration The removal and at all times during the term submitted to the addrequirement is permitted.
	with approval from the District Maintenance Engineer for tho restoration/removal costs less than or equal to \$2000.00.	se installations wit	h estimated
	District Maintenance Engineer,	I	Date:

n. The Department reserves its right to cause the Agency to relocate or remove the Project, in the Department's sole discretion, and at the Agency's sole cost.

5. <u>INDEMNITY AND INSURANCE.</u>

- a. The Agency agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement:
 - "The contractor/ subcontractor/ consultant/ subconsultant shall indemnify, defend, save and hold harmless the State of Florida, Department of Transportation and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor/ subcontractor/ consultant/ subconsultant, its officers, agents or employees."
- b. The Agency shall carry or cause its contractor/ subcontractor/ consultant/ subconsultant to carry and keep in force during the period of this Agreement a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$1,000,000 per person and \$5,000,000 each occurrence, and property damage insurance of at least \$100,000 each occurrence, for the services to be rendered in accordance with this Agreement. Additionally, the Agency or its contractor/ subcontractor/ consultant/subconsultant shall cause the Department to be an additional insured party on the policy or policies, and shall provide the Department with certificates documenting that the required insurance coverage is in place and effective. In addition to any other forms of insurance or bonds required under the terms of the Agreement, when it includes construction within the limits of a railroad right-of-way, the Agency must provide or cause its contractor to obtain the appropriate rail permits and provide insurance coverage in accordance with Section 7-13 of the Department's current Standard Specifications for Road and Bridge Construction, as amended.
- c. The Agency shall also carry or cause its contractor/ subcontractor/ consultant/ subconsultant to carry and keep in force Worker's Compensation insurance as required by the State of Florida under the Worker's Compensation Law.
- **6.** <u>NOTICES.</u> All notices pertaining to this Agreement are in effect upon receipt by either Party, shall be in writing, and shall be transmitted either by personal hand delivery; United States Post Office, return receipt requested; or, overnight express mail delivery. E-mail and facsimile may be used if the notice is also transmitted by one of the preceding forms of delivery. The addresses set forth below for the respective parties shall be the places where notices shall be sent, unless prior written notice of change of address is given.

STATE O	F FLORIDA, DEPARTMENT OF TRANSPORTATION DISTRICT PROGRAM MANAGER
Phon	e:
	
	COUNTY [OR CITY], FLORIDA
Phon	e:
Fax:	

7. <u>TERMINATION OF AGREEMENT.</u> The Department may terminate this Agreement upon no less than thirty (30) days notice in writing delivered by certified mail, return receipt requested, or in person with proof of delivery. The Agency waives any equitable claims or defenses in connection with termination of the Agreement by the Department pursuant to this Paragraph 7.

8. <u>LEGAL REQUIREMENTS.</u>

- a. This Agreement is executed and entered into in the State of Florida and will be construed, performed, and enforced in all respects in strict conformity with local, state, and federal laws, rules, and regulations. Any and all litigation arising under this Agreement shall be brought in a state court of appropriate jurisdiction in Leon County, Florida, applying Florida law.
- b. 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.
- c. The Agency 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 Agency in conjunction with this Agreement. Failure by the Agency to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department.
- d. The Agency and the Department agree that the Agency, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- e. The Agency shall not cause any liens or encumbrances to attach to any portion of the Department's right-of-way.
- 9. PUBLIC ENTITY CRIME. The Agency affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes. 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 thirty six (36) months from the date of being placed on the convicted vendor list. The Agency agrees that it shall not violate Section 287.133(2)(a), Florida Statutes, and further acknowledges and agrees that any conviction during the term of this Agreement may result in the termination of this Agreement.
- **10. UNAUTHORIZED ALIENS.** The Department will consider the employment of unauthorized aliens, by any contractor or subcontractor, as described by Section 274A(e) of the Immigration and Nationalization Act, cause for termination of this Agreement.
- 11. <u>NON-DISCRIMINATION.</u> The Agency will not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. The Agency shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. The Agency shall insert similar provisions in all contracts and subcontracts for services by this Agreement.
- 12. <u>DISCRIMINATORY VENDOR LIST.</u> The Agency affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes. An entity or affiliate who has been placed on the discriminatory vendor list 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. The Agency further agrees

that it shall not violate Section 287.134(2)(a), Florida Statutes, and acknowledges and agrees that placement on the list during the term of this Agreement may result in the termination of this Agreement.

- **13.** ATTORNEY FEES. Each Party shall bear its own attorney's fees and costs.
- **14.** There shall be no reimbursement for travel expenses under this Agreement.
- 15. PRESERVATION OF REMEDIES. No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default by either Party under this Agreement, will impair any such right, power or remedy of either party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default.
- **16. MODIFICATION.** This Agreement may not be modified unless done so in a writing executed by both Parties to this Agreement.
- 17. NON-ASSIGNMENT. The Agency may not assign, sublicense, or otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the Department. Any assignment, sublicense, or transfer occurring without the required prior written approval of the Department will be null and void. The Department will at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida, upon giving prior written notice to the Agency. In the event that the Department approves transfer of the Agency's obligations, the Agency remains responsible for all work performed and all expenses incurred in connection with this Agreement.
- **18. BINDING AGREEMENT.** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations, or remedies upon any other person or entity except as expressly provided for in this Agreement.
- **19. INTERPRETATION.** No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.
- 20. ENTIRE AGREEMENT. This Agreement, together with the attached exhibits and documents made a part by reference, embodies the entire agreement of the Parties. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement. This Agreement supersedes all previous communication, representation, or agreement, either verbal or written, between the Parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of the Agency and the authorized officer of the Department or his/her delegate.
 - 21. **DUPLICATE ORIGINALS.** This Agreement may be executed in duplicate originals.

The remainder of this page is intentionally left blank.

Section No.	CAFA No.
AGENCY	
City of Key West	
1300 White Street, Key West, FL 33040	
By:	
Print Name: Brian L. Barroso	
Title: City Manager	
As approved by the Council, Board, or	
Commission on:	
Attest:	
Legal Review:	
City or County Attorney	
DEPARTMENT	
State of Florida, Department of Transportation	
Ву:	
Print Name:	
Title:	
Date:	
Legal Review:	

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	EXHIBIT "A"	
	PROJECT DESCRIPTION	
I.	SCOPE OF SERVICES	
[Provide a desc	cription of the improvements proposed within the Department's right-of-way]	see Submittal/Approval Letter
II.	PROJECT PLANS	
	authorized to install the Project in accordance with the attached plans prepare thitect and dated $\frac{07.03.2025}{}$. Any revisions to these plans must be approved	

Section No. _____ CAFA No. ____

Section No.	CAFA No	
EXHIBIT "B"		

None beyond those listed in the main agreement. See Project Plans For Detail.

SPECIAL PROVISIONS

Section No.	CAFA No.	
EXHIBIT "C"		

TERMS AND CONDITIONS FOR INSTALLATION OF THE PROJECT

All Terms and Conditions for installation will follow FDOT guidelines, including MOT and safety standards.

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Section No.	CAFA No.
EXHIBIT "D"	
AGENCY RESOLUTION	

See Attached.

EXHIBIT "E"		
NOTICE OF COMPLETION AND RESPONSIBLE PROFESSIONAL'S CERTIFICATE OF COMPLIANCE		
NOTICE OF COMPLETION		
COMMUNITY AESTHETIC FEATURE AGREEMENT Between THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION and City of Key West		
PROJECT DESCRIPTION: Welcome & Thank You Signs		
In accordance with the Terms and Conditions of the Community Aesthetic Feature Agreement, the undersigned provides notification that the work authorized by this Agreement is complete as of Oct. 1 , 20 25. By:		
RESPONSIBLE PROFESSIONAL'S CERTIFICATION OF COMPLIANCE		
In accordance with the Terms and Conditions of the Community Aesthetic Feature Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification, the Agency shall furnish the Department a set of "as-built" plans certified by the Engineer of Record.		
Ву:		
SEAL: Name:		
Date:		

Section No. CAFA No.