

OFF-SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT

Between

**STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
("DEPARTMENT")**

and

**City of Key West, a Municipality
("City")**

THIS AGREEMENT is made and entered into as of _____, 20__, by and through the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida (the "Department"), and the CITY OF KEY WEST, a municipality of the State of Florida (the "City"), collectively referred to as the "Parties."

RECITALS

A. Upon approval of the Department's Work Program by the State of Florida Legislature, and adoption by the Department Secretary, the Department shall complete the various projects included in the Department Work Program; and

B. Included in the Department Work Program is Project Number FM# 454101-1-52-01, SR A1A/North Roosevelt Boulevard at Eisenhower Drive/Jose Marti Drive Flooding Mitigation Project (the "Project"). A portion of the Project includes work on Eisenhower Drive and on Jose Marti Drive, in the City of Key West, Florida, a road not on the State Highway System; and

C. The City is the holder of ownership rights to Eisenhower Drive and Jose Marti Drive, a road not on the State Highway System; and

D. The Parties agree that it is in the best interest of each party for the Department to undertake and to complete all aspects of the Project, including but not limited to, the design, construction, construction inspection, maintenance during construction, utilities, easements, and other associated tasks; and

E. The Parties further agree that it is in the best interest of each party to enter into this Agreement to allow the Department to construct and complete the Project.

TERMS

NOW THEREFORE, in consideration of the premises, the mutual covenants and other valuable considerations contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The recitals in this Agreement are true and correct, and incorporated into and made a part hereof.
2. The Parties agree that the Department intends to undertake and complete Project Number FM# 454101-1-52-01, which Project generally includes the following:
 - Raising of the roadway pavement a minimum of 6 inches
 - Localized pavement reconstruction along Tuman Ave, North Roosevelt Blvd and Jose Marti Drive
 - Installing new drainage pump station system
 - Installing a new generator for the pump station system
 - Raising sea wall approximately 24 inches at Jose Marti Drive
 - Replacing traffic and pedestrian signals at the intersection
 - Reconstructing sidewalk and pedestrian curb ramps
 - Installing new signing and pavement markings
 - Installing decorative lighting

The Project shall include improvements on Eisenhower Drive (from Sta 398+20 to Sta 399+80) and on Jose Marti Drive (from Sta 800+25 to Sta 804+30) as shown in **Attachment “A”** attached hereto and made a part hereof (for purposes of this agreement, the “Off-System Project Limits”). The work within the Off-System Project Limits shall include, but may not be limited to the following (hereinafter referred to as the “Local Roadway Improvements”):

- a) Roadway milling, overbuilding, and resurfacing.
- b) Pavement marking upgrades.
- c) Ground-mounted sign installation.
- d) Installation of the stormwater pump station, electrical panel, and backup generator.
- e) Utility adjustments including valve and manhole adjustments.
- f) Light pole installation.

- g) Seawall modifications and safety railing installation.
- h) Sidewalk reconstruction.

The Project shall further include all activities associated with or arising out of the construction of the Local Roadway Improvements. In the event that the Project requires the acquisition of additional right-of-way within the Off-System Project Limits, the Department shall acquire such right-of-way in order to complete the Project. The City shall cooperate with and shall support the Department's work efforts in these regards.

The Department will design and construct the Project in accordance with all applicable federal and state laws and regulations and in accordance with Department design and construction standards as set forth in the Department's guidelines, standards, and procedures. The Department shall have final decision-making authority with respect to the design, the design review process, and construction of the Local Roadway Improvements, and the relocation of any utilities that the Department may determine to be required, provided that the Department coordinate with the City prior to any decisions being finalized that would impact City-owned property.

3. The Parties acknowledge and agree that the City will review the Project Design Plans ("Project Design Plans") and shall submit its comments, if any, via Electronic Reviewer Comments ("ERC"). The Department shall provide the City access to the ERC, and the Department shall use the ERC to submit the Project Design Plans for the City to review. When the Department places the Project Design Plans in the ERC, the Department will designate a Comment Due Date and a Response Due Date. The City shall submit its comments with regards to the Project Design Plans on or before the Comment Due Date, and the Department shall respond to the City's comments, if any, on or before the Response Due Date. If the City does not submit its comments by the Comment Due Date, the City will be deemed to have approved the Project Design Plans submitted by the Department. The review process for the Project Design Plans will be deemed concluded when the Department has submitted the Final Project Design Plans to the ERC, and the Comment Due Date and Response Due Date for the Final Project Design Plans have passed, and the Department has addressed all of the City's comments that were submitted through the ERC. Once the review process is concluded, the Department will construct the Project in accordance with the Final Project Design Plans submitted through the ERC. The City acknowledges and agrees that, during construction of the Local Roadway Improvements, the

Department will only utilize the services of law enforcement officers when required by the Department's Standard Specifications for Road and Bridge Construction, and no additional requirements will be imposed. No further agreements or permits shall be required for production or construction of this Project.

Major modifications of the approved Project Design Plans must be submitted to the City for review. A "Major Modification" is any modification that materially alters the kind or nature of the work depicted in the approved Project Design Plans, or that alters the integrity or maintainability of the Local Roadway Improvements, or related components. The City's review shall be within the reasonable time schedule proposed by the Department, in order to avoid delay to the Department's construction contract. In the event that any Major Modifications are required during construction, the Department shall be entitled to proceed with the modifications that are necessary to complete the construction of the Project, and shall, upon identifying the need for a Major Modification, immediately notify the City of the required changes prior to proceeding with implementation of the same. It is specifically understood and agreed that any such changes during construction shall not delay nor affect the timely construction schedule of the Project.

4. The City agrees to fully cooperate with the Department in the construction, reconstruction and relocation of utilities that are located within the City's right-of-way, within the Off-System Project Limits. The utility relocations, if any, which may be required by the Department for purposes of the Project, shall be done in accordance with the Department's guidelines, standards and procedures. However, any relocation of City utilities shall require the approval of the City and must be done to City standards. The Department shall submit the proposed utility relocation schedule to the City. Utility relocations, if any, shall be done in accordance with the provisions of Chapter 337, F. S.

Additionally, the City agrees to fully cooperate with the Department in the removal of any encroachments or permitted improvements, and in the modification of any driveway connections, located within the City's right-of-way, within the Off-System Project Limits, that are in conflict with the Project, and the City hereby authorizes the Department to take any legal action necessary to effectuate the removal of any such conflicting encroachments or permitted improvements, and to effectuate the modification of any such driveway connections. The Department shall coordinate with the City for said removals or modifications, at no cost to the City.

The City agrees to perpetually maintain the Local Roadway Improvements within the Off-System Project Limits (as shown in **Attachment “A”**), including, but not limited to, the pump station system and generator. For purposes of this Agreement, “maintain” means to perform normal maintenance operations for the preservation of the Local Roadway Improvements, including, but not limited to, roadway surfaces, shoulders, roadside structures, drainage, signing and pavement markers, lighting, and such traffic control devices as are necessary for the safe and efficient use of the Local Roadway Improvements. Notwithstanding the foregoing, the City shall have no responsibility for the maintenance, repair, or replacement of any state-owned or state-maintained roadways or associated infrastructure. Additionally, the Parties understand and agree that the Department shall transfer any permit(s) required for the construction of the Local Roadway Improvements, if any, to the City as the operational maintenance entity, and the City agrees to accept such transfer and to be fully responsible, at its sole cost and expense, for compliance with all operational and maintenance conditions of such permit(s). Notwithstanding the requirements hereof, maintenance during construction shall be the responsibility of the Department and its Contractor, as set forth in paragraph 9 of this Agreement.

5. The Parties acknowledge and agree that the City’s right-of-way and the improvements and structures located within the City’s right-of-way, are and will remain under the ownership of the City, and that the Department will not have any ownership interest in the right-of-way, improvements, or structures located thereon or installed therein pursuant to this Project.
6. The Department shall require its construction Contractor to maintain, at all times during construction, Commercial General Liability insurance providing continuous coverage for all work or operations performed under the construction contract. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy, or such other minimum insurance coverage that may be required by the Department for the construction of the Project, in accordance with the Department’s Standards and Specifications for Road and Bridge Construction. The Department shall further cause its Contractor to name the City and the Department as additional insured Parties on the afore-stated policies, and to provide evidence of Workers’ Compensation Insurance in accordance with the laws of the State

of Florida and in amounts sufficient to secure the benefit of the Florida Workers' Compensation law for all employees.

7. The Department shall notify the City at least one (1) week before beginning construction within the City's right-of-way. Such notification may be provided via email to the Engineering Department and the Community Service Department and the notice requirements set forth in paragraph 20 shall not apply to this paragraph.

The Department agrees that the City may, at reasonable times during the construction of the Local Roadway Improvements, inspect the Contractor's construction site and perform such tests as are reasonably necessary to determine whether the goods or services required to be provided by the Contractor, pursuant to the Contractor's Construction Agreement with the Department, conform to the terms of said Construction Agreement. Upon request by the City, the Department shall coordinate with its Contractor to provide access to the City for performance of said inspections. During the construction work related to the Project, the City shall fully cooperate with any such work being performed by the Department and the Department's contractors. The City shall not commit nor permit any act which may delay or interfere with the performance of any such work by the Department or the Department's contractors, unless the Department agrees in writing that the City may commit or permit said act.

8. Maintenance during construction within the Off-System Project Limits, commencing as of the first date of construction, shall be the responsibility of the Department's Contractor. Notwithstanding, neither the Department nor its Contractor shall be responsible for mowing or removing litter during construction of the Project. After completion of construction, the City shall assume all maintenance responsibilities for the Local Roadway Improvements. The City shall not assume maintenance responsibilities of any state-owned property.

Upon completion of construction, the Department shall invite the City for the Final Inspection of the work within the Off-System Project Limits, and will incorporate legitimate City concerns that are within the scope of the contract into the final Project punch list to be corrected by the Contractor. Notice for Final Inspection shall be delivered via email to the City at least 30 days prior to the Final Inspection and the notice provision of paragraph 20 shall not be applicable. If the City does not attend the Final Inspection, the Department will proceed to conduct the Final Inspection, finalize the Project punch list, and issue a Notice of Final Acceptance to its Contractor. The Final Inspection shall be performed and the Notice of Final Acceptance shall be

issued in accordance with the Department's Standard Specifications for Road and Bridge Construction and the Construction Project Administration Manual (CPAM).

Upon issuance of the Notice of Final Acceptance to the Contractor, the Department shall provide a copy of said notice to the City. As of the date of the Notice of Final Acceptance, the City shall be immediately responsible for the maintenance of the Local Roadway Improvements including, but not limited to, the pump station system and the generator, and shall further accept the Local Roadway Improvements. The City shall not assume maintenance responsibilities of any state-owned property. The Department, however, shall have the right to assure completion of any punch list by the Contractor. Notwithstanding the issuance of the Notice of Final Acceptance, the City may notify the Department Project Manager of deficiencies in the Local Roadway Improvements that may be covered by the warranty provisions in the contract between the Department and its Contractor. The warranty provisions of the contract between the Department and its Contractor shall be provided to the City as soon as the contract is executed so that the City is made aware of the warranties provided in the contract. The Department shall enforce the warranty if remedial action is required by the warranty provisions, as determined by the Department.

Upon completion of all work related to construction of the Project, the Department will be required to submit to the City final as-built plans for the Local Roadway Improvements and an engineering certification that construction was completed in accordance with the plans. Additionally, the Department shall vacate those portions of the City's right-of-way used to construct the Local Roadway Improvements, and shall remove the Department's property, machinery, and equipment from said portions of the City's right-of-way. Furthermore, the Department shall restore those portions of the City right-of-way disturbed by Project construction activities to the same or better condition than that which existed immediately prior to commencement of the construction of the Project.

9. Upon submission by the Department of a deed, with accompanying sketch and legal description, for the transfer to the City of any additional right-of-way acquired by the Department within the Off-System Project Limits, the City shall forthwith submit the same to its governing board or commission for approval and acceptance of such additional right-of-way.
10. This Agreement shall become effective as of the date both parties hereto have executed the Agreement. Prior to commencement of construction, the Department may in its sole discretion

terminate this Agreement if it determines that it is in the best interest of the public to do so. If the Department elects to terminate this Agreement, the Department shall deliver formal notice of termination to the City, as set forth in paragraph 20 of this Agreement.

11. In the event that any election, referendum, approval, ratification, notice or other proceeding, or authorization is required to carry out the Project, the City agrees to expeditiously initiate and consummate, as provided by law, all actions necessary with respect to any such matters, with time being of the essence.
12. The Department may utilize federal funds to design and construct the Project. In the event that the Project shall be constructed using federal funds, all costs incurred must be in conformity with applicable federal and state laws, regulations, and policies and procedures.
13. The Department's performance and obligations under this Agreement are contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred.
14. In the event that this Agreement is in excess of \$25,000, and the Agreement has a term for a period of more than one year, the provisions of Section §339.135(6)(a), Florida Statutes, are hereby incorporated into this Agreement and are as follows:
"The department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during any such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."
15. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department's or the City's sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

16. 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.
17. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.
18. No term or provision of this Agreement shall be interpreted for or against any party because that party's legal counsel drafted the provision.
19. In accordance with Executive Order No. 11-02 the Department's Vendor/Contractor(s) shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of;
 - i. all persons employed by the Vendor/Contractor during the term of the Contract to perform employment duties within Florida; and
 - ii. all persons, including subcontractors, assigned by the Vendor/Contractor to perform work pursuant to the contract with the Department.
20. All notices required pursuant to the terms hereof, shall be in writing and shall be sent by first class United States Mail, facsimile transmission, hand delivery or express mail. 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. Unless otherwise notified in writing, notices shall be sent to the following:

To the City:

Doug Bradshaw
Director of Engineering
City of Key West
1300 White Street
Key West, Florida 33040

To the Department:

Rudy Garcia
Director of Transportation Operations
State of Florida, Department of Transportation
1000 N.W. 111th Avenue

Miami, Florida 33172

21. The City, by and through Resolution No. _____, attached hereto as Attachment “B”, has duly authorized the execution and delivery of this Agreement and agrees to be bound by the terms hereunder, and has further authorized the Mayor or his designee to take all necessary steps to effectuate the terms of this Agreement.

[Remainder is intentionally left blank. Signatures follow.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates exhibited, by the signatures below.

**STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION**

By:

Name: _____
Title: Director of Transportation Operations

Date:

Attest:

Name: _____
Title: _____

Department Legal Review:

By:

Name: _____

CITY OF KEY WEST, FLORIDA

By:

Name: _____
Title: _____

Date:

Attest:

Name: _____
Title: _____

Approved as to form and legality:

By:

Name: _____