

**FLORIDA DEPARTMENT OF TRANSPORTATION
LANDSCAPE AND TREE GRATES
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
CITY OF KEY WEST**

This **AGREEMENT**, entered into this ____ day of _____, 20__, by and between the **FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **CITY OF KEY WEST**, a municipal corporation of and existing under the Laws of the State of Florida, hereinafter called the **CITY**.

RECITALS:

WHEREAS, the **DEPARTMENT** has jurisdiction over **State Road (S.R.) 5/North Roosevelt Boulevard from Eisenhower Drive (MP 1.337) to S.R. 1A1A/South Roosevelt Avenue (MP 3.927)**, within the limits of the **CITY**, as part of the State of Florida Highway System; and

WHEREAS, the **DEPARTMENT** has drafted design plans for beautification improvements on S.R. 5/North Roosevelt Boulevard in accordance with **DEPARTMENT** Contracts # T-6060 and T-6232, the limits of which, hereinafter **PROJECT LIMITS**, are described in the attached Exhibit 'A', which by reference hereto shall become a part hereof; and

WHEREAS, the parties hereto mutually recognize the need for entering into an **AGREEMENT** designating and setting forth the responsibilities of each party; and

WHEREAS, the **CITY**, by Resolution No. _____, dated _____, attached hereto as Exhibit 'B', which by reference hereto shall become a part hereof, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. DEPARTMENT RESPONSIBILITIES

a. Assignment

The **DEPARTMENT** and the **CITY** agree that, by executing this **AGREEMENT**, all maintenance responsibilities pertaining to the landscape and tree grates within the **PROJECT LIMITS** will be assigned to the **CITY** in perpetuity.

2. CITY'S MAINTENANCE RESPONSIBILITIES

The **CITY** shall be solely responsible for the maintenance and preservation of the landscape and tree grates within the **PROJECT LIMITS**.

- a. Mow, cut and/or trim and edge the grass or turf in accordance with the latest edition of the State of Florida "Guide for Roadside Mowing" and the latest edition of the "Maintenance Rating Program".
- b. Properly prune all plants, which include trees, shrubs and ground covers, in accordance with the latest edition of the "Maintenance Rating Program" and the International Society of Arboriculture. Prune, trim and/or edge such parts thereof which may present a visual or other safety hazard for those using or intending to use the right of way including growth around street lights and traffic signals.
- c. Keep plants as free as possible from disease and harmful insects. Remove and properly dispose of dead, diseased or otherwise deteriorated plants in their entirety, and replacing those that fall below original project standards. All replacement material shall be replaced, at minimum, by plants of the same size and grade as specified in the **PLANS AND SPECIFICATIONS**, incorporated herein by reference.
- d. Properly mulch all plant beds and tree rings.
- e. Properly remove and dispose of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials.
- f. Water and fertilize all plants properly.
- g. Remove and properly dispose of litter from roadside and median strips.
- h. Ensure tree grates are fully functional for pedestrian use by performing routine and regular observations of same, identifying damage and/or malfunctions and repairing and/or replacing broken or damaged decorative pavement and tree grates to ensure pedestrian access and tree health is maintained.
- i. Remove and dispose of all trimmings, roots, branches, litter, etc., resulting from the activities described by 2.A through 2.I inclusively as described above.

The above-named functions to be performed by the **CITY** may be subject to periodic inspections by the **DEPARTMENT** at its sole

discretion. Such inspection findings will be shared with the **CITY** and shall be the basis of all decisions regarding reworking or agreement termination. The **CITY** shall not change or deviate from said plans without written approval of the **DEPARTMENT**.

3. MAINTENANCE DEFICIENCIES

If, at any time while the terms of this **AGREEMENT** are in effect, it shall come to the attention of the **DEPARTMENT** that the **CITY's** responsibility as established herein or a part thereof is not being properly accomplished pursuant to the terms of this **AGREEMENT**, the **DEPARTMENT** may, at its option, issue a written notice, in care of the **CITY MANAGER**, to place the **CITY** on notice regarding its maintenance deficiencies. Thereafter, the **CITY** shall have a period of thirty (30) calendar days within which to correct the cited deficiency or deficiencies. If said deficiencies are not corrected within this time period, the **DEPARTMENT** may, at its option, proceed as follows:

- a. Maintain the landscape and tree grates, or a part thereof, with **DEPARTMENT** or contractor's personnel and invoice the **CITY** for expenses incurred; or
- b. Terminate the Agreement in accordance with Section 6 of this Agreement and remove, by **DEPARTMENT** or contractor's personnel, all of the landscape and tree grates installed under this Agreement or any preceding agreements and charge the **CITY** the reasonable cost of such removal.

4. NOTICES

All notices, requests, demands, consents, approvals, and other communication which are required to be served or given hereunder, shall be in writing and shall be sent by registered mail or certified U.S. mail, return receipt requested, postage prepaid, addressed to the party to receive such notices as follows:

To the DEPARTMENT: Florida Department of Transportation
1000 Northwest 111 Avenue, Room 6205
Miami, Florida 33172-5800
Attention: District Maintenance Engineer

To the CITY: City of Key West
525 Angela Street
Key West, Florida 33040
Attention: City Manager

5. LANDSCAPE AND TREE GRATES

- a. It is understood between the parties hereto that the landscape and tree grates covered by this **AGREEMENT** may be removed, relocated or adjusted at any time in the future, as found necessary by the **DEPARTMENT**, in order that the adjacent state road be widened, altered or otherwise changed and maintained to meet with future criteria or planning of the **DEPARTMENT**. The **CITY** shall be given sixty (60) calendar days notice to remove said landscape/hardscape and tree grates after which time the **DEPARTMENT** may remove same.
- b. The **CITY** may construct additional landscape within the **PROJECT LIMITS** identified as a result of this document, subject to the following conditions:
 - i. Plans for any new and/or additional materials shall be subject to approval by the **DEPARTMENT**. The **CITY** shall not change or deviate from said plans without written approval by the **DEPARTMENT**.
 - ii. All landscape shall be developed and implemented in accordance with appropriate state safety and road design standards.
 - iii. The **CITY** agrees to comply with the requirements of this **AGREEMENT** with regard to any additional materials installed.

6. TERMINATION

This **AGREEMENT** is subject to termination under any one of the following conditions:

- a. By the **DEPARTMENT**, if the **CITY** fails to perform its duties under Section 2, following thirty (30) days written notice.
- b. In accordance with Section **287.058(1)(c)**, **Florida Statutes**, the **DEPARTMENT** shall reserve the right to unilaterally cancel this **AGREEMENT** if the **CITY** refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the **CITY** pertinent to this **AGREEMENT** which are subject to provisions of Chapter 119, of the Florida Statutes.
- c. Only if mutually agreed to by both parties with a six (6) month written notice.

7. TERMS

- a. The terms of this **AGREEMENT** shall only commence upon execution by all parties. This **AGREEMENT** shall continue

in perpetuity or until termination as set forth in Section 6.

- b. 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.
- c. The **DEPARTMENT's** District Secretary shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this **AGREEMENT**, the prosecution or fulfillment of the service hereunder and the character, quality, amount and value thereof; and his decision upon all claims, questions and disputes shall be final and conclusive upon the parties hereto.
- d. This **AGREEMENT** is nontransferable and nonassignable in whole or in part without the prior written consent of the **DEPARTMENT**.
- e. This **AGREEMENT**, regardless of where executed, shall be governed by and constructed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF KEY WEST:

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:**

BY: _____
CITY Mayor

BY: _____
District Secretary

ATTEST: _____ **(SEAL)**
CITY Clerk

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: _____
CITY Attorney

BY: _____
District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

Below are the limits of the landscape and tree grates to be maintained under this **AGREEMENT**.

State Road Number: 5 /North Roosevelt Boulevard
Agreement Limits: From Eisenhower Drive (MP 1.337) to SR-A1A/South
Roosevelt (MP 3.927)
County: Monroe

EXHIBIT 'B'

CITY OF KEY WEST RESOLUTION

To be herein incorporated once ratified by the CITY Board of Commissioners.