

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2015-72**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A LANDSCAPE MAINTENANCE AGREEMENT WITH FDOT FOR THE MAINTENANCE OF THE MAINTENANCE OF NEW LANDSCAPING ALONG THE US 1 CORRIDOR WITHIN THE CITY OF MARATHON PARTIALLY FUNDED THRU A GRANT FROM FDOT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Florida Department of Transportation (the “FDOT”) has jurisdiction over and maintains State Road (S.R.) 5/US-1/Overseas Highway corridor within the corporate limits of the City of Marathon (the “City”); and

**WHEREAS**, the City has requested grant funding from FDOT for the installation of landscaping within the US 1 corridor; and

**WHEREAS**, the FDOT agreed to provide funds in the amount of \$100,000.00 for the installation of said landscaping; and

**WHEREAS**, as a requirement of the funding, FDOT requires that the City maintain the landscaping as established in the maintenance agreement; and

**WHEREAS**, the parties are authorized to enter into this Agreement, and authorize its officers to do so.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The City Manager is authorized to execute the Agreement, a copy of which is attached as Exhibit “A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved. The City Manager is authorized to execute the Contract and expend budgeted funds on behalf of the City.

**Section 3.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14<sup>th</sup> DAY OF JULY, 2015.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Mayor Chris Bull**


AYES: Keating, Kelly, Senmartin, Zieg, Bull  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

  
\_\_\_\_\_  
City Attorney

**FLORIDA DEPARTMENT OF TRANSPORTATION  
LANDSCAPE AND TURF, SIGNAGE, PLAQUES, RAISED MEDIAN  
PAVERS, LANDSCAPE LIGHTING AND STREET FURNISHINGS  
MAINTENANCE MEMORANDUM OF AGREEMENT  
WITH THE  
CITY OF MARATHON**

This **AGREEMENT**, entered into on August 10<sup>th</sup>, 2015, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **CITY OF MARATHON**, a municipal corporation of the State of Florida, hereinafter called the **CITY**, and collectively referred to as the **PARTIES**.

**RECITALS:**

- A. The **DEPARTMENT** has jurisdiction over **State Road (S.R.) 5/Overseas Highway from Seven Mile Bridge (M.P 46.7) to Grassy Key (M.P 60.5)**, which is located within the limits of the **CITY**; and
- B. The **CITY**, pursuant to Contract # G-0268, has drafted design plans for beautification improvements on S.R. 5/Overseas Highway from Seven Mile Bridge to Grassy Key, the limits of which are described in the attached Exhibit 'A' (the **PROJECT LIMITS**), which by reference shall become a part of this **AGREEMENT**; and
- C. The **CITY** will install landscaping and turf, signage, plaques, raised median pavers, landscape lighting and street furnishings in accordance with the design plans for Contract # G-0268 (the "Project"); and
- D. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party with regards to the maintenance of the landscaping and turf, existing and new signage, existing and new plaques, raised median pavers, landscape lighting and street furnishings installed pursuant to the Project; and
- E. The **CITY**, by Resolution No. 2015-72, dated 7-14-2015, attached hereto as Exhibit 'B', which by reference shall

become a part of this **AGREEMENT**, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

**NOW, THEREFORE**, for and in consideration of the mutual benefits contained herein and other good and valuable consideration, the **PARTIES** covenant and agree as follows:

**1. RECITALS**

The recitals in this **AGREEMENT** are true and correct, and are incorporated herein by reference and made a part hereof.

**2. DEPARTMENT RESPONSIBILITIES**

The **PARTIES** agree that the execution of this **AGREEMENT** shall constitute an assignment of all maintenance responsibilities pertaining to the landscaping and turf, existing and new signage, existing and new plaques, raised median pavers, landscape lighting and street furnishings within the **PROJECT LIMITS** to the **CITY** in perpetuity upon the **DEPARTMENT'S** release of its contractor from further warranty work and responsibility.

**3. CITY'S MAINTENANCE RESPONSIBILITIES**

The **CITY** shall maintain the landscaping and turf, existing and new signage, existing and new plaques, raised median pavers, landscape lighting and street furnishings in accordance with all applicable **DEPARTMENT** guidelines, standards, and procedures, which shall include but shall not be limited to the Maintenance Rating Program Handbook, as may be amended from time to time. Additionally, the **CITY** shall maintain the landscape and street furnishings in accordance with the International Society of Arboriculture standards, guidelines, and procedures, as may be amended from time to time, and in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions and the manufacturer's recommendations. The **CITY'S** maintenance obligations shall include but not be limited to:

- a. Mowing, cutting and/or trimming and edging the grass and turf.
- b. Pruning all plant materials, which include trees, shrubs and ground covers, and parts thereof.

- c. Fertilizing, insecticide, pesticide, herbicide and watering will be required to maintain the current landscape and turf in a healthy and vigorous growing condition.
- d. Removing and properly disposing of dead, diseased or otherwise deteriorated plants in their entirety, and replacing those that fall below the standards set forth in the Project Plans and in the Project Specifications, incorporated herein by reference, and all applicable **DEPARTMENT** guidelines, standards and procedures, as may be amended from time to time. All replacement materials shall be in accordance with the Project Plans and the Project Specifications and Special Provisions.
- e. Mulching all plant beds and tree rings.
- f. Removing and disposing of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials.
- g. Watering and fertilizing all plants as needed to maintain the plant materials in a healthy and vigorous growing condition.
- h. Performing routine and regular observations of the street furnishing(s) to assure that are fully functional for pedestrian use; identifying damage and/or malfunctions and repairing and/or replacing broken or missing parts per manufacturer's recommendations.
- i. Performing routine and regular inspection of landscape lighting performance to ensure that the system(s) are fully functional; identifying damage and/or malfunctions; repairing or replacing broken or missing lighting equipment; and adjusting light throw to eliminate interference with visibility of motoring public.
- j. Performing routine and regular inspection of Welcome Sign(s) and Plaque(s) to ensure that they are maintained in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time and the Project

plans as approved by the **DEPARTMENT** and the **DEPARTMENT's** Aesthetic Committee. Ensure all pedestrian and motorists can use the roadway and sidewalks without being exposed to a hazardous condition; identifying damages and/or malfunctions with respect to the sign(s) and plaque(s) location, horizontal offset, height, electrical requirements (if illuminated), structural integrity and applied finishes; repairing or replacing all identified damaged component(s) and or equipment.

- k. Sweep the raised median pavers periodically to keep it free of debris and to maintain an aesthetically pleasing condition. A light pressure washing may be necessary for heavy stain removal or cleaning.
- l. Maintain and make repairs to the raised median pavers to prevent safety hazards for those using or intending to use the median.
- m. For any routine repairs or replacement due to noticeable color scarring or surface deterioration of the raised median pavers, the product authorized installer should be contacted.
- n. The **CITY** shall conduct annual condition surveys of the pavers for gaps, settlement, drop-offs, and other deficiencies for the life of the adjacent pavement.
- o. Gaps within the pavers shall not exceed a quarter (0.25) of an inch.
- p. Differential settlement within the pavers shall not exceed a quarter (0.25) of an inch in depth.
- q. Ensure that no edge drop-offs adjacent to the pavers exist greater than two inches (2") measured to the adjacent areas. Restored areas must have no greater than one inch (1") drop-off.
- r. When remedial action is required in accordance with the above requirements, the **CITY** at its own expense shall complete all necessary repairs within thirty (30) days of the date the deficiency is identified to or by the **CITY**.

- s. Paying for all water use and all costs associated therewith.
- t. Removing and disposing of litter from roadside and median strips in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.
- u. Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described by 3.a through 3.t.
- v. Maintaining a service log of all maintenance operations that sets forth the date of the maintenance activity, the location that was maintained, and the work that was performed.
- w. Submitting Lane Closure Requests to the **DEPARTMENT** when maintenance activities will require the closure of a traffic lane in the **DEPARTMENT's** right-of-way. Lane closure requests shall be submitted through the District Six Lane Closure Information System, to the **DEPARTMENT's** area Permit Manager and in accordance with the District Six Lane Closure Policy, as may be amended from time to time.

The **DEPARTMENT** may, at its sole discretion, perform periodic inspection of the landscaping and turf, existing and new signage, existing and new plaques, raised median pavers, landscape lighting and street furnishings to ensure that the **CITY** is performing its duties pursuant to this **AGREEMENT**. The Department shall share with the **CITY** its inspection findings, and may use those findings as the basis of its decisions regarding maintenance deficiencies, as set forth in Section 4 of this **AGREEMENT**. The **CITY** is responsible for obtaining copies of all applicable rules, regulations, policies, procedures, guidelines, and manuals, and the Project Specification and Special Provisions, as may be amended from time to time.

#### **4. MAINTENANCE DEFICIENCIES**

If at any time it shall come to the attention of the **DEPARTMENT** that the **CITY's** responsibilities as established herein are 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 notify the **CITY** of the maintenance deficiencies. From the date of receipt of the notice, the **CITY** shall have a period of thirty (30) calendar days, within which to correct the cited deficiency or deficiencies. Receipt is determined in accordance with Section 5 of this **AGREEMENT**.

If said deficiencies are not corrected within this time period, the **DEPARTMENT** may, at its option, proceed as follows:

- a. Maintain the landscaping and turf, existing and new signage, existing and new plaques, raised median pavers, landscape lighting and street furnishings, or a part thereof and invoice the **CITY** for expenses incurred; or
- b. Terminate this **AGREEMENT** in accordance with Section 7, remove any or all landscape and site furnishings located within the **PROJECT LIMITS**, and charge the **CITY** the reasonable cost of such removal.

#### **5. 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 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  
Attn: District Maintenance Engineer

**To the CITY:** City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
Attn: City Manager

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.

#### **6. REMOVAL, RELOCATION OR ADJUSTMENT OF THE LANDSCAPING AND TURF, EXISTING AND NEW SIGNAGE, EXISTING AND NEW PLAQUES,**



RAISED MEDIAN PAVERS, LANDSCAPE LIGHTING AND STREET FURNISHINGS

- a. The **PARTIES** agree that the landscaping and turf, existing and new signage, existing and new plaques, raised median pavers, landscape lighting and street furnishings addressed by this **AGREEMENT** may be removed, relocated or adjusted at any time in the future, at the **DEPARTMENT's** sole discretion. In the event that the **DEPARTMENT** relocates or adjusts the landscaping and turf, existing and new signage, existing and new plaques, raised median pavers, landscape lighting and street furnishings, the **CITY's** maintenance responsibilities will survive the relocation or adjustment, as long as the materials remain within the **PROJECT LIMITS**.

**7. 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 3 of this **AGREEMENT**, following the thirty (30) days written notice, as specified in Section 4 of this **AGREEMENT**.
- 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. If mutually agreed to by both parties, upon thirty (30) days advance notice. An agreement to terminate shall be valid only if made in writing and executed with the same formalities as this **AGREEMENT**.

**8. TERMS**

- a. The effective date of this **AGREEMENT** shall commence upon execution by the **PARTIES**. This **AGREEMENT** shall continue in perpetuity or until termination as set forth in

Section 7.

b. E-Verify

The **CITY** / Contractors or Vendors:

- i. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
- ii. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

The **CITY** shall insert the above clause into any contract entered into by the **CITY** with vendors or contractors hired by the **CITY** for purposes of performing its duties under this **AGREEMENT**.

- c. 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.
- d. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT**.
- e. This **AGREEMENT** shall be governed by and constructed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the **AGREEMENT**.
- f. Venue for any and all actions arising out of or in connection to the interpretation, validity, performance or breach of this **AGREEMENT** shall lie exclusively in a state court of proper jurisdiction in Leon County,

Florida.

- g. 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**.
- i. The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.
- j. No term or provision of this **AGREEMENT** shall be interpreted for or against either Party because the Party or its legal representative drafted the provision.
- k. The **DEPARTMENT** is a state agency, self-insured and subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. Nothing in this **AGREEMENT** shall be deemed or otherwise interpreted as waiving the **DEPARTMENT's** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

## **9. INDEMNIFICATION**

Subject to Section 768.28, Florida Statutes, as may be amended from time to time, the **CITY** shall promptly indemnify, defend, save and hold harmless the **DEPARTMENT**, its officers, agents, representatives and employees from any and all losses, expenses, fines, fees, taxes, assessments, penalties, costs, damages, judgments, claims, demands, liabilities, attorneys fees, (including regulatory and appellate fees), and suits of any nature or kind whatsoever caused by, arising out of, or related to the **CITY's** exercise or attempted exercise of its responsibilities as set out in this **AGREEMENT**, including but not limited to, any act, action, neglect or omission by the **CITY**, its officers, agents, employees or representatives in any way pertaining to this **AGREEMENT**, whether direct or indirect, except that neither the **CITY** nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the sole negligence of the **DEPARTMENT**.

The **CITY's** obligation to indemnify, defend and pay for the defense of the **DEPARTMENT**, or at the **DEPARTMENT's** option, to participate and associate with the **DEPARTMENT** in the defense and trial of any claim and any related settlement negotiations, shall be triggered immediately upon the **CITY's** receipt of the **DEPARTMENT's** notice of claim for indemnification. The notice of claim for indemnification shall be deemed received if the **DEPARTMENT** sends the notice in accordance with the formal notice mailing requirements set forth in Section 5 of this **AGREEMENT**. The **DEPARTMENT's** failure to notify the **CITY** of a claim shall not release the **CITY** of the above duty to defend and indemnify the **DEPARTMENT**.

The **CITY** shall pay all costs and fees related to this obligation and its enforcement by the **DEPARTMENT**. The indemnification provisions of this section shall survive termination or expiration of this **AGREEMENT**, but only with respect to those claims that arose from acts or circumstances which occurred prior to termination or expiration of this **AGREEMENT**.

The **CITY's** evaluation of liability or its inability to evaluate liability shall not excuse the **CITY's** duty to defend and indemnify the **DEPARTMENT** under the provisions of this section. Only an adjudication or judgment, after the highest appeal is exhausted, specifically finding the **DEPARTMENT** was solely negligent shall excuse performance of this provision by the **CITY**.

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

CITY OF MARATHON:

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION:

BY: Michael Houts  
CITY Manager

BY: [Signature]  
District Director of  
Transportation Operations

ATTEST: [Signature] (SEAL)  
CITY Clerk

ATTEST: [Signature]  
Executive Secretary

LEGAL REVIEW:

BY: [Signature]  
CITY Attorney

BY: [Signature]  
District Chief Counsel

# **EXHIBIT 'A'**

## **PROJECT LIMITS**

Below are the limits of the landscaping and turf, existing and new signage, existing and new plaques, raised median pavers, landscape lighting and street furnishings to be maintained under this **AGREEMENT**.

**State Road Number:** 5/Overseas Highway

**Agreement Limits:** From Seven Mile Bridge (M.P. 46.7) to  
Grassy Key (M.P. 60.5)

**County:** Monroe

***EXHIBIT 'B'***

**CITY OF MARATHON RESOLUTION**

To be herein incorporated once ratified by the CITY Council.