

RESOLUTION NO. 00-09-49

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE FLORIDA HIGHWAY BEAUTIFICATION COUNCIL GRANT TO SUPPORT THE BEAUTIFICATION OF STATE ROAD 5 (U.S.1) AT THE EAST AND WEST ENTRY POINTS INTO THE CITY, AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Florida Department of Transportation has recently opened an application cycle for the Florida Highway Beautification Council Grant, and

**WHEREAS**, the Florida Highway beautification Council Grant supports projects that support the Enhancement and Beautification of State Highways; and

**WHEREAS**, the City desires to enhance and beautify State Road 5 (U.S.1) at Grassy Key and Knights Key.

**WHEREAS**, the Florida Highway Beautification Council Grant may fund up to \$150,000 per project.

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

**Section 1:** Recitals. The above recitals are true and correct and are incorporated herein by this reference.

**Section 2:** That the City Council supports and authorizes the City Manager to file an application with the Florida Department of Transportation for the Florida Highway Beautification Council Grant.

**Section 3:** That the City Council supports the grant for the Beautification of State Road 5 (U.S.1) between the Florida Turnpike and State Road 7.

**Section 3:** That the City Council supports the use of roadway beautification funds as matching funds for the Grant.

**Section 4:** That the City Council will provide for the maintenance of the Beautification elements after consideration.

**Section 5:** That the City Manager or his designee is authorized to execute material for the administration of the Grant.

**Section 6: Effective Date.** This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 26<sup>th</sup> day of September, 2000.

  
\_\_\_\_\_  
ROBERT MILLER, MAYOR



Carol N. Chamberlain  
MY COMMISSION # CC682322 EXPIRES  
September 22, 2001  
BONDED THRU TROY FAIN INSURANCE, INC.

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
CITY ATTORNEY

17B



# Florida Department of Transportation

JEB BUSH  
GOVERNOR

THOMAS F. BARRY, JR.  
SECRETARY

## HIGHWAY LANDSCAPE GRANT AGREEMENT AND LANDSCAPE CONSTRUCTION AND MAINTENANCE MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this 07<sup>TH</sup> day of JUNE 2002 by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, a component agency of the State of Florida, hereinafter called the DEPARTMENT and the City of Marathon a political subdivision of the State of Florida, existing under the Laws of Florida, hereinafter called the "AGENCY."

### WITNESSETH

WHEREAS, the DEPARTMENT has jurisdiction over and maintains State Road No 5 as part of the State Highway System; and

WHEREAS, the AGENCY seeks to install and maintain sprinkler/irrigation system, concrete pavers, trees, palms and groundcovers within the unpaved areas within the right of way of State Road No 5; and

WHEREAS, the DEPARTMENT agrees that landscaping should be installed and maintained as proposed by AGENCY and has, through the Florida Highway Beautification Council, awarded AGENCY a beautification grant for installing such landscaping; 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, AGENCY, by Resolution No.00-09-49, dated SEPTEMBER 26, 2000, and attached hereto as Exhibit "A," has accepted said grant and authorized its' officers to execute this AGREEMENT on its behalf.

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

1. The AGENCY hereby agrees to install or cause to be installed landscaping on the highway facility as specified in the Landscape Plan(s) included as Exhibit "B." as well an irrigation system as specified in the irrigation plan (s) included as Exhibit "E" Such installations shall be in conformance with Florida Administrative Code Rule 14-40.003, as it may be amended from time to time, and the Florida Highway Landscape Guide, which is incorporated into Rule 14-40.003 by reference. The AGENCY shall not change or deviate from said plan(s) without written approval of the DEPARTMENT.

2. The AGENCY agrees to maintain the landscaping within the median and areas outside the travel way within the right of way line in accordance with the Landscape Maintenance Plan(s) included as Exhibit "C". Said maintenance will be in accordance with Florida Administrative Code Rule 14-40.003 and the Florida Highway Landscape Guide, as they may be amended from time to time. The AGENCY's responsibility for maintenance shall be consistent with the requirements of Florida Administrative Code Rule 14-40.003(1)(d).

The above named functions to be performed by the AGENCY, shall be subject to periodic inspections by the Department. The AGENCY shall not change or deviate from said plan(s) without written approval of the DEPARTMENT.

3. All landscape installation and maintenance activities undertaken by AGENCY shall be in accordance with the Maintenance of Traffic Plan(s) included as Exhibit "D" and Florida Administrative Code Rule 14-40.003(4).

4. If at any time after the AGENCY has assumed the landscaping installation or maintenance responsibility above-mentioned, it shall come to the attention of the Department that the limits or a part thereof is not properly installed or maintained pursuant to the terms of this AGREEMENT, the District Secretary or his designee may issue a written notice that deficiency or deficiencies exist(s), by sending a certified letter to the AGENCY to place said AGENCY on notice thereof. Thereafter, the AGENCY shall have a period of thirty(30) calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the DEPARTMENT may at its option, proceed as follows:

- (a) If installation is not completed in accordance with the plans in paragraph 1, the DEPARTMENT may complete the installation, with DEPARTMENT or Contractor's personnel, and deduct the reasonable cost thereof from the money otherwise due the AGENCY under this AGREEMENT.
- (b) If installation has been properly completed or if the DEPARTMENT elects not to complete the landscaping under (a) above, and maintenance by AGENCY is not in compliance with paragraphs 2 or 3, the DEPARTMENT may take action to maintain the landscaping or a part thereof, with DEPARTMENT or Contractor's personnel and invoice the AGENCY for expenses incurred, or
- (c) The DEPARTMENT may terminate the AGREEMENT, in which case the AGENCY shall at its own expense and within sixty (60) days after written notice by the DEPARTMENT, remove all of the landscaping that the DEPARTMENT directs be removed and return the right-of-way to its original condition. The AGENCY will own such materials as it removes and the DEPARTMENT shall own any materials remaining. The DEPARTMENT may, in its discretion, remove, relocate or adjust the landscaping materials, with the AGENCY being responsible for the cost of any removal.

Upon DEPARTMENT action under one of the above options and upon direction of the DEPARTMENT, AGENCY shall cease installation and maintenance activities under this AGREEMENT.

5. It is understood between the parties hereto that the landscaping covered by this AGREEMENT may be removed, relocated or adjusted by the DEPARTMENT at any time in the future as determined to be necessary by the DEPARTMENT in order that the state road be widened, altered or otherwise changed to meet with future criteria or planning of the DEPARTMENT. The AGENCY shall be given sixty(60) calendar days notice to remove said landscaping/Hardscape after which time the Department may remove the same.

6. AGENCY may utilize its employees or third parties to accomplish its obligations; however, AGENCY remains responsible for proper performance under this AGREEMENT and shall take all steps necessary to ensure that its employees or third parties perform as required under this AGREEMENT.

7. The DEPARTMENT hereby agrees that, upon satisfaction of the conditions of paragraph 9 of this AGREEMENT, the DEPARTMENT will pay the AGENCY the amount of \$100,030.00 or 50 % of the cost of such installation, whichever is less, as a grant pursuant to Section 339.2405(11), Florida Statutes. For purposes of this provision, the cost of such installation may only include costs which are allowed by Section 339.2405(11), Florida Statutes.

8. Payment shall be made to the AGENCY by the DEPARTMENT under the following conditions:

- a. This AGREEMENT has not been terminated pursuant paragraph 4;
- b. The grant award has not lapsed under paragraph 10;
- c. Written certification of the completion of the installation and acceptance by the AGENCY is provided to the DEPARTMENT;
- d. The Highway Beautification Council has inspected and issued written approval of the work or has issued a written waiver of its inspection rights under this AGREEMENT; and
- e. A DEPARTMENT Landscape Architect has inspected the work and has issued a written determination that the AGENCY has completed the installation of the landscaping described in the attached Highway Landscape Construction and Maintenance Memorandum of Agreement in accordance with the terms of that Memorandum of Agreement.

9. Payment under paragraph 8 of this AGREEMENT is also subject to the following conditions:

- a. Proof of receipt and approval of goods and services must be available upon request by the DEPARTMENT or the State Comptroller in accordance with Section 215.42, Florida Statutes.
- b. Bills for fees or other compensation for services or expenses that are recovered pursuant to this AGREEMENT shall contain detail sufficient for a proper preaudit or postaudit thereof and bills for any travel expenses authorized by this AGREEMENT shall be submitted and paid in accordance with the rates specified in Section 112.061, Florida Statutes.

c. Records of costs incurred under the terms of this AGREEMENT shall be maintained by the AGENCY and made available upon request to the DEPARTMENT at all times during the period of this AGREEMENT and for three years after final payment is made. Copies of these documents shall be provided to the DEPARTMENT upon request. Records of the costs incurred include the AGENCY'S general accounting records, together with supporting documents and records of prime contractor and all subcontractors performing work, and all other records of prime contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.

10. The beautification grant awarded pursuant to this AGREEMENT shall be effective and continue for a period of one (1) year from the date of this AGREEMENT.

11. The term of this AGREEMENT commences upon execution.

12. The AGENCY shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from -any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission or negligent act by the AGENCY, its agents, or employees, during the performance of the Agreement, except that neither the AGENCY, its agents, nor its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees during the performance of the Agreement.

13. When the Department receives a notice of claim for damages that may have been caused by the AGENCY in the performance of services required under this Agreement, the Department will immediately forward the claim to and the Department will evaluate the claim and report their findings to each other within seven working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of the claim or to require that participation of the AGENCY in the defense of the claim or to require that the AGENCY defend the Department in such claim as described in this section. The Department's failure to notify the AGENCY of a claim shall not release the AGENCY from any of the requirements of this section. The Department and the AGENCY will pay their own costs for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs, but if the verdict determines that there is joint responsibility, the costs and liability for damages will be shared in the same percentage as that judicially established.

14. 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.

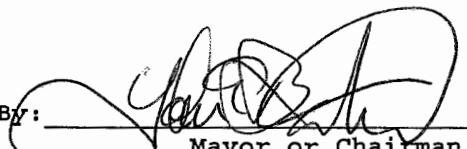
15. This AGREEMENT may not be assigned or transferred by the AGENCY in whole or part without the consent of the Department.

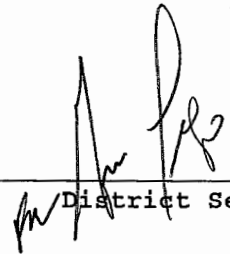
16. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the AGREEMENT and Florida law, the laws of Florida shall prevail.

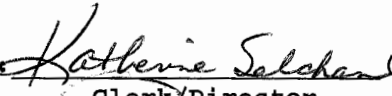
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF MARATHON  
(AGENCY)

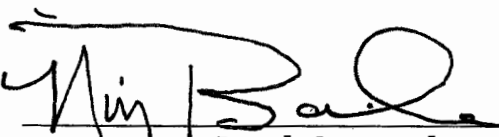
STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

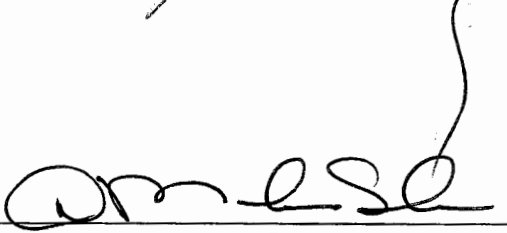
By:   
\_\_\_\_\_  
Mayor or Chairman

By:   
\_\_\_\_\_  
District Secretary

Attest:  (SEAL)  
\_\_\_\_\_  
Clerk/Director

Attest:  (SEAL)  
\_\_\_\_\_  
Executive Secretary

  
\_\_\_\_\_  
Legal Approval

  
\_\_\_\_\_  
Legal Approval

**SCANNED**

7/8/02 #5963 KSV



## Florida Department of Transportation

JEB BUSH  
GOVERNOR

THOMAS F. BARRY, JR.  
SECRETARY

District Six Maintenance Office  
1000 N.W. 111th Avenue, Room # 6214  
Miami, Florida 33172  
(305) 470-5347

June 11, 2002

Mr. Craig Wrathell, City Manager  
City of Marathon  
10045-55 Overseas Highway  
Marathon, Florida 33050

Dear: Wrathell

**RE: HIGHWAY LANDSCAPE GRANT & MAINTENANCE AGREEMENT**

Contract : AK-660  
FIN NO.: 41234217401  
County : Marathon

Enclosed Please find and executed Original document of the Highway Landscape Grant Agreement and an original document of the Highway Maintenance Agreement.

Should you have any questions concerning this project, please contact me at the number noted above.

Sincerely,

*Ronald S. Steiner*

Ron Steiner, P.E.  
District Maintenance Engineer

cc: Jorge Fernandez, Jesus Valderrama, and District File.  
Enclosures







17A

# Florida Department of Transportation

JEB BUSH  
GOVERNOR

District Six Maintenance Office  
1000 NW 111 Avenue, Room 6214  
Miami, Florida 33172  
(305) 470-5350

THOMAS F. BARRY, JR.  
SECRETARY

## HIGHWAY LANDSCAPE MAINTENANCE

### MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this 07<sup>TH</sup> day of JUNE 2002 by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, a component agency of the State of Florida, hereinafter called the "DEPARTMENT" and The City of Marathon, a political subdivision of the State of Florida, existing under the Laws of Florida, hereinafter called the "**CITY**".

#### WITNESSETH

WHEREAS, as a part of the continual updating of the State of Florida Highway System, the Department, for the purpose of safety, protection of the Investment and other reasons, has constructed and does maintain two tenths of a mile at Grassy Key, MM60, just to the western limit of Harbor Bridge and two tenths of a mile west of Knights Key, MM47, just to the eastern limit of the seven mile Bridge a divided highway facilities outlined in Exhibit "B" attached hereto and incorporated by reference herein, within the corporate limits of the City of Marathon, Monroe County, Florida; and

WHEREAS, the **CITY** is of the opinion that said highway facilities which contain sprinkler/irrigation system, concrete pavers, trees, palms and groundcovers (the "Plantings" ) shall be maintained by periodic trimming, cutting, mowing, fertilizing and necessary re-plantings and repairs; 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. 00-09-49 attached hereto as Exhibit "A" and by this Reference made a part hereof, desires to enter into this Agreement and authorizes its officers to do so; and

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

1. The **CITY** shall perform the following standards in a reasonable manner and with all due care.

The CITY hereby agrees to maintain, at its sole cost and expense the plantings, following the Department's landscape guidelines, safety and plant care. The CITY's responsibility for maintenance shall include all landscaped and/or turfed areas on Department of Transportation right-of-way within the limits of the project. Such maintenance to be provided by the CITY is specifically set out as follows: To maintain, which means that proper watering and proper fertilization of all plants and keeping them as free as practicable from disease and harmful insects: to properly mulch the plant beds: to keep the premises free of weeds: ~~to mow and /or cut the grass to a proper length: to properly prune all plants~~ which includes (1) removing dead or diseased parts of plants, or (2) pruning such parts thereof which present a visual hazard for those using the roadway. To maintain also means removing or replacing dead or diseased plants in their entirety, or removing or replacing those that fall below original project standards. All plants removed for whatever reason shall be replaced by plants of the same grade as specified in the original plans and specifications and of a size comparable to those existing at the time approval is obtained from deletions. To maintain also means to keep litter removed from the median strip or landscaped areas within the said project. Plants shall be those items, which would be scientifically classified as plants and include but are not limited to trees, grass or shrubs.

The above named functions to be performed by the CITY, shall be subject to periodic inspections by the DEPARTMENT. Such inspection findings will be shared With the CITY and shall be the basis of all decisions regarding payment reduction, reworking or agreement termination.

2. If at any time after the CITY has assumed the maintenance responsibility above-mentioned, it shall come to the attention of the Department's District Secretary, that the limits of Exhibit "B" or a part thereof is not properly maintained pursuant to the terms of the Agreement, said District Secretary may at his option issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter in care of City Manager to place said CITY on notice thereof.

Thereafter. The CITY shall have a period of thirty (30) days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the Department may at its option, proceed as follows:

- (a) Maintain the landscaping during construction or a part thereof, with Department or an independent contractor's personnel and deduct the cost of such work from the CITY's payment for said work or par thereof, or
- (b) Terminate Agreement in accordance with Paragraph 4 of this agreement and remove, by Department or an independent contractor's personnel, all of the ground cover and shrubs installed under this Agreement or any preceding agreements except as to trees and palms and charge the CITY for the reasonable cost of such removal.

3. It is understood between the parties hereto that the ground cover, shrubs, trees and palms covered by this Agreement may be removed, relocated or adjusted at any time in the future as determined to be necessary by the Department in order that the adjacent State road be widened, altered or otherwise changed to meet with future criteria or planning of the DEPARTMENT. The CITY shall be given sixty (60) calendar days written notice to remove said ground covered, shrubs, trees and palms after which time, the DEPARTMENT may remove said ground cover, shrubs, trees and palms.

4. This Agreement may be terminated under any one of the following conditions under Paragraph 2.:

- (a) By the DEPARTMENT, if the CITY fails to perform it's duties following thirty (30) days written notice.
- (b) By the DEPARTMENT, for refusal by the CITY to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes an made or received by the CITY in conjunction with this Agreement.
- (c) By either party following sixty (60) calendar days written notice.
- (c) By both parties, thirty (30) calendar days following complete execution by both parties, of an agreement to terminate this Agreement.

5. It is anticipated that the term of this Agreement will extend beyond the Department's current fiscal year. 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 such fiscal year. Any Agreement 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 Agreement or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, however, contract so made shall be executed only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.

6. To the extent provided by law, the City shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the City, its agents, or employees, during the performance of the Agreement, except that neither the City, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees during the performance of the Agreement.

When the Department receives a notice of claim for damages that may have been caused by the City in the performance of services required under this Agreement, the Department will immediately forward the claim to the City. and the Department will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to ~~require the participation of the City in the defense of the claim or to require that the City defend the Department in such claim as described in this section.~~ The Department's failure to promptly notify the City of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by the City. The Department and the City will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all expenses at trial.

7. This writing embodies the entire Agreement and understanding between the parties hereto and there are no other Agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

8. 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.

9. This Agreement may not be assigned or transferred by the CITY, in whole or in part without prior written consent of the DEPARTMENT.

10. This Agreement shall be governed by, and construed according to the Laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida Law, the laws of Florida shall prevail.

11. The parties agree that in the event of any mediation or court proceeding for the enforcement, defense or interpretation of either party's rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs at both the trial and appellate levels.

12. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be invalid or unenforceable to any extent, the remaining terms covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and

shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of the agreement between the parties.

13. The parties here by waive trial by jury in any legal proceeding brought with respect to any matter whatsoever arising out of or in any way connected with this Agreement or the relationship of City and the Department.

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

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

*Amish* 5/16/02  
DOT Approval as to Date  
Form and Legality

By: *[Signature]*  
District Secretary

ATTEST:

*[Signature]* (SEAL)  
Executive Secretary

AGENCY

*WBO*  
Approved as to Form Date  
City Attorney, City of Marathon

By: *[Signature]* (SEAL)  
City Manager

**SCANNED**

7/8/02 #5962 KS✓