

CITY CLERK

2014 JUN -3 PM 1: 24

SECTION NO.: N/A
FM No.(s): N/A
COUNTY: Broward County
S.R. No.: US1/Federal Hwy

**DISTRICT FOUR
MAINTENANCE MEMORANDUM OF AGREEMENT**

THIS AGREEMENT, made and entered into this 27th day of May 2014, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the DEPARTMENT, and **City of Fort Lauderdale**, a municipal corporation existing under the Laws of Florida, hereinafter called the AGENCY.

WITNESSETH:

WHEREAS, the DEPARTMENT has jurisdiction over US1/Federal Highway; and

WHEREAS, the DEPARTMENT seeks to install and have maintained by the AGENCY certain highway improvements; and

WHEREAS, as 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 US1/Federal Hwy (within the limits of the AGENCY); and

WHEREAS, it is the intent of the AGENCY and the DEPARTMENT that the AGENCY shall maintain the sidewalk installed along Federal Highway between the limits of **M.P. 5.660 and M.P. 5.729**; and

WHEREAS, the Project involves the scope of work as described within Exhibit A and identified under Permit Number **2013-L-491-0004**, which will benefit the AGENCY; and

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

WHEREAS, execution of this Agreement by the proper City officials on behalf of the AGENCY was authorized by Motion adopted by the City Commission at its Regular Meeting of February 18, 2014;

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 recitals set forth above are true and correct and are deemed incorporated herein.
2. **INSTALLATION OF FACILITIES**

The DEPARTMENT has issued permit **2013-L-491-0004** to reconstruct and relocate sidewalk as detailed in exhibit A at the request of the AGENCY. The sidewalk is to be constructed within the perpetual easement granted to the DEPARTMENT on May 10, 2013 by 4901, LTD., a Florida limited partnership which will benefit the AGENCY.

2-18-14
M-9
14-0014

3. MAINTENANCE OF FACILITIES

A. The AGENCY agrees to maintain the sidewalk improvements to be installed under **permit 2013-L-491-0004** within the permanent easement. Maintenance by the AGENCY will be limited to repair or replacement of the sidewalk upon damage caused by the underlying utility owners.

B. It is understood and agreed by the parties that upon acceptance by the DEPARTMENT the AGENCY shall be responsible for maintenance of the Project in accordance with the following Federally and State accepted standards (current editions at the time of execution of this Agreement and any amendments hereafter) and all costs related thereto: (a) FDOT Plans Preparation Manual (PPM), (b) Florida Green Book, (c) Standard Specifications for Roadway and Bridge Construction, as amended, and (d) Manual on Uniform Traffic Control Devices (MUTCD).

C. If it becomes necessary to provide utilities (water/electricity) to these improvements, all costs associated with the utilities, landscape accent lighting and/or irrigation systems including, but not limited to the impact and connection fees, and the on-going cost of utility usage for water and electrical, are the maintaining AGENCY'S responsibility.

(1) The AGENCY shall be directly responsible for impact and connection fees

AND

(2) The AGENCY shall become responsible for the above named ongoing utility costs upon final acceptance of the construction project (including the Landscape improvements) by the DEPARTMENT and thereafter. The project is accepted prior to the start of the Plant Establishment and Contractor's Warranty Period.

AND

(3) The AGENCY shall be responsible for the improvements immediately after final acceptance of the construction project by the DEPARTMENT except for the plant materials. The AGENCY shall be responsible for the maintenance of all landscape improvements after the completion of the Plant Establishment and Contractor's Warranty Period.

D. The above named functions to be performed by the AGENCY may be subject to periodic inspections by the DEPARTMENT at the discretion of the DEPARTMENT. Such inspection findings will be shared with the AGENCY and shall be the basis of all decisions regarding, repayment, reworking or Agreement termination.

E. Any work impacting traffic flow on SR-5 or SR-A1A must be coordinated with the DEPARTMENT. Lane closures must be submitted for approval in accordance with DEPARTMENT procedures and policies and will meet the goals established in the DEPARTMENT'S Open Roads Policy.

4. FUTURE DEPARTMENT IMPROVEMENTS

It is understood between the parties hereto that the improvements 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.

5. FUTURE AGENCY IMPROVEMENTS

The AGENCY may construct additional improvements within the limits of the rights of ways identified as a result of this document, subject to the following conditions:

- (a) Plans for any new landscape improvements shall be subject to approval by the DEPARTMENT. The AGENCY shall not change or deviate from said plans without written approval by the DEPARTMENT.
- (b) The AGENCY shall procure a permit and/ or Construction Agreement from the DEPARTMENT, as appropriate.
- (c) All improvements shall be developed and implemented in accordance with appropriate state safety and roadway design standards.
- (d) The AGENCY agrees to comply with the requirements of this Agreement with regard to any additional improvements installed at no cost to the DEPARTMENT.

6. AGREEMENT TERMINATION

This Agreement may be terminated under any one (1) of the following conditions:

- (a) By the DEPARTMENT, if the AGENCY fails to perform its duties under this Agreement, following ten (10) days written notice.
- (b) By the DEPARTMENT, for refusal by the AGENCY to 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.

7. AGREEMENT TERM

- A. The term of this Agreement commences upon execution by all parties. The term of this Agreement shall remain in effect for Fifty (50) years.

8. LIABILITY AND INSURANCE REQUIREMENTS

- A. With respect to any of the AGENCY'S agents, consultants, sub-consultants, contractors, and/or sub-contractors, such party in any contract for the landscape improvements shall agree to indemnify, defend, save and hold harmless the DEPARTMENT from all claims, demands, liabilities, and suits of any nature arising out of, because of or due to any intentional and/or negligent act or occurrence, omission or commission of such agents, consultants, subconsultants, contractors and/or subcontractors. The AGENCY shall provide to the DEPARTMENT written evidence of the foregoing upon the request of the

DEPARTMENT. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the DEPARTMENT for its own negligence.

- B. In the event that AGENCY contracts with a third party to provide the services set forth herein, any contract with such third party shall include the following provisions:
- (a) AGENCY'S contractor shall at all times during the term of this Agreement keep and maintain in full force and effect, at contractor's sole cost and expense, Comprehensive General Liability with minimum limits of \$1,000,000.00 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and Worker's Compensation insurance with minimum limits of \$500,000.00 per Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability and Worker's Compensation policy without restrictive endorsements, as filed by the Insurance Services Office and shall name the DEPARTMENT as an additional insured.
 - (b) AGENCY'S contractor shall furnish AGENCY with Certificates of Insurance of Endorsements evidencing the insurance coverages specified herein prior to the beginning performance of work under this Agreement.
 - (c) Coverage is not to cease and is to remain in full force and effect (subject to cancellation notice) until all performance required of AGENCY'S contractor is completed. All policies must be endorsed to provide the DEPARTMENT with at least thirty (30) days notice of cancellation and or/or restriction. If any of the insurance coverages will expire prior to the completion of work, copies of renewal policies shall be furnished at least (30) days prior to the date of expiration.

9. E-VERIFY REQUIREMENTS

The AGENCY, to confirm the employment eligibility of;

- (1) Shall utilize the U.S. Department of Homeland Security's E-Verify system in accordance with the terms governing use of the system, to verify the employment eligibility of all new employees hired by the Agency during the term of the contract; and
 - (2) 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.
10. 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.
11. 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 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 one (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 TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than one year.

12. DISPUTES

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.

13. ASSIGNMENT

This Agreement may not be assigned or transferred by the AGENCY in whole or part without the consent of the DEPARTMENT.

14. LAWS GOVERNING

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 contract and Florida law, the laws of Florida shall prevail. Venue with respect to judicial proceedings arising out of this Agreement shall be in Broward County, Florida.

15. NOTICES

Any and all notices given or required under this Agreement shall be in writing and either personally delivered with receipt acknowledgement or sent by certified mail, return receipt requested. All notices shall be sent to the following addresses.

If to the DEPARTMENT:

State of Florida Department of Transportation
3400 West Commercial Blvd.
Ft. Lauderdale, FL 33309-3421
Attention:
District Maintenance Engineer

If to the AGENCY:

City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301
Attention:
Title: Director of Public Works

16. LIST OF EXHIBITS

Exhibit A: Project Location and Description

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year provided below.

CITY OF FORT LAUDERDALE:

ATTEST:

_____, City Clerk

See Attached
By
City Signature Page

_____, Mayor
____ day of _____, 2014

Approved as to form

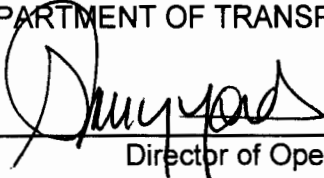
By _____
_____, City Attorney

DEPARTMENT:

ATTEST:


STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Executive Secretary
(SEAL)

By 

Director of Operations

Approval as to Form:



District General Counsel

IN WITNESS WHEREOF, the said grantor has caused these presents to be executed in its name by its Mayor, and its seal to be hereto affixed, attested by its City Clerk, the date first above written.

WITNESSES:

CITY OF FORT LAUDERDALE

Safeya Ali
Safeya Ali
[Witness type or print name]

By [Signature]
John P. "Jack" Seiler, Mayor

Donna Varisco
Donna Varisco
[Witness type or print name]

By [Signature]
Lee R. Feldman, City Manager

ATTEST:

(CORPORATE SEAL)

Jonda K. Joseph
Jonda K. Joseph, City Clerk

Approved as to form:

[Signature]
Robert B. Dunckel, Asst. City Attorney

