

SECTION No.: 86020000
Permit No.: 2020-L-491-00016
COUNTY: Broward
S.R. No.: 5

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
DISTRICT FOUR
LANDSCAPE MAINTENANCE MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this 1 day of Nov 2022, 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 Fort Lauderdale**, a municipal corporation, existing under the Laws of Florida, hereinafter called the **AGENCY**.

WITNESSETH:

WHEREAS, the **DEPARTMENT** has jurisdiction over **State Road 5 (Federal Highway/US 1)** as part of the State Highway System as described in **Exhibit "A"**; and

WHEREAS, the **AGENCY** seeks to have installed by permit and maintain certain landscape improvements within the right of way of **State Road 5 (Federal Highway / US 1)** as described within **Exhibit "B"**; 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 the highway facility as described in **Exhibit "A"** attached hereto and incorporated by reference herein, within the corporate limits of the **AGENCY**; and

WHEREAS, the **AGENCY** is agreeable to maintaining those landscape improvements within the **AGENCY'S** limits including plant materials, irrigation system and/or hardscape which may contain specialty surfacing (concrete pavers, color stamped concrete and color stamped asphalt [also known as patterned pavement]) including any other nonstandard hardscape (if applicable), but excluding standard concrete sidewalk, and agree such improvements shall be maintained by periodic mowing, fertilizing, weeding, litter pick-up, pruning, necessary replanting, irrigation repair and/or repair of the median concrete replacements associated with the specialty surfacing (if applicable) as needed; and

WHEREAS, it is the intent of the **AGENCY** and the **DEPARTMENT** that the **AGENCY** shall maintain all right of way within the medians, outside the travelway and improvements made to the travelway that was made at the request of the **AGENCY**; 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 **AGENCY** by Resolution No. 22-193 dated September 6, 2022, attached hereto 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 recitals set forth above are true and correct and are deemed incorporated herein.
2. INSTALLATION OF FACILITIES

The **AGENCY** shall install and agrees to maintain the *landscape improvements* described herein as: plant materials, irrigation and/or hardscape on the highway facilities substantially as specified in plans and specifications hereinafter referred to as the Project (s) and incorporated herein as **Exhibit "B"**. *Hardscape* shall mean, but not be limited to any site amenities such as landscape accent lighting, bike racks, fountain, tree grates, decorative free-standing wall, and/or sidewalk, median and/or roadway specialty surfacing such as concrete pavers, stamped colored concrete and/or stamped colored asphalt (also known as patterned pavement).

- (a) All plant materials shall be installed and maintained in strict accordance with sound nursery practice prescribed by the International Society of Arboriculture (ISA). All plant materials installed shall be Florida #1 or better according to the most current edition of Florida Department of Agriculture, *Florida Grades and Standards for Nursery Stock*; and all trees shall meet Florida Power & Light, *Right Tree, Right Place, South Florida*.
- (b) Trees and palms within the right of way shall be installed and pruned to prevent encroachment to roadways, lateral offsets and sidewalks. Definition of these criteria is included in the most current editions of FDOT standards for design, construction, maintenance, and utility operations on the state highway system and **Exhibit "C"**, the Maintenance Plan.
- (c) Tree and palm pruning shall be supervised by properly trained personnel trained in tree pruning techniques and shall meet the most current standards set forth by the International Society of Arboriculture (ISA) and the American National Standard Institute (ANSI), Part A-300.
- (d) Irrigation installation and maintenance activities shall conform to the standards set forth by the Florida Irrigation Society (FIS) latest edition of FIS, *Standards and Specifications for Turf and Landscape Irrigation Systems*.
- (e) The **AGENCY** shall provide the FDOT Local Operation Center accurate as-built plans of the irrigation system so if in the future there is a need for the **DEPARTMENT** to perform work in the area, the system can be accommodated as much as possible. (See paragraph (l) for contact information)
- (f) If it becomes necessary to provide utilities (water/electricity) to the median or side areas, it shall be the **AGENCY'S** responsibility to obtain a permit for such work through the local Operations Center (see paragraph (l) below) and the **AGENCY** shall be responsible for all associated fees for the installation and maintenance of these utilities.

- (g) All specialty surfacing shall be installed and maintained in strict accordance with the most current edition of the *Florida Accessibility Code for Building Construction* and the *Interlocking Concrete Pavement institute (ICPI)*.
- (h) All activities, including landscape improvements installation and future maintenance operations performed on State highway right of way, must be in conformity with the most current edition of the *Manual on Uniform Traffic Control (MUTCD)* and *FDOT Design Standards, Index 600 Series, Traffic Control through Work Zones*.
- (i) The most current edition of *FDOT Design Standards, Index 546 (Sight Distance at Intersections)* must be adhered to.
- (j) Lateral Offsets as specified in the *FDOT Plans Preparation Manual, Volume 1, Chapters 2 and 4* must be adhered to.
- (k) Landscape improvements shall not obstruct roadside signs or permitted outdoor advertising signs, (see Florida Administrative Code [F.A.C.] Rule Chapter 14-10.)
- (l) The **AGENCY** shall provide the local FDOT Operation Center located at Broward Operations, 5548 NW 9th Avenue, Fort Lauderdale, FL 33309, (954)776-4300, a twenty-four (24) hour telephone number and the name of a responsible person that the **DEPARTMENT** may contact. The AGENCY shall notify the local maintenance office forty-eight (48) hours prior to the start of the landscape improvements.
- (m) If there is a need to restrict the normal flow of traffic, it shall be done on non-holiday, weekday off-peak hours (9 AM to 3 PM), and the party performing such work shall give notice to the local law enforcement agency within whose jurisdiction such road is located prior to commencing work on the landscape improvements. The **DEPARTMENT'S** Operation Center Public Information Officer (see telephone number in Paragraph (l) shall also be notified.
- (n) The **AGENCY** shall be responsible to clear all utilities within the landscape improvement limits before construction commences.
- (o) The **AGENCY** shall follow the minimum level of maintenance guidelines as set forth in FDOT'S Rule Chapter 14-40 *Highway Beautification and Landscape Management*, in the *FDOT Guide to Roadside Mowing and Maintenance Management System*, and **Exhibit "C"**, the *Maintenance Plan* for maintenance activities for landscape improvements.

3. MAINTENANCE OF FACILITIES

- A. The **AGENCY** agrees to maintain the landscape improvements, as existing and those to be installed, within the physical limits described in **Exhibit "A"** and as further described in **Exhibit "B"**. The non-standard improvements within and outside the travelway shall be maintained by the AGENCY regardless if the said improvement was made by the DEPARTMENT, the AGENCY, or others authorized pursuant to Section 7, by periodic mowing, pruning, fertilizing, weeding, curb and sidewalk edging, litter pickup, necessary replanting, irrigation system repair and/ or repair of any median

concrete replacement associated with specialty surfacing (if applicable) following the **DEPARTMENT'S** landscape safety and maintenance guidelines, **Exhibit "C"**, the Maintenance Plan. The **AGENCY'S** responsibility for maintenance shall include all landscaped, turfed and hardscape areas on the sidewalk or within the medians and areas outside the travelway to the right of way and/or areas within the travelway containing specialty surfacing. It shall be the responsibility of the **AGENCY** to restore an unacceptable ride condition of the roadway caused by the differential characteristics of non-standard travelway surfacing (if applicable) on **DEPARTMENT** right of way within the limits of this Agreement.

- B. Such maintenance to be provided by the **AGENCY** is specifically set out as follows: to maintain, which means to properly water and fertilize all plant materials; to keep them as free as practicable from disease and harmful insects; to properly mulch the planting beds; to keep the premises free of weeds; to mow the turf to the proper height; to properly prune all plants which at a minimum includes: (1) removing dead or diseased parts of plants, (2) pruning such parts thereof to provide clear visibility to signage, permitted outdoor advertising signs per Florida Statute 479.106 and for those using the roadway and/or sidewalk; (3) preventing any other potential roadway hazards. *Plant materials* shall be those items which would be scientifically classified as plants and including trees, palms, shrubs, groundcover and turf. To maintain also means to remove or replace dead or diseased plant materials in their entirety, or to remove or replace those that fall below original project standards. Palms shall be kept fruit free year-round. To maintain also means to keep the header curbs that contain the specialty surfacing treatment in optimum condition. To maintain also means to keep the nonstandard hardscape areas clean, free from weeds and to repair said hardscape as is necessary to prevent a safety hazard. To maintain also means to keep litter removed from the median and areas outside the travel way to the right of way line. All plants removed for whatever reason shall be replaced by plants of the same species type, size, and grade as specified in the original plans and specifications. Any changes to the original plans shall be submitted by permit application to the **DEPARTMENT** for review and approval.
- C. If it becomes necessary to provide utilities (water/electricity) to the medians or areas outside the travelway to maintain these improvements, all costs associated with the utilities associated for the landscape improvements including any impact and/or connection fees, and the on-going cost of utility usage for water and electrical, are the maintaining **AGENCY'S** responsibility.

The **AGENCY** shall be directly responsible for impact and connection fees.

- D. The maintenance 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. The **AGENCY** shall not change or deviate from said plans without written approval of the **DEPARTMENT**.

4. NOTICE OF MAINTENANCE DEFICIENCIES

A. If at any time after the **AGENCY** has undertaken the landscape improvements installation and/or maintenance responsibility for the landscape improvements it shall come to the attention of the **DEPARTMENT'S** District Secretary that the limits, or a part thereof, are not properly maintained pursuant to the terms of this Agreement, said District Secretary, may at his/her option, issue a written notice that a 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:

- (1) Maintain the landscape improvements or any part thereof, with the **DEPARTMENT** or Contractor's personnel and invoice the **AGENCY** for expenses incurred, and/or
- (2) At the discretion of the **DEPARTMENT**, terminate the Agreement in accordance with Paragraph 9 of this Agreement and remove, by the **DEPARTMENT** or Contractor's personnel, all of the landscape improvements installed under this Agreement or any preceding Agreements, except as to trees and palms, and charge the **AGENCY** the reasonable cost of such removal.

5. FUTURE DEPARTMENT IMPROVEMENTS

It is understood between the parties hereto that the landscape 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 future criteria or planning needs of the **DEPARTMENT**.

The **AGENCY** shall be given sixty (60) calendar day notice to remove said landscape improvements at the **AGENCY's** expense after which time the **DEPARTMENT** may remove same. All permits (including tree permits), fees, and any mitigation associated with the removal, relocation or adjustments of these improvements are the maintaining **AGENCY'S** responsibility.

6. FUTURE AGENCY IMPROVEMENTS

The **AGENCY** may construct additional landscape improvements within the limits of the landscape improvements 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) All landscape improvements shall be developed and implemented in accordance with appropriate state safety and roadway design standards.

- (c) The **AGENCY** agrees to comply with the requirements of this Agreement with regard to any additional landscape improvements it chooses to have installed and there will be no cost to the **DEPARTMENT**.

7. ADJACENT PROPERTY OWNER IMPROVEMENTS

The **DEPARTMENT** may allow an adjacent property owner to construct additional landscape improvements within the limits of the right of way identified in **Exhibit "A"** of this Agreement that the **AGENCY** shall be responsible for maintaining under this Agreement, subject to the following conditions:

- (a) Plans for any new landscape improvements shall be subject to approval by the **DEPARTMENT** and shall require a valid permit attached with a letter of consent to said plans by the **AGENCY**. The plans shall not be changed or deviated from without written approval by the **DEPARTMENT** and the **AGENCY**.
- (b) All landscape improvements shall be developed and implemented in accordance with appropriate state safety and roadway design standards.
- (c) The **AGENCY** agrees to comply with the requirements of this Agreement with regard to any additional landscape improvements installed by an adjacent owner.

8. AGREEMENT TERM

The term of this Agreement commences upon execution by all parties. The term of this Agreement shall remain in effect for twenty-five (25) years.

9. AGREEMENT TERMINATION

In addition to those conditions otherwise contained herein, this Agreement may be terminated under anyone (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) At the discretion of the **DEPARTMENT** with 60 days' notice.

10. 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:

- (1) **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. The **AGENCY** and **DEPARTMENT** shall be named as additional insured on such policies.
- (2) **AGENCY'S** contractor shall furnish **AGENCY** with Certificates of Insurance of Endorsements evidencing the insurance coverage specified herein prior to the beginning performance of work under this Agreement.
- (3) 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) day notice of cancellation and or/or restriction. If any of the insurance coverage 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.

11. E-VERIFY REQUIREMENTS

The **AGENCY** shall:

- (a) Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the **AGENCY** during the term of the contract; and
- (b) 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.

12. SUPERSEDED AGREEMENTS

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 (except the associated landscape permit).

13. FISCAL TERMS

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 will/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.

14. DISPUTES

The **DEPARTMENT'S** District Secretary shall decide 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. Should the **AGENCY** disagree with the **DEPARTMENT'S** District Secretary's decision, the **AGENCY** may pursue any and all legal and equitable remedies available under this Agreement.

15. ASSIGNMENT

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

16. 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.

17. 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
Attn: FDOT District 4 Landscape Architect

If to the AGENCY:

City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301
Attn: City Manager

18. LIST OF EXHIBITS

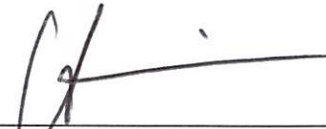
- Exhibit A: Landscape Improvements Maintenance Boundaries
- Exhibit B: Landscape Improvement Plans
- Exhibit C: Maintenance Plan for Landscape Improvements

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first above written.

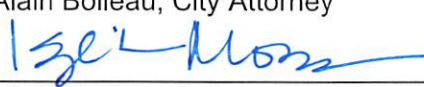
CITY OF FORT LAUDERDALE, through its
CITY COMMISSIONERS

By: 
Dean J. Trantalis, Mayor

1 day of Nov., 2022



Greg Chavarria
City Manager

Approved as to form:
Alain Boileau, City Attorney


Kimberly Cunningham Mosley
Assistant City Attorney

ATTEST:


David R. Soloman, City Clerk



(SEAL)

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____
Transportation Development Director

Attest: _____
Executive Secretary

Legal Review

Date

Office of the General Counsel



COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM

72

Today's Date: 10/12/2022

DOCUMENT TITLE: STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION DISTRICT FOUR LANDSCAPE MAINTENANCE MEMORANDUM OF AGREEMENT

COMM. MTG. DATE: 9/6/2022 CAM #: 22-0679 ITEM #: CR-2 CAM attached: YES NO

Routing Origin: TAM Router Name/Ext: G.Smith/x3764 Action Summary attached: YES NO

CIP FUNDED: YES NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) Dept: CAO Router Name/Ext: K.Nembhard/x5001 # of originals routed: 1 Date to CAO: 10/12/2022

2) City Attorney's Office: Documents to be signed/routed? YES NO # of originals attached: 1

Is attached Granicus document Final? YES NO Approved as to Form: YES NO

Date to CCO: 10/13/2022

Kimberly Cunningham Mosley
Attorney's Name

ECM
Initials

3) City Clerk's Office: # of originals: 2 Routed to: Donna V./Aimee L./CMO Date: 10/13/22

4) City Manager's Office: CMO LOG #: 02121 Document received from: _____

Assigned to: GREG CHAVARRIA TARLESHA SMITH
ANTHONY FAJARDO SUSAN GRANT
GREG CHAVARRIA as CRA Executive Director

APPROVED FOR G. CHAVARRIA'S SIGNATURE N/A FOR G. CHAVARRIA TO SIGN

PER ACM: T. Smith _____ (Initial/Date) PER ACM: A. Fajardo _____ (Initial/Date)
S. Grant _____ (Initial/Date)

PENDING APPROVAL (See comments below)

Comments/Questions: _____

Forward ___ originals to Mayor CCO Date: _____

5) Mayor/CRA Chairman: Please sign as indicated. Forward ___ originals to CCO for attestation/City seal (as applicable) Date: _____

6) City Clerk: Scan original and forwards 1 originals to: G.Smith/x3764

Attach ___ certified Reso # _____ YES NO

Original Route form to K.Nembhard/x5009