

**FLORIDA DEPARTMENT OF TRANSPORTATION
LANDSCAPE AND TURF
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE TOWN OF CUTLER BAY**

This **AGREEMENT**, entered into on _____, 20____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **TOWN OF CUTLER BAY**, a political subdivision of the State of Florida, hereinafter called the **TOWN**, and collectively referred to as the **PARTIES**.

RECITALS:

- A. The **DEPARTMENT** has jurisdiction over **State Road (SR) 5 (US-1) (South Dixie Highway) from 575 feet south of SW 200th Street (Caribbean Boulevard) to 460 feet north of SW 200th Street (Caribbean Boulevard)**, which is located within the limits of the **TOWN**; and
- B. The **DEPARTMENT**, pursuant to Contract # T6431, has drafted design plans for beautification improvements on SR 5 (US-1) (South Dixie Highway) from 575 feet south of SW 200th Street (Caribbean Boulevard) to 460 feet north of SW 200th Street (Caribbean Boulevard), 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 **DEPARTMENT** will install landscaping in accordance with the design plans for Contract # T6431 (the "Project"), as approved by the **DEPARTMENT**; and
- D. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the **TOWN's** responsibilities with regards to the maintenance of all the landscaping and turf along the median within the **PROJECT LIMITS**; and
- E. The **TOWN**, by Resolution No. _____, dated _____, 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 within the **PROJECT LIMITS** to the **TOWN** upon the **DEPARTMENT'S** release of its contractor from further warranty work and responsibility.

3. TOWN'S MAINTENANCE RESPONSIBILITIES

So long as the **IMPROVEMENTS** remain in place, the **TOWN** shall be responsible for the maintenance of the same. The **TOWN** shall maintain the landscape and turf 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 **TOWN** shall maintain the landscape in accordance with the International Society of Arboriculture standards, guidelines and procedures, the latest edition of the "Maintenance Rating Program", and Index 546 of the latest **DEPARTMENT** Design Standards as may be amended from time to time. The **TOWN** shall further maintain the landscape and turf in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions. The **TOWN'S** maintenance obligations shall include but not be limited to:

3.1 Landscaping and Turf:

- a. Mowing, cutting and/or trimming and edging the grass and turf within the **PROJECT LIMITS**.
- b. Pruning all plant materials, which include trees, shrubs and ground covers, and parts thereof, including all material from private property encroaching into the **DEPARTMENT'S** Right-of-Way.

- c. All pruning and trimming will follow the Maintenance Rating Program Handbook which specifically requires no encroachment of trees, tree limbs or vegetation in or over travel way (or clear zone) lower than 14.5 feet, or lower than 8.5 feet over sidewalks.
- 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. Paying for all water use and all costs associated therewith.
- i. 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.
- j. Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described by 3.A through 3.I.

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.

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 landscape and turf to ensure that the **TOWN** is performing its duties pursuant to this **AGREEMENT**. The Department shall share with the **TOWN** 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 **TOWN** 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 **TOWN'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 **TOWN MANAGER**, to notify the **TOWN** of the maintenance deficiencies. From the date of receipt of the notice, the **TOWN** 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 landscape and turf, or a part thereof, and invoice the **TOWN** for expenses incurred; or
- b. Terminate this **AGREEMENT** in accordance with Section 7, remove any or all landscape located within the **PROJECT LIMITS**, and charge the **TOWN** 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 TOWN: Town of Cutler Bay
10720 Caribbean Boulevard
Suite 105
Cutler Bay, Florida 33189
Attention: Town Manager/Mayor

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 LANDSCAPE

a. The **PARTIES** agree that the landscape 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 landscape, the **TOWN'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 **TOWN** 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 **TOWN** refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the **TOWN** 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** and shall continue so long as the **IMPROVEMENTS** remain in place until termination as set forth in Section 7.
- b. E-Verify

The **TOWN's** Contractors or Vendors shall:

- i. 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. 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.
(Executive Order Number 2011-02)

The **TOWN** shall insert the above clause into any contract entered into by the **TOWN** with vendors or contractors hired by the **TOWN** 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 TOWN, 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 **TOWN** 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 **TOWN's** negligent

exercise or of its responsibilities as set out in this **AGREEMENT**, including but not limited to, any negligent act, negligent action, negligence or omission by the **TOWN**, its officers, agents, employees or representatives in the performance of this **AGREEMENT**, whether direct or indirect, except that neither the **TOWN** nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages caused or resulting from the negligence of the **DEPARTMENT**.

The **TOWN'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 **TOWN'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 **TOWN** of a claim shall not release the **TOWN** of the above duty to defend and indemnify the **DEPARTMENT**.

The **TOWN** 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 **TOWN's** evaluation of liability or its inability to evaluate liability shall not excuse the **TOWN'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 negligent shall excuse performance of this provision by the **TOWN**.

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

TOWN OF CUTLER BAY:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY: _____
Town Manger/Mayor

BY: _____
District Director of
Transportation Operations

ATTEST: _____ (SEAL)
Town Clerk

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: _____
Town Attorney

BY: _____
District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

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

State Road Number: 5 (US-1)

Local Road Name: South Dixie Highway

Agreement Limits: From 575 feet south of SW 200th Street (Caribbean Boulevard) to 460 feet north of SW 200th Street (Caribbean Boulevard)

County: Miami-Dade

EXHIBIT 'B'

TOWN OF CUTLER BAY RESOLUTION

To be herein incorporated once ratified by the **TOWN** Council.