RESOLUTION NO. 12-09-85

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING THE MAINTENANCE MEMORANDUM OF AGREEMENT BETWEEN FLORIDA DEPARTMENT OF TRANSPORTATION AND ISLAMORADA, VILLAGE OF ISLANDS TO PROVIDE BEAUTIFICATION IMPROVEMENTS IN THE US 1 RIGHT-OF-WAY, FROM 1,900 FEET SOUTH OF SNAKE CREEK BRIDGE (MM 85.3) TO 100 FEET SOUTH OF PIPKEN DRIVE (MM 87.3); AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Florida Department of Transportation has proposed a beautification improvement project, Contract #E-6G60, within the U.S. 1 Highway right-of-way, from 1,900 feet south of Snake Creek Bridge (MM 85.3) to 100 feet south of Pippen Drive (MM 87.3); and

WHEREAS, Florida Department of Transportation has prepared a Landscape Maintenance Memorandum of Agreement (the "Agreement") to provide the beautification improvements (the "Project") within the U.S. 1 Highway right-of-way, within the Village’s boundaries; and

WHEREAS, the Florida Department of Transportation has agreed to provide the services described in the Agreement; and

WHEREAS, after a one (1) year warranty period, the Village will be responsible for maintaining the Project’s limits according to all standard, applicable guidelines and procedures approved in the FY 2012-2013 Turf and Landscape Maintenance Joint Participation Agreement between the Village and Florida Department of Transportation; and

WHEREAS, the Village Council finds that approval of the Agreement between Florida Department of Transportation and the Village attached hereto is in the best interest of the
Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF
ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval of Agreement. The Maintenance Memorandum of Agreement (the “Agreement”) between Florida Department of Transportation and the Village to provide beautification improvements in the U.S. 1 Highway right-of-way, a copy of which is attached as Exhibit “1”, together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney, is approved.

Section 3. Authorization of Village Officials. The Village Manager and/or his designee and the Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

Section 4. Authorization of Fund Expenditure. Notwithstanding the limitations imposed upon the Village Manager pursuant to the Village’s Purchasing Procedures Ordinance, the Village Manager is authorized to expend budgeted funds to implement the terms and conditions of the Agreement.

Section 5. Execution of Agreement. The Village Manager is authorized to execute the Agreement on behalf of the Village, to execute any required agreements and/or documents to implement the terms and conditions of the Agreement and to execute any extensions and/or amendments to the Agreement, subject to the approval as to form and legality by the Village Attorney.
Section 6. **Effective Date.** This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 27th day of September, 2012.

Motion to adopt by Councilman Achenberg, second by Councilman Purdo.

FINAL VOTE AT ADOPTION

Mayor Ken Philipson YES
Vice Mayor Ted Blackburn YES
Councilman Don Achenberg YES
Councilman Dave Purdo YES
Councilman Michael Reckwerdt YES

KEN PHILIPSON, MAYOR

ATTEST:

VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF ISLAMORADA, VILLAGE OF ISLANDS:

VILLAGE ATTORNEY
FLORIDA DEPARTMENT OF TRANSPORTATION
LANDSCAPE
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH
ISLAMORADA, VILLAGE OF ISLANDS

This AGREEMENT, entered into on October 5, 2012, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter called the DEPARTMENT, and ISLAMORADA, VILLAGE OF ISLANDS, a municipal corporation of the State of Florida, hereinafter called the VILLAGE, and collectively referred to as the PARTIES.

RECITALS:

A. The DEPARTMENT has jurisdiction over State Road (S.R.) 5/Overseas Highway from 1,900 feet south of Snake Creek Bridge (M.M. 85.3) to 100 feet south of Pippin Drive (M.M. 87.3), which is located within the limits of the VILLAGE; and

B. The DEPARTMENT, pursuant to Contract # E-6G60, has drafted design plans for beautification improvements on S.R. 5/Overseas Highway from 1,900 feet south of Snake Creek Bridge to 100 feet south of Pippin Drive, 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 # E-6G60 (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 installed pursuant to the Project; and

E. The VILLAGE, by Resolution No. 12-09-85, dated September 23, 2012, 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 by executing this AGREEMENT all maintenance responsibilities pertaining to the landscaping within the PROJECT LIMITS are assigned to the VILLAGE in perpetuity upon the DEPARTMENT’s release of its contractor from further warranty work and responsibility, as set forth in Section 580-5 of the DEPARTMENT’s Standard Specification for Road and Bridge Construction.

3. VILLAGE’S MAINTENANCE RESPONSIBILITIES

The VILLAGE shall maintain the landscape 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 VILLAGE shall maintain the landscape 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. The VILLAGE’s maintenance obligations shall include but not be limited to:

a. Pruning all plant materials, which include trees, shrubs and ground covers, and parts thereof.

b. 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.

c. Mulching all plant beds and tree rings.

d. Removing and disposing of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials.

e. Watering and fertilizing all plants as needed to maintain the plant materials in a healthy and vigorous growing condition.

f. 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.

g. Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described by 2.A through 2.F.

h. 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.

i. 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 to ensure that the VILLAGE is performing its duties pursuant to this AGREEMENT. The Department shall share with the VILLAGE 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 VILLAGE 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 VILLAGE'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 VILLAGE MANAGER, to notify the VILLAGE of the maintenance deficiencies. From the date of receipt of the notice, the VILLAGE 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, or a part thereof, and invoice the VILLAGE 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 VILLAGE 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 VILLAGE: Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, Florida 33036
Attention: Village 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 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 VILLAGE’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 VILLAGE 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 VILLAGE refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the VILLAGE 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 written notice.

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. For purposes of performing its duties under this AGREEMENT, the VILLAGE shall insert the following clause into any contracts entered into by the VILLAGE, with vendors or contractors:

Vendors/Contractors:

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 AGREEMENT; and

ii. Shall expressly require 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 of all new employees hired by the subcontractors during the AGREEMENT term.

c. This writing embodies the entire agreement and understanding between the parties hereto and, it may be modified or amended only by mutual consent of the parties in writing. This AGREEMENT supersedes any other agreements and understanding, oral or written, with reference to the subject matter hereof.

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 by mutual written agreement of the DEPARTMENT and the VILLAGE, executed by and delivered to each party.

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 the provisions and monetary limitations of Section 768.28(5), Florida Statutes, and to the extent permitted by law, the VILLAGE 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 VILLAGE’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 VILLAGE, its officers, agents, employees or representatives in any way pertaining to this agreement, whether direct or indirect, except that neither the VILLAGE 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 willful negligence of the DEPARTMENT.

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

The VILLAGE 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 VILLAGE's evaluation of liability or its inability to evaluate liability shall not excuse the VILLAGE'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 VILLAGE.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the day and year above written.

ISLAMORADA,
VILLAGE OF ISLANDS:

BY:  
VILLAGE Mayor/Manager

ATTEST:  
Deputy VILLAGE Clerk

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY:  
District Director of Transportation Operations

ATTEST:  
Executive Secretary

LEGAL REVIEW:

BY:  
VILLAGE Attorney

BY:  
District Chief Counsel
EXHIBIT 'A'

PROJECT LIMITS

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

State Road Number: 5/Overseas Highway

Agreement Limits: From 1,900 feet south of Snake Creek Bridge (M.M. 85.3) to 100 feet south of Pippin Drive (M.M. 87.3)

County: Monroe
EXHIBIT 'B'

ISLAMORADA, VILLAGE OF ISLANDS RESOLUTION

To be herein incorporated once ratified by the VILLAGE Council.