

**DISTRICT SEVEN HIGHWAY LANDSCAPE REIMBURSEMENT
AND MAINTENANCE MEMORANDUM OF AGREEMENT**

THIS AGREEMENT, made and entered into as of the _____ day of _____, 201_, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, a component agency of the State of Florida, (the "Department") and CITY OF CLEARWATER, "City".

WITNESSETH

WHEREAS, the Department owns State Roads 595 and 651 (Alt. U.S. 19/S. Missouri Avenue) right-of-way between Bayview Drive (Section 15007-000, M.P. 1.400) and Kingsley Street (Section 15007-000, M.P. 2.037) in Pinellas County, Florida and

WHEREAS, the City seeks to beautify the Project by the installation of landscape improvements which would enhance its aesthetic quality; and

WHEREAS, under F.P.I.D. 438701-1-58-01 (the "Project") the Department has allocated funds for such improvements and is authorized pursuant to Section 334.044(26), Florida Statutes, to reimburse the City for eligible expenditures; and

WHEREAS, upon installation of such improvements, the City has agreed to maintain those improvements in accordance with the provisions below; and

WHEREAS, the Department is authorized pursuant to Section 334.044(7), Florida Statutes to enter into contracts and agreements with counties/municipalities for maintenance of roadside landscape improvements on the State Highway System; and

WHEREAS, the City has authorized its officers to execute this Agreement on its behalf,

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

1. SUBMITTALS

a. The City shall produce plans for and install landscape improvements on those areas of the Project Highway as depicted in the Landscape Plans and Specifications to be attached and incorporated as Exhibit "A". All work conducted in connection with plans production and installation of improvements shall be referred to as the "Project".

b. Within one hundred twenty calendar days after execution of this Agreement, the City shall submit to the Department four copies of the landscape plans and specifications. This shall include:

1. A Project Maintenance Plan.
2. Maintenance of Traffic plan sheets.
3. In addition, to the landscape plans and specifications, two (2) copies of the following documents are required:
 - a. The Project schedule.
 - b. Letters of no conflict from all utilities within the Project limits.
 - c. Project cost estimate.

Within three weeks of the receipt of review comments by the Department, the City shall revise all documents required herein in accordance with the Department's comments and submit two copies of the revised documents for the Department's written approval. Within one week of receipt of Department approval, the City shall submit four copies of the approved Plans and Specifications to the Department. Failure to submit any of the required documents within the time periods specified may result in termination by the Department of this Agreement.

c. If any of the submittals of the City pursuant to Paragraph 1.b. are rejected by the Department and returned to the City for revisions, such documents must be approved and resubmitted to the Department not later than one hundred eighty calendar days following the execution of this Agreement. If such documents are not resubmitted as approved, the Department may terminate this Agreement, including its obligation to reimburse any monies expended for the Project except for those approved expenditures for design of the Project.

d. All notices, demands, requests or other instruments shall be given by depositing the same in the U.S. Mail, postage prepaid, registered or certified with return receipt requested.

(1) If to the Department, address to District Maintenance Engineer, at Florida Department of Transportation, MS 7-1200, 11201 N. McKinley Drive, Tampa, Florida 33612-6456 or at such other address as the Department may from time to time designate by written notice to the City; and

(2) If to the City address to _____ or at such other address as the City from time to time designates by written notice to the Department.

All time limits provided hereunder shall run from the date of receipt of all such notices, demands, requests and other instruments.

2. INSTALLATION

a. The City shall not commence Project installation until the Department has issued a Notice to Proceed with Construction. Said Notice shall contain the Project completion date. The City shall notify the District Landscape Architect (DLA) and Operations Center Engineer two (2) full working days prior to commencing work on the Project site.

b. The City agrees to install or cause to be installed landscaping within the Project area as specified in the Landscape Plans and Specifications included as Exhibit "A". The City shall not change or deviate from the plan(s) without the Department's prior written approval.

c. If the City desires to position vehicles, equipment, or personnel, or to perform maintenance activities closer than fifteen feet to the edge of pavement, or to close a traffic lane, Maintenance of Traffic shall be in accordance with the Project plans and the Department's Maintenance of Traffic Regulations. The City shall have a Worksite Traffic Supervisor certified in Advanced Maintenance of Traffic supervise the set up and operation of Maintenance of Traffic devices at the site of the construction or maintenance activity. Prior to proceeding with construction, the City shall provide the Department with the Worksite Traffic Supervisor's certification.

d. In the event that any portion of the Project is at any time determined by the Department to not be in conformance with all applicable laws, rules, procedures and guidelines of the

Department, or is determined to be interfering with the safe and efficient operation of any transportation facility, or is otherwise determined to present a danger to public health, safety, or welfare, said portion shall be immediately brought into departmental compliance at the sole cost and expense of the City.

e. If the City fails to substantially complete Project installation by the completion date in the Notice to Proceed, the Department shall provide the City with written notice of its intent to terminate this Agreement. If the City fails to respond or take corrective action within the prescribed time period set forth in the notice, the Department may terminate the Agreement as provided for in Paragraph 6.b., including its obligation to reimburse any monies expended for the Project except for those portions of the Project already completed by the City and accepted by the Department.

f. Upon certification of completion by the City, inspection, and approval of the Project as substantially complete in writing by the DLA, the Project shall be subject to a ninety calendar-day establishment period. Work performed and costs incurred after final project approval are not eligible for reimbursement.

3. BILLING and PAYMENT

a. Upon completion of the ninety calendar-day establishment period and approval of the Project installation by the Department, the City shall, within one hundred eighty calendar days, furnish the Department with three signed originals of its final and complete billing of all eligible costs incurred in connection with the Project. The invoice shall show the description and site of the Project; the date on which the first work was performed or the date on which the earliest billed expense was incurred; the date on which the last work was performed or the last item of billed expense was incurred; and the location where records and accounts billed can be audited.

b. The Department shall reimburse the City in an amount not to exceed \$99,500 Dollars and No Cents for all eligible expenditures for the professional design, inspection, and enforcement of the material and installation standards; and the purchase, installation, and establishment of plant material as identified in Exhibit "A". Reimbursement for design fees shall not exceed ten percent (10%) of the total reimbursement amount.

c. Payment shall be made to the City by the Department under the following conditions.

1. This Agreement has not been terminated pursuant to Paragraph 6. b.
2. The City agrees to complete the project on or before two (2) years from the date of the Agreement. If the City does not complete the project within this time period, any reimbursement for payment shall not be processed by the Department unless an extension of the time period is requested by the City and granted in writing by the Department
3. Written certification of the completion of the installation and acceptance by the City is provided to the Department.
4. The DLA has inspected the work and has issued a letter of final completion to the City noting that it has fully met with the terms and conditions of this Agreement.
5. After Department issuance of the Substantial Completion letter, the City shall provide the Department with four (4) sets of 11" x 17" folded As-Built drawings.

4. STANDARD FINANCIAL PROVISIONS

- a. The Department agrees to compensate the City for services described in Exhibit A - Landscape Plans and Specifications. The Method of Compensation is described in Section 3, "Billing and Payment".
- b. The City shall provide quantifiable, measurable and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project, and its quantifiable, measurable and verifiable units of deliverables are described more fully in Exhibit A - Landscape Plans and Specifications. **(Section 287.058(1)(d) and (e) F.S.)**
- c. Invoice Summaries shall be submitted by the City in detail sufficient for a proper pre-audit and post audit based on the quantifiable, measurable and verifiable units of deliverables as established in Exhibit A - Landscape Plans and Specifications. Deliverables must be received and accepted in writing by the Department's DLA prior to payments. **(Section 287.058 (1) (a), F.S.)**
- d. There shall be no reimbursement for travel expenses under this Agreement.
- e. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under **Chapters 215 and 216, F.S.** If the Department determines that the performance of the City is unsatisfactory, the Department shall notify the City of the deficiency to be corrected, which correction shall be made within a time frame to be specified by the Department. The City shall, within five (5) days after notice from the Department, provide the Department with a corrective action plan describing how the City will address all issues of Agreement non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or Agreement non-compliance. Payment shall not be made to the City until the goods and services have been received and proof of payment or other backup documentation as requested is provided to the Department. The Project must be completed (goods and services received and approved by the City) no later than_____.

The City providing goods and services to the Department should be aware of the following time frames. Inspection and approval of goods or services should take no longer than five (5) working days. The Department has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the date the Invoice Summary is received. **(Section 215.422 (1), F.S.)**

If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 55.03 (1), F.S., will be due and payable, in addition to the Invoice Summary amount, to the City. Interest penalties of less than one dollar (\$1.00) will not be enforced unless the City requests payment. Invoice Summaries that have to be returned to a City because of City preparation errors will result in a delay of the payment. The Invoice Summary payment requirements do not start until a properly completed Invoice Summary is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for the City who may be experiencing problems in obtaining timely payment(s) from the Department. The Vendor Ombudsman may be contacted at (850) 413-5516. (*Section 215.422 (5) and (7), F.S.*)

f. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request by the Department at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the City's general accounting records and project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the contractor and subcontractors considered necessary by the Department for a proper audit of costs. (*Section 287.058 (4), F.S.*)

g. In the event this contract is for services in excess of \$25,000.00 and a term for a period of more than one (1) year, the provisions of *Section 339.135 (6) (a), F.S.*, are hereby incorporated:

"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 such 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 which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year."

h. The Department's obligation to pay is contingent upon an annual appropriation by the Florida Legislature. (*Section 216.311, F.S.*)

i. The City agrees to comply with *Section 20.055 (5), F.S.*, and to incorporate in all subcontracts the obligation to comply with *Section 20.055 (5), F.S.*

5. MAINTENANCE

a. At such time as the Department issues a Notice to Proceed with Project installation and until such time as the Project is removed pursuant to Paragraphs 5. f. and 6. a., the City shall maintain the Project in a reasonable manner and with due care in accordance with Project standards. Specifically, the City agrees to:

- (1) remove litter from all landscaped areas of the Project Highway;
- (2) remove fallen palm fronds, fallen fruit and flower stalks and fallen twigs and limbs from all landscaped areas of the Project Highway;
- (3) water and fertilize all plants;
- (4) mulch all plants beds;
- (5) keep plants as free as practicable from disease and harmful insects;

- (6) weed the Project premises routinely;
- (7) mow and/or cut grass within the areas delineated by the landscape plans;
- (8) prune all plants, specifically remove all dead or diseased parts of plants and prune of all parts of plants that present a visibility hazard to those using the roadway;
- (9) replace, or at the City's option, remove all dead or diseased plants or other parts of the Project that have fallen below Project standards. Replace with plants of substantially the same grade, size and specification as originally provided for in the plans and specifications, unless otherwise authorized by the Department; and
- (10) perform routine maintenance as prescribed by the manufacturer of any Project irrigation system; and
- (11) trim, alter, relocate or remove landscaping as needed for any future Intelligent Transportation System (ITS).

b. Maintenance of the Project shall be subject to periodic inspections by the Department. In the event that any of the aforementioned responsibilities are not carried out or are otherwise determined by the Department not to be in conformance with the applicable Project standards, the Department may terminate the agreement in accordance with Paragraph 6.b.

c. The Operations Center Engineer shall be notified forty-eight hours in advance of commencing any scheduled construction or maintenance activities. Emergency repairs shall be performed without delay and the Operations Center Engineer notified immediately. The Operations Center Engineer with responsibility for the roadway within this Project is located 5211 Ulmerton Road, Clearwater, FL. 33760: Telephone 727-575-8300.

d. Prior to any Project construction or reconstruction activity, the City shall submit plans to the Department for review and approval of the proposed work. Additionally, such plans shall be submitted to all utilities with facilities within the limits of work for their review and comment. The City shall resolve any conflicts and/or concerns raised by the utilities prior to commencement of such activities. Work shall not start until the Department has issued a Design Approval and Notice to Proceed with Construction letter to the City. Prior to commencing any field activity on this Project, the City shall notify all the utilities of their work schedule enabling facilities to be field located and marked to avoid damage.

e. The Department will require the City to cease operations and remove all personnel and equipment from the Department's right-of-way if any actions on the part of the City or representatives of the City violate the conditions or intent of this agreement as determined by the Department.

f. It is understood between the parties hereto that any or all of the Project 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 the future criteria or planning of the Department. The City shall be given notice regarding such removal, relocation, or adjustment and shall be allowed sixty (60) calendar days to remove all or part of the Project at its own cost. The City will own that part of the Project it removes. After the sixty (60) calendar days removal period, the Department may remove, relocate, or adjust the Project as it deems best. Wherever the City removes improvements pursuant to this agreement, the City shall restore the surface of the affected portion of the Project premises to the same safe and trafficable condition as it was before installation of such improvements.

g. The City covenants to appropriate in its annual budget, for each Fiscal Year, non ad valorem funds lawfully available to satisfy its maintenance responsibilities under this Agreement. This covenant does not create any lien upon, or pledge of, such non-ad valorem funds, nor does it preclude the City from pledging such funds in the future, or from levying and collecting any particular non-ad valorem funds.

6. TERMINATION

a. The term of this Agreement shall be for a period of ten years commencing on the date of execution of the Agreement, with ten year renewal options. The Department shall send the City an expiration notice six months prior to each ten year expiration date. Any renewal must be agreed upon by both parties in writing ninety calendar days prior to the expiration of the existing agreement

In the event that the City elects to not renew the Agreement, then the City shall, at its sole expense, be responsible for the removal of the Project and shall restore the Project Highway to a safe and trafficable condition prior to expiration of the Agreement.

b. The Agreement may be terminated by the Department if the City, following fifteen calendar days' written notice, fails to perform its duties under this agreement.

c. The Department reserves the right to unilaterally cancel the Agreement for refusal by the contractor or City to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, F.S. and made or received in conjunction with this Agreement.

d. Within sixty (60) calendar days following a notice to terminate pursuant to Paragraph 6.b., if the Department requests, the City shall remove the Project and restore the Project premises to the same safe condition existing prior to installation of the Project. If the Department does not request such restoration or terminates this Agreement pursuant to Paragraph 6.b., the Department may complete, remove, relocate or adjust the Project as it deems best.

7. CLAIMS

a. When the Department receives notice of a 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.

8. GENERAL

a. The Department's District Secretary or his designee 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.

b. E-Verify:

1. The City 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 City during the term of this Agreement; and

2. shall expressly require any subcontractors performing work or providing services to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employee eligibility of all new employees hired by the subcontractor during this Agreement's term.

c. This Agreement embodies the entire Agreement and understanding between the parties hereto and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. This Agreement may not be assigned or transferred by the City in whole or in part without written consent of the Department.

d. If any provision of the Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

e. This Agreement, regardless of where executed, shall be governed by and construed according to the Laws of the State of Florida.

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

CITY OF CLEARWATER
a municipal corporation
of the State of Florida

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
Name: _____
Title: _____

By: _____
Brian McKishnie, P.E.
Director of Transportation Operations,
District Seven

Attest: _____
Title: _____ (SEAL)

Attest: _____
Executive Secretary (SEAL)

Legal Review:

Legal Review:

Title: _____

Office of the General Counsel, District 7

City Signature Page for District Seven Highway Landscape Reimbursement
And Maintenance Memorandum of Agreement
(Missouri Avenue right-of-way between Bayview Drive and Kinglsey Street)

Countersigned:

CITY OF CLEARWATER, FLORIDA

George N. Cretekos
Mayor

By: _____
William B. Horne, II
City Manager

Approved as to form:

Attest:

Matthew M. Smith
Assistant City Attorney

Rosemarie Call
City Clerk