



# VILLAGE OF KEY BISCAINE



Office of the Village Manager

## MEMORANDUM

*Village Council*  
Franklin H. Caplan, *Mayor*  
Mayra P. Lindsay, *Vice Mayor*  
Michael W. Davey  
Theodore J. Holloway  
Michael E. Kelly  
Ed London  
James S. Taintor

DATE: September 3, 2013

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

*Village Manager*  
John C. Gilbert

RE: Highway Beautification Grant with the Florida Department of Transportation

### RECOMMENDATION

It is recommended that the Village Council authorize the Village Manager to apply for and accept, if awarded, a matching grant with the Florida Department of Transportation for the beautification of Harbor Drive.

### BACKGROUND

In Fiscal Year 2014, the Florida Highway Beautification Council will award a total of \$1 Million to local agencies desiring to beautify roads on the State Highway System. Harbor Drive is part of the State Highway System. This grant, if awarded will be used to beautify Harbor Drive. Approximately 100 trees will be planted along Harbor Drive.

The grant application requires a Resolution from the Village Council authorizing the Village Manager to apply for and accept the grant. Exhibit "A", Example Florida Highway Beautification Council Grant, Landscape Construction, and Maintenance Memorandum of Agreement, includes Exhibits A, B and C that will be submitted to the Florida Beautification Council if the grant is awarded. This grant requires a 50% match.

Matching funds for this project will come from the Harbor Drive Lighting Project in the Capital Improvement Program. The cost of this project is not to exceed \$43,000.

Mr. Chad Freidman from Weiss Serota Helfman Pastoriza Cole & Boniske provided resolution and attests to form and legal sufficiency.

RESOLUTION NO. 2013 - \_\_\_\_\_

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AUTHORIZING THE VILLAGE MANAGER TO APPLY FOR AND ACCEPT, IF AWARDED, A HIGHWAY BEAUTIFICATION GRANT FROM THE FLORIDA DEPARTMENT OF TRANSPORTATION; FURTHER AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN AGREEMENT RELATED TO THE SAME; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, many roadside areas and median strips within Florida Department of Transportation rights of way must be maintained and attractively landscaped; and

**WHEREAS**, the Village of Key Biscayne (the "Village") Village Council desires to beautify and improve various rights of way by landscaping within the Village; and

**WHEREAS**, the Village Council authorizes the Village Manager to apply for a Highway Beautification Council Grant from the Florida Department of Transportation, and if awarded, to accept the grant, and enter into a Highway Beautification Grant, Landscape Construction, and Maintenance Memorandum of Agreement between the Village and the Florida Department of Transportation in substantially the form attached as Exhibit "A;" and

**WHEREAS**, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

**Section 2. Village Manager Authorized.** The Village Council hereby authorizes the Village Manager to apply for a Highway Beautification Council Grant from the Florida Department of Transportation, and if awarded, to accept the grant, and enter into a Highway Beautification Grant, Landscape Construction, and Maintenance Memorandum of Agreement between the Village and the Florida Department of Transportation, in substantially the form attached as Exhibit "A," subject to approval as to form, content, and legal sufficiency by the Village Attorney.

**Section 3. Implementation.** The Village Manager is hereby authorized to take any and all necessary action to implement the purposes of this Resolution.

**Section 4. Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this \_\_\_\_ day of September, 2013.

\_\_\_\_\_  
FRANK CAPLAN, MAYOR

ATTEST:

\_\_\_\_\_  
CONCHITA H. ALVAREZ, MMC  
VILLAGE CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

\_\_\_\_\_  
VILLAGE ATTORNEY

Exhibit "A"

EXAMPLE- FLORIDA HIGHWAY BEAUTIFICATION  
COUNCIL GRANT

**FLORIDA HIGHWAY BEAUTIFICATION COUNCIL  
GRANT, LANDSCAPE CONSTRUCTION, AND MAINTENANCE  
MEMORANDUM OF AGREEMENT**

**THIS AGREEMENT**, made and entered into this day of     DATE    , by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, a component **AGENCY** of the State of Florida, hereinafter called the "**DEPARTMENT**" and the     LOCAL GOVERNMENTAL ENTITY    , a political subdivision of the State of Florida, existing under the Laws of Florida, hereinafter called the "**AGENCY**."

**WITNESSETH**

**WHEREAS**, the **DEPARTMENT** has jurisdiction over and maintains State Road     HIGHWAY     as part of the State Highway System; and

**WHEREAS**, the **AGENCY** seeks to install and maintain certain landscaping within the unpaved areas within the right of way of State Road     HIGHWAY    ; and

**WHEREAS**, the **DEPARTMENT** agrees that landscaping should be installed and maintained as proposed by **AGENCY** and has, through the Florida Highway Beautification Council, awarded **AGENCY** a beautification grant for installing such landscaping; 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**, **AGENCY**, by Resolution No.     ###    , dated     DATE    , and attached hereto as Exhibit "A," has accepted said grant and authorized its officers to execute this **AGREEMENT** on its behalf.

**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 **AGENCY** hereby agrees to install or cause to be installed landscaping on the highway facility as specified in the Landscape Plan(s) included as Exhibit "B." Such installation shall be pursuant to Rule 14-40.003, Florida Administrative Code, as it may be amended from time to time. The **AGENCY** shall not change or deviate from said plan(s) without written approval of the **DEPARTMENT**.
2. The **AGENCY** agrees to maintain the landscaping within the median and areas outside the travel way within the right of way pursuant to the Landscape Maintenance Plan(s) included as Exhibit "C", and Rule 14-40.003, Florida Administrative Code, as it may be amended from time to time. The above named functions to be performed by the **AGENCY**, shall be subject to periodic inspections by the **DEPARTMENT**. The **AGENCY** shall not change or deviate from said plan(s) without written approval of the **DEPARTMENT**.
3. All landscape installation and maintenance activities undertaken by **AGENCY** shall be pursuant to the Work Zone Traffic Control Plan(s) included as Exhibit "D", and Rule 14-40.003, Florida Administrative Code.
4. If at any time after the **AGENCY** has assumed the landscaping installation or maintenance responsibility above-mentioned, it shall come to the attention of the **DEPARTMENT** that the limits or a part thereof is not properly installed or maintained pursuant to the terms of this **AGREEMENT**, the District Secretary or his designee may 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:

- a. If installation is not completed pursuant to the plans in paragraph 1, the DEPARTMENT may complete the installation, with DEPARTMENT or Contractor's personnel, and deduct the reasonable cost thereof from the money otherwise due the AGENCY under this AGREEMENT.
- b. If installation has been properly completed or if the DEPARTMENT elects not to complete the landscaping under (a) above, and maintenance by AGENCY is not in compliance with paragraphs 2 or 3, the DEPARTMENT may take action to maintain the landscaping or a part thereof, with DEPARTMENT or Contractor's personnel and invoice the AGENCY for expenses incurred, or
- c. The DEPARTMENT may terminate the AGREEMENT, in which case the AGENCY shall at its own expense and within sixty (60) days after written notice by the DEPARTMENT, remove all of the landscaping that the DEPARTMENT directs be removed and return the right-of-way to its original condition. The AGENCY will own such materials as it removes and the DEPARTMENT shall own any materials remaining. The DEPARTMENT may, in its discretion, remove, relocate or adjust the landscaping materials, with the AGENCY being responsible for the cost of any removal.

Upon DEPARTMENT action under one of the above options and upon direction of the DEPARTMENT, AGENCY shall cease installation and maintenance activities under this AGREEMENT.

- 5. It is understood between the parties hereto that the landscaping covered by this AGREEMENT may be removed, relocated or adjusted by the DEPARTMENT at any time in the future as determined to be necessary by the DEPARTMENT in order that the state road be widened, altered or otherwise changed to meet with future criteria or planning of the DEPARTMENT. The AGENCY shall be given sixty (60) calendar days notice to remove said landscaping after which time the DEPARTMENT may remove the same.
- 6. AGENCY may utilize its employees or third parties to accomplish its obligations under paragraphs 1, 2 or 3; however, AGENCY remains responsible for proper performance under this AGREEMENT and shall take all steps necessary to ensure that its employees or third parties perform as required under this AGREEMENT.
- 7. The DEPARTMENT hereby agrees that, upon satisfaction of the conditions of paragraph 8 of this AGREEMENT, the DEPARTMENT will pay the AGENCY the amount of \$ 33,333.00 as a grant pursuant to Section 339.2405(11), Florida Statutes. For purposes of this provision, the cost of such installation may only include costs which are allowed by Section 339.2405(11), Florida Statutes.
- 8. Payment shall be made to the AGENCY by the DEPARTMENT under the following conditions.
  - a. This AGREEMENT has not been terminated pursuant paragraph 4.
  - b. The grant award has not lapsed pursuant to paragraph 11.
  - c. Written certification of the completion of the installation and acceptance by the AGENCY is provided to the DEPARTMENT.
  - d. The Highway Beautification Council has inspected and issued written approval of the work or has issued a written waiver of its inspection rights pursuant to this AGREEMENT.
  - e. A DEPARTMENT Landscape Architect has inspected the work and has issued a written determination that the AGENCY has completed the installation of the landscaping pursuant to the terms of this AGREEMENT.

9. Payment under paragraph 8 of this **AGREEMENT** is also subject to the following conditions.
- a. Proof of receipt and approval of goods and services must be available upon request by the **DEPARTMENT** or the State Comptroller pursuant to Section 215.42, Florida Statutes.
  - b. Bills for fees or other compensation for services or expenses that are recovered pursuant to this **AGREEMENT** shall contain detail sufficient for a proper preaudit or postaudit thereof.
  - c. Records of costs incurred under the terms of this **AGREEMENT** shall be maintained by the **AGENCY** and made available upon request to the **DEPARTMENT** at all times during the period of this **AGREEMENT** and for three years after final payment is made. Copies of these documents shall be provided to the **DEPARTMENT** upon request. Records of the costs incurred include the **AGENCY'S** general accounting records, together with supporting documents and records of LOCAL GOVERNMENTAL ENTITY and all subcontractors performing work, and all other records considered necessary by the **DEPARTMENT** for a proper audit of costs.
10. The administration of funds awarded by the **DEPARTMENT** to the **AGENCY** may be subject to audits and/or monitoring by the **DEPARTMENT** as described in this section.
- a. In addition to reviews of audits conducted in accordance with OMB A-133 monitoring procedures may include, but not be limited to, on-site visits by **DEPARTMENT** staff, limited scope audits as defined by OMB A-133, and/or other procedures. By entering into this **AGREEMENT**, the **AGENCY** agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the **DEPARTMENT**. In the event the **DEPARTMENT** determines that a limited scope or project-specific audit of the **AGENCY** is appropriate, the **AGENCY** agrees to comply with any additional instructions provided by the **DEPARTMENT** to the **AGENCY** regarding such audit. The **AGENCY** further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the State Comptroller or Auditor General.
  - b. In the event that the **AGENCY** expends a total amount of State awards (i.e., State financial assistance provided to the **AGENCY** to carry out a State project) equal to or in excess of \$300,000 in the **AGENCY'S** fiscal year, the **AGENCY** must have the State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapters 10.550 and 10.650, rules of the Auditor General. Paragraph 7 to this **AGREEMENT** indicates State funds awarded through the **DEPARTMENT** by this **AGREEMENT**. In determining the State awards expended in its fiscal year, the **AGENCY** shall consider all sources of State awards, including State funds received from the **DEPARTMENT**, except that State awards received by a non-State entity for Federal program matching requirements shall be excluded from consideration.
  - c. In connection with the audit requirements addressed in paragraph 10.c. above, the **AGENCY** shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(d), Florida Statutes, and Chapters 10.550 and 10.650, Rules of the Auditor General.
  - d. If the **AGENCY** expends less than \$300,000 in State awards in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the **AGENCY** expends less than \$300,000 in State awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from non-State funds (i.e., the cost of such an audit must be paid from the **AGENCY'S** funds obtained from other than State entities).

- e. Copies of the financial reporting packages required by paragraph 10 of this **AGREEMENT** shall be submitted by or on behalf of the **AGENCY** directly to each of the following:  
FDOT District Highway Beautification Council Grant Coordinator  
District Office Address (include the internet address)

State of Florida Auditor General  
Room 401, Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

- f. Any reports, management letters, or other information required to be submitted to the **DEPARTMENT** pursuant to this **AGREEMENT** shall be submitted timely in accordance with OMB Circular A-133, Section 215.97, Florida Statutes, and Chapters 10.550 and 10.650, Rules of the Auditor General, as applicable. When submitting financial reporting package to the **DEPARTMENT** for audits, **AGENCY** should indicate the date that the financial reporting package is delivered to the **DEPARTMENT** in correspondence accompanying the financial reporting package.

11. The beautification grant awarded pursuant to this **AGREEMENT** shall be effective and continue for a period of one (1) year from the date of this **AGREEMENT**.
12. The term of this **AGREEMENT** commences upon execution.
13. The **AGENCY** shall indemnify, defend, and hold harmless the **DEPARTMENT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission or negligent act by the **AGENCY**, its agents, or employees, during the performance of the **AGREEMENT**, except that neither the **AGENCY**, its agents, nor its employees will be liable pursuant to this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the **DEPARTMENT** or any of its officers, agents, or employees during the performance of the **AGREEMENT**.
14. When the **DEPARTMENT** receives a notice of claim for damages that may have been caused by the **AGENCY** in the performance of services pursuant to this **AGREEMENT**, the **DEPARTMENT** will immediately forward the claim to **AGENCY**, and the **DEPARTMENT** will evaluate the claim and report their findings to each other within seven working days and will jointly discuss options in defending the claim. After reviewing the claim, the **DEPARTMENT** will determine whether to require the participation of the **AGENCY** in the defense of the claim or to require that the **AGENCY** defend the **DEPARTMENT** in such claim pursuant to this section. The **DEPARTMENT**'s failure to notify the **AGENCY** of a claim shall not release the **AGENCY** from any of the requirements of this section. The **DEPARTMENT** and the **AGENCY** will pay their own costs for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs, but if the verdict determines that there is joint responsibility, the costs and liability for damages will be shared in the same percentage as that judicially established.
15. 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.
16. This **AGREEMENT** may not be assigned or transferred by the **AGENCY** in whole or part without the consent of the **DEPARTMENT**.
17. 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 **AGREEMENT** and Florida law, the laws of Florida shall prevail.

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

LOCAL GOVERNMENTAL ENTITY  
(AGENCY)

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Mayor or Chairman

By: \_\_\_\_\_  
District Secretary

Attest: \_\_\_\_\_(SEAL)  
Clerk/Director

Attest: \_\_\_\_\_(SEAL)  
Executive Secretary

\_\_\_\_\_  
Legal Approval

\_\_\_\_\_  
Legal Approval

EXAMPLE

Catalog of State Financial Assistance (CSFA) Number - 55003  
CSFA Title - Florida Highway Beautification Council  
Object Code - 750003  
Category - 088850

**EXHIBIT "A"**

*RESOLUTION BY LEGAL GOVERNMENTAL ENTITY ACCEPTING GRANT  
AND AUTHORIZING ITS OFFICERS TO EXECUTE THIS AGREEMENT ON ITS BEHALF*

EXAMPLE

**EXHIBIT "B"**

*LANDSCAPE PLAN APPROVED BY DISTRICT LANDSCAPE ARCHITECT*

**EXAMPLE**

EXHIBIT "C"

*LANDSCAPE MAINTENANCE PLAN APPROVED BY DISTRICT LANDSCAPE ARCHITECT*

EXAMPLE