

<b>To:</b>	Tom
<b>From:</b>	Kari
<b>Date:</b>	9/16/2021
<b>Subject:</b>	Signature approval

Tom-

Attached for your signature is the landscape maintenance agreement with FDOT.

Thanks-  
Kari

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REF. PERMIT NUMBER: 2019-A-194-00056  
LOCAL AGENCY: TOWN OF LONGBOAT KEY  
ROADWAY: SR 789

**LANDSCAPE MAINTENANCE AND INSTALLATION AGREEMENT  
BETWEEN  
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND  
TOWN OF LONGBOAT KEY**

THIS Agreement made and entered into this 13th day of September, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, (hereinafter, "DEPARTMENT") and TOWN OF LONGBOAT KEY (hereinafter, "AGENCY") for the AGENCY to maintain, at the AGENCY'S expense, landscaping within the area specified below.

WITNESSETH

1. WHEREAS, the DEPARTMENT has jurisdiction over and maintains SR 789 (Gulf of Mexico Dr.) as part of the State Highway System; and
2. WHEREAS, the DEPARTMENT, at the request of the AGENCY, seeks to construct a left turn lane and related improvements within the right-of-way of SR 789 (Gulf of Mexico Dr.) pursuant to Permit Number 2019-A-194-00056 (hereinafter, "PROJECT") and the AGENCY has agreed, at its expense, to maintain the landscaping including the mowing of the grass, irrigation, and landscape plantings installed within certain areas of the right-of-way as part of the PROJECT (hereinafter, the landscaping including the mowing of the grass, irrigation, and landscape plantings are collectively referred to as, "LANDSCAPE IMPROVEMENTS").
3. WHEREAS, the AGENCY, by Resolution No. 2021-20, **dated** September 13, 2021 **and** attached hereto as Exhibit A, attached hereto and incorporated into this Agreement, accepted this obligation and authorized its Chairman or Designee 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 assures the DEPARTMENT, that prior to submitting this Agreement, it has:
  - a. Ascertained the location of all existing utilities, both aerial and underground. A letter of notification of the landscape development improvements was mailed on 4/18/2019, to the following utilities/municipalities:
    - Florida Power and Light
    - TECO
    - Frontier Communications

**Utilities have been addressed in the roadway design plans.**
  - b. Complied with all permit requirements from the appropriate agencies (county,

REF. PERMIT NUMBER: 2019-A-194-00056  
LOCAL AGENCY: TOWN OF LONGBOAT KEY  
ROADWAY: SR 789

municipality, etc.) in connection with the activities described hereunder. Outdoor advertising is specifically excluded from this Agreement in accordance with Fla. Stat. §479.11.

2. The AGENCY agrees to maintain the LANDSCAPE IMPROVEMENTS in accordance with the Technical Maintenance Plan included as Exhibit B attached hereto and by this reference made a part hereof. The AGENCY agrees, at the AGENCY'S expense, to maintain all LANDSCAPE IMPROVEMENTS identified on Project Plan Sheets included within Permit Number 2019-A-194-00056 issued by DEPARTMENT, included as Exhibit C, attached hereto and incorporated into this Agreement, and Rule 14-40.003, Florida Administrative Code, as it may be amended from time to time, the AGENCY shall maintain all landscaping and mow all turf areas within the State Right of Way (ROW) from MP 4.188 to MP 5.047 on State Roadway No. 789 (Gulf of Mexico Drive) so that the landscaping and turf areas meet or exceed minimum Maintenance Rating Performance Standards (MRP) as defined by the DEPARTMENT.
3. The landscaping duties 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.
4. All installation and maintenance of the LANDSCAPE IMPROVEMENTS undertaken by AGENCY shall be pursuant to the Work Zone Traffic Control Plan(s) using the FDOT Standard Plans for Road Construction Index 102, and incorporated into this Agreement, and Rule 14-40.003, Florida Administrative Code.
5. The AGENCY may utilize its employees or third parties to accomplish its obligations under this Agreement. However, the 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.
6. It is understood between the parties hereto that the LANDSCAPE IMPROVEMENTS 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 to widen, alter or otherwise change the state road to meet with future criteria or planning of the DEPARTMENT. The AGENCY shall be given sixty (60) calendar days' notice to remove said LANDSCAPE IMPROVEMENTS by which time the DEPARTMENT may remove the same.
7. Designated personnel as directed by the District Secretary, or his designee may inspect and evaluate this PROJECT. If at any time after the AGENCY has assumed landscaping maintenance responsibility it shall come to the attention of the DEPARTMENT that the limits or a part thereof is not properly maintained pursuant to the terms of this Agreement, the District Secretary or his designee may issue a written notice to the AGENCY that a deficiency or deficiencies exist(s). Upon receipt of the notice, 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. The DEPARTMENT may take action to maintain the LANDSCAPE

REF. PERMIT NUMBER: 2019-A-194-00056  
LOCAL AGENCY: TOWN OF LONGBOAT KEY  
ROADWAY: SR 789

- IMPROVEMENTS or a part thereof, with DEPARTMENT or its Contractor's personnel and invoice the AGENCY for expenses incurred and the AGENCY shall promptly reimburse the DEPARTMENT for the costs, or
- b. 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 the LANDSCAPE IMPROVEMENTS that the DEPARTMENT directs to be removed and return the right-of-way to its original condition.
8. This Agreement shall take effect upon execution by both parties.
  9. This Agreement shall remain in effect until such time the AGENCY or DEPARTMENT wishes to terminate this Agreement. Termination shall be done in writing giving the other party thirty (30) days notice. Upon notice of termination by either party, all LANDSCAPE IMPROVEMENTS shall be removed by the AGENCY and the DEPARTMENT'S right-of-way returned to its original condition. If, after thirty (30) days, the LANDSCAPE IMPROVEMENTS have not been removed, the DEPARTMENT may, at its option, proceed as follows:
    - a. Maintain the LANDSCAPE IMPROVEMENTS within the limits of said PROJECT with DEPARTMENT'S contractor or personnel and the AGENCY shall promptly reimburse the DEPARTMENT upon receipt of an invoice for the reasonable values of such work; or
    - b. Remove all LANDSCAPE IMPROVEMENTS; return the right-of-way to its original condition with the DEPARTMENT'S contractor or personnel and the AGENCY shall promptly reimburse the DEPARTMENT upon receipt of an invoice for the reasonable values of such work.
  10. The AGENCY shall keep in force during the period of this Agreement public liability insurance, property damage insurance and worker's compensation insurance through an insurance policy(ies) or the AGENCY'S self-insurance program.
  11. 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.
  12. To the extent provided by law, the AGENCY shall indemnify, defend and hold harmless

REF. PERMIT NUMBER: 2019-A-194-00056  
LOCAL AGENCY: TOWN OF LONGBOAT KEY  
ROADWAY: SR 789

DEPARTMENT against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of the AGENCY, or any of its officers, agents or employees, acting within the scope of their office or employment, in connection with the obligations and rights granted to or exercised by the AGENCY hereunder, to the extent and within the limitations of Section 768.28, Florida Statutes. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by the AGENCY to indemnify DEPARTMENT for the negligent acts or omissions of DEPARTMENT, its officers, agents or employees, or for the acts of third parties. Nothing herein shall be construed as consent by the AGENCY to be sued by third parties in any manner arising out of this agreement. The AGENCY shall also require all contractors and subcontractors who conduct operations within the PROJECT to indemnify and hold DEPARTMENT harmless against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of said Contractor or Subcontractor or any of their officers, agents or employees, acting within the scope of their office or employment. The indemnities assumed by the AGENCY shall survive termination of this agreement.

13. 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.
14. This Agreement may not be assigned or transferred by the AGENCY in whole or part without the consent of the DEPARTMENT.
15. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
16. All notices under this Agreement shall be directed to the following addresses:

TO DEPARTMENT:  
Mr. Darryl Richard  
District Landscape Architect  
801 North Broadway (MS 1-49)  
Bartow, FL 33830-1249

TO TOWN OF LONGBOAT KEY  
Name: Isaac Brownman  
Title: Public Works Director  
Department: Public Works  
600 General Harris Street  
Longboat Key, FL 34228

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REF. PERMIT NUMBER: 2019-A-194-00056  
 LOCAL AGENCY: TOWN OF LONGBOAT KEY  
 ROADWAY: SR 789

IN WITNESS WHEREOF, Town of Longboat Key: has caused this Agreement to be executed in its behalf, by the Chairman or its designee, as authorized by Resolution No. 2021-20 And the FLORIDA DEPARTMENT OF TRANSPORTATION has caused this Agreement to be executed in its behalf through its District Secretary or authorized designee. This Agreement shall become effective on: September 13, 2021

TOWN OF LONGBOAT KEY:

ATTEST

DocuSigned by:  
*Trish Shinkle*  
 ABEF8C3903504A6...  
 CLERK (Seal)

DS



9/17/2021

DATE

DocuSigned by:  
*Tom Harmer*  
 0D91072D299C4DD...  
 MAYOR OR DESIGNEE

Thomas A. Harmer 9/17/2021  
 PRINT NAME DATE

TOWN OF LONGBOAT KEY LEGAL REVIEW:

By: *R. David Jackson* 9/17/2021  
 7EF499D8481B4C9...  
 Asst. Town Attorney DATE

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

ATTEST

EXECUTIVE SECRETARY (Seal)

By: \_\_\_\_\_  
 DISTRICT SECRETARY OR DESIGNEE  
 DISTRICT ONE

PRINT NAME DATE

PRINT NAME DATE

REVIEW & APPROVAL

FLA. DEPT. OF TRANS. LEGAL REVIEW:

By: \_\_\_\_\_  
 DISTRICT LANDSCAPE ARCHITECT DATE

By: \_\_\_\_\_  
 DATE

EXHIBIT A

RESOLUTION 2021-20

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA, ESTABLISHING A LANDSCAPE INSTALLATION AND MAINTENANCE AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND TOWN OF LONGBOAT KEY; PROVIDING FOR ACCORDANCE WITH APPLICABLE STATE LAW INCLUDING THE SUNSHINE AND PUBLIC RECORDS LAWS; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Florida Department of Transportation (FDOT) has jurisdiction over and maintains SR 789 (Gulf of Mexico Drive) as part of the State Highway System; and

**WHEREAS**, the Town has completed the engineering design of left turn lanes and medians along Gulf of Mexico Drive from Sloop Lane to Longboat Club Road North; and

**WHEREAS**, in order to issue a permit for construction (Permit Number 2019-A-194-00056), the Florida Department of Transportation ("FDOT") is requiring the Town to maintain all landscaping and irrigation to be contained within the proposed project medians; and

**WHEREAS**, the Town is agreeable to maintaining landscaping and irrigation within the medians in accordance with this stipulation; and

**WHEREAS**, this Resolution authorizes and memorializes the Town's agreement to maintain landscape and irrigation medians to be installed on Gulf of Mexico Drive within the project limits;

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA:**

SECTION 1. The above Whereas clauses are hereby incorporated, ratified, and confirmed as true and correct.

SECTION 2. This Resolution shall become effective immediately upon adoption.

Passed at a meeting of the Town Commission held the 13<sup>th</sup> day of September, 2021.

  
Kenneth Schneier, Mayor

ATTEST:

  
Trish Shinkle, Town Clerk

