

RESOLUTION NO. 19-06-44

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING THE MAINTENANCE MEMORANDUM OF AGREEMENT BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION AND ISLAMORADA, VILLAGE OF ISLANDS RELATED TO ELEVATOR MAINTENANCE RESPONSIBILITIES FOR THE US.1 PEDESTRIAN BRIDGE AT FOUNDERS PARK; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, at the request of the Village Council of Islamorada, Village of Islands (the “Village Council”) the Florida Department of Transportation (the “FDOT”) approved a project to build a permanent pedestrian bridge over U.S. 1 at Founders Park, located at 87000 Overseas Highway, is within the jurisdictional limits of Islamorada, Village of Islands (the “Village”); and

WHEREAS, the Village desires to provide safe pedestrian access to Founders Park for its residents and visitors; and

WHEREAS, through the adoption of Resolution No 18-02-09, the Village Council formally selected the FDOT recommendation of a steel truss pedestrian bridge with stairs and elevators and affirmed that the Village is willing to maintain the proposed elevators therein; and

WHEREAS, the FDOT prepared a Maintenance Memorandum of Agreement (“MMOA” or “Agreement”) to define the responsibilities of the FDOT and the responsibilities of the Village with regard to maintenance of the pedestrian bridge elevators; and

WHEREAS, the Village Council finds that approval of the MMOA would be in the best interest of the Village and its residents.

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 hereby incorporated into this Resolution by this reference.

Section 2. Approval of Agreement. The Village Council hereby approves the Maintenance Memorandum of Agreement (MMOA) between the Florida Department of Transportation and the Village, a copy of which is attached hereto as Exhibit “A”, 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.

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 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. Effective Date. This Resolution shall take effect immediately upon adoption.

Motion to adopt by Councilman Ken Davis; second by Councilman Jim Mooney.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Deb Gillis	YES
Vice Mayor Mike Forster	YES
Councilman Ken Davis	YES
Councilwoman Cheryl Meads	ABSENT
Councilman Jim Mooney	YES

PASSED AND ADOPTED ON THIS 27TH DAY OF JUNE, 2019.



DEB GILLIS, MAYOR

ATTEST:



KELLY TOTH, VILLAGE CLERK

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



ROGET V. BRYAN, VILLAGE ATTORNEY

**FLORIDA DEPARTMENT OF TRANSPORTATION
PEDESTRIAN BRIDGE, ELEVATOR AND OTHER IMPROVEMENTS
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH
ISLAMORADA, VILLAGE OF ISLANDS**

This **AGREEMENT**, entered into on July 10th, 2019, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **ISLAMORADA, VILLAGE OF ISLANDS**, a political subdivision 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 5 (Overseas Highway)** at **Founders Park (87000 Overseas Highway)** from the **Park's South entrance (MM 86.762)** to the **Park's North entrance (MM 87.146)**, which is located within the limits of the **VILLAGE**; and
- B. The **VILLAGE** has requested that the **DEPARTMENT** build a permanent pedestrian bridge over SR-5 at Founders Park. The pedestrian bridge will be accessed using both stairs and elevators.
- C. The **DEPARTMENT**, pursuant to Contract #E-6M32, has drafted design plans (hereinafter also referred to as "the Plans") for a permanent pedestrian bridge on State Road 5 (Overseas Highway) at Founders Park (87000 Overseas Highway), 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
- D. The **DEPARTMENT** will build a permanent pedestrian bridge in accordance with the design plans for Contract #E-6M32 (the "Project"), as approved by the **DEPARTMENT**; and
- E. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the **VILLAGE'S** responsibilities with regards to the maintenance of the permanent pedestrian bridge within the **PROJECT LIMITS**; and

F. The **VILLAGE**, by Resolution No. 18-12-123, dated 12/18/2018, 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 permanent pedestrian bridge within the **PROJECT LIMITS** to the **VILLAGE** upon the **DEPARTMENT's** release of its contractor from further warranty work and responsibility.

The **DEPARTMENT** may, at its sole discretion, perform periodic inspection of the **IMPROVEMENTS** 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 **DEPARTMENT** will be responsible for the maintenance and repairs of only structurally deficient components on the pedestrian bridge, support towers and stairs. The **DEPARTMENT** is funded to repaint concrete structures approximately once every 15 years, depending on the condition of the surfaces. Similarly, the **DEPARTMENT** is also funded to paint steel surfaces based on the results of routine inspections. The **DEPARTMENT** will not paint bridge components due to fading colors.

3. VILLAGE'S RESPONSIBILITIES

This section of the **AGREEMENT** details the responsibilities the **VILLAGE** will undertake solely at the **VILLAGE'S** cost and expense. The responsibilities specified consist of performing all operations to ensure the **PROJECT LIMITS** are maintained in a safe, attractive, clean and operable manner at all times.

The **VILLAGE** shall inspect all **PEDESTRIAN SURFACES** within the **PROJECT LIMITS**. For purposes of this **AGREEMENT**, the **PEDESTRIAN SURFACES** is defined as all surfaces that are traversable by pedestrians and bicyclists within the **PROJECT LIMITS** included but not limited to stairs, pedestrian ramps, sidewalks, decks, elevator floors, sod, and other areas generally accessible by the public.

The **VILLAGE** shall perform surface maintenance and repairs of the following **PEDESTRIAN SURFACES** within the **PROJECT LIMITS**: stairs, pedestrian ramps, sidewalks, and elevator floors. Maintenance and repairs not covered under this paragraph shall be brought to the attention of the **DEPARTMENT** upon **VILLAGE'S** identification.

The **VILLAGE** shall further inspect and maintain all equipment and components related to the elevators within the **PROJECT LIMITS** per the latest ASME A17.1, the Florida Elevator Safety Code, and per all other requirements specified in this **AGREEMENT**, or required by law.

The **VILLAGE** shall ensure that a **CLEAR PEDESTRIAN PATH** is maintained at all times in the State Right of Way within the **PROJECT LIMITS**. For purposes of this **AGREEMENT**, the **CLEAR PEDESTRIAN PATH** is defined as an American Disabilities Act (ADA) compliant continuous, unobstructed way of pedestrian passage within the **PROJECT LIMITS**, extending horizontally a minimum of five (5) feet. No improvements, features, obstructions or encroachments of any kind shall be permitted within the **CLEAR PEDESTRIAN PATH** at any time.

The **VILLAGE** shall maintain the **PROJECT LIMITS** 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, when the **DEPARTMENT** does not have guidelines, standards, and procedures related to

certain maintenance activities, the **VILLAGE** shall maintain the **PROJECT LIMITS** in accordance with Federal standards, guidelines, and procedures, as may be amended from time to time, and in accordance with the standards set forth in the Plans, in the Project Specifications, Special Provisions and all Manufacturer's and Vendor's maintenance recommendations. The **VILLAGE** shall ensure that any improvements comply with the terms of this **AGREEMENT** and meet the **DEPARTMENT'S** safety guidelines.

3.1 GENERAL REQUIREMENTS

The **VILLAGE'S** responsibilities and maintenance obligations hereunder shall include, but not be limited to:

- a. Performing routine and regular inspections of the **CLEAR PEDESTRIAN PATH** surface to ensure that the surface is ADA compliant;
- b. Identifying damage and/or malfunctions in the surfaces, and repairing and/or replacing damaged areas within the **PROJECT LIMITS** to ensure surfaces are maintained and that they do not pose safety hazards for the public (These repairs do not include structural repairs.);
- c. Conducting annual condition surveys of the **PEDESTRIAN SURFACES** for gaps, settlement, drop-offs, rutting, raveling, pot holes, delamination, cracking and other deficiencies described in this **AGREEMENT**;
- d. Ensuring that gaps within the **PEDESTRIAN SURFACES** shall not exceed a quarter (1/4) of an inch, and that differential settlement within the concrete/finish surfaces shall not exceed a quarter (1/4) of an inch in depth;
- e. Sweeping or pressure cleaning all **PEDESTRIAN SURFACES** periodically to keep them free of debris and to maintain an aesthetically pleasing condition (a light pressure washing may be necessary for heavy stain removal or cleaning), and removing all debris, stickers, signs, graffiti and all other unauthorized items placed on all surfaces within the **PROJECT LIMITS**;

- f. Bringing to the **DEPARTMENT'S** attention all damages to the detectable warning surface (ADA ramps) when found noncompliant to the Plans and the latest Standard Specifications for Road and Bridge Construction and the applicable ADA requirements, as amended from time to time;
- g. 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.
- 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 the sidewalk or 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.

When remedial action is required in accordance with the above requirements, the VILLAGE at its own expense shall complete all necessary repairs within thirty (30) days of the date the deficiency is identified.

3.2 BRIDGE ELEVATOR

- a. The **VILLAGE** shall be responsible for the daily (24 hours per day, every day of the year) monitoring of all elevator functions, including all emergencies, and customer complaints. The **VILLAGE** shall also be responsible for all inspections, maintenance and repairs of all elevator components. All monitoring, inspections, examinations, testing, maintenance and repairs shall follow the latest version of ASME A17.1, State and Local codes, supplemented by the Manufacturer's recommendations.
- b. The **VILLAGE'S** General elevator maintenance should include, but not limited to, maintenance of

hoistways, pits, pistons, plunger grippers, machine/equipment rooms, control rooms, car surfaces, safety devices, lubrication, packing glands, seals, hoses, pipes, doors, fittings, oils, valves, ropes, runbys, cylinders, electrical systems, corrosion protection, corrosion prevention, and ADA compliance.

- c. An electronic, and a hard-copy-paper Maintenance Control Program (MCP) shall be created by the **VILLAGE**. Records of all maintenance should be kept and made available to the **DEPARTMENT** when requested. All service records shall be kept at a central location. Inspection checklists meeting Federal, State and Local codes shall be kept in the machine room for one year.
- d. **VILLAGE** shall also pay all fees, including but not limited to, permits, certifications, licenses, renewals, insurance, delinquencies, citation, fines, and transfers.
- e. All modifications, alterations, and improvements to the elevator and elevator systems shall be submitted to the **DEPARTMENT** for review and approval prior to implementation.

3.3 STEEL BRIDGE STRUCTURE

- a. The **VILLAGE** understands that the **DEPARTMENT** is funded to repaint steel surfaces based on the information found in biannual bridge inspection reports. In the event the **VILLAGE** determines repainting is needed, the **VILLAGE** shall submit a permit to the **DEPARTMENT** for review and approval. The **DEPARTMENT** will not paint bridge components due to fading colors.
- b. The **VILLAGE** is responsible for the inspection, monitoring and maintenance of all components on and attached to the bridge, such as, but not limited to, hand railings, lighting, fencing, etc. The **DEPARTMENT** is only responsible for the inspection and maintenance of the structural components. The **VILLAGE** will perform all temporary repairs to pedestrian hand railing to ensure a safe condition is achieved, and will immediately advise the **DEPARTMENT**.

3.4 BRIDGE TOWERS

- a. The **VILLAGE** understand the **DEPARTMENT** is funded to repaint concrete structures approximately once every 15 years, depending on the condition of the concrete surfaces. In the event the **VILLAGE** determines repainting is needed, the **VILLAGE** shall submit a permit to the **DEPARTMENT** for review and approval. The **DEPARTMENT** will not paint bridge components due to fading colors.
- b. The **VILLAGE** is responsible for the inspection, monitoring and maintenance of all components on and attached to the bridge towers, such as, but not limited to, hand railings, lighting, fencing, roofing systems, doors, Village seals/logos, etc. The **DEPARTMENT** is only responsible for the inspection and maintenance of the structural components. The **VILLAGE** will perform all temporary repairs to pedestrian hand railing to ensure a safe condition is achieved, and will immediately advise the **DEPARTMENT**.

3.5 BRIDGE STAIRS

- a. The **VILLAGE** understand the **DEPARTMENT** is funded to repaint concrete structures approximately once every fifteen years, depending on the condition of the concrete surfaces. In the event the **VILLAGE** determines repainting is needed, the **VILLAGE** shall submit a permit to the **DEPARTMENT** for review and approval. The **DEPARTMENT** will not paint bridge components due to fading colors.
- b. The **VILLAGE** is responsible for the inspection and monitoring of all components on and attached to the bridge stairs, such as, but not limited to, hand railings, lighting, Village seals/logos, etc. Inspection results shall be brought to the attention of the **DEPARTMENT** upon **VILLAGE'S** identification. The **DEPARTMENT** is responsible for the inspection and maintenance of the structural components, and the maintenance/repairs of the hand railings and lighting.

3.6 OTHER AREAS TO BE MAINTAINED BY THE VILLAGE

The **VILLAGE'S** responsibilities and maintenance obligations hereunder shall include, but not be limited to:

- a. Maintenance of all sidewalks and **PEDESTRIAN SURFACES** within the **PROJECT LIMITS**;
- b. Mowing, cutting and/or trimming and edging the grass and turf within the **PROJECT LIMITS**;
- c. Pruning all plant materials, which include trees, shrubs and ground covers, and parts thereof, including all material encroaching from adjacent properties onto the adjacent State right-of-way. (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 10 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; and
- h. Paying for all water use and all costs associated therewith.

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 permanent pedestrian bridge 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 permanent pedestrian bridge 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 IMPROVEMENTS

- a. The **PARTIES** agree that the permanent pedestrian bridge 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 permanent pedestrian bridge, 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 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 **VILLAGE** 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 **VILLAGE** shall insert the above clause into any contract entered into by the **VILLAGE** with vendors or contractors hired by the **VILLAGE** 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 VILLAGE, 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 **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, attorney's 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 sole 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 caused these presents to be executed the day and year first above written.

VILLAGE:

STATE OF FLORIDA

DEPARTMENT OF TRANSPORTATION:

BY:

[Signature]
VILLAGE Manager

BY:

[Signature]
District Director of
Transportation Operations

ATTEST:

[Signature]
VILLAGE Clerk

(SEAL)

ATTEST:

[Signature]
Executive Secretary

LEGAL REVIEW:

BY:

[Signature]
VILLAGE Attorney

BY:

[Signature]
District Chief Counsel

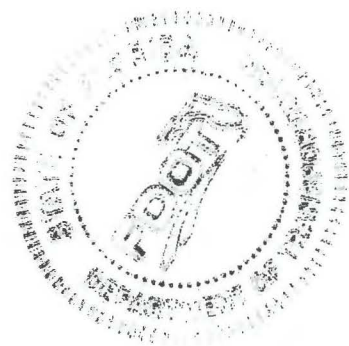


EXHIBIT 'A'

PROJECT LIMITS

Below are the limits of the permanent pedestrian bridge to be maintained under this **AGREEMENT**.

State Road Number: State Road 5 (Overseas Highway)

Agreement Limits: Founders Park (87000 Overseas Highway)
from the Park's South entrance (MM 86.762)
to the Park's North entrance (MM 87.146)

County: Monroe

EXHIBIT 'B'

VILLAGE RESOLUTION

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