

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and City of Green Cove Springs, Clay County, Florida ("Agency").

-RECITALS-

1. The Department owns and currently maintains those portions of the state highway system identified in Exhibit "A" ("Property"); and
2. The Agency desires to assume the maintenance responsibilities of the Property; and
4. The Property is within or adjacent to the corporate limits of the Agency; and
4. The Department is amenable to the Agency's desires and will compensate the Agency for their maintenance efforts pursuant to Section 335.055, Florida Statutes, and in accordance with the terms and conditions of this Agreement; and
6. The Agency will be compensated quarterly at such time as Agency provides a completed copy of the form identical to attached Exhibit "B" demonstrating completion of the maintenance responsibilities required by the terms and conditions of this Agreement; and
7. The Agency, by Resolution No. _____ dated _____, attached as Exhibit "C", authorizes its officers to enter this Agreement.

NOW THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound, acknowledge and agree as follows:

1. RECITALS & EXHIBITS

The above recitals and attached exhibits, if any, are specifically incorporated by reference and made part of this Agreement.

2. EFFECTIVE DATE

The "Effective Date" of this Agreement shall be the date the last of the parties to be charged executes the Agreement.

3. TERM

The term of this Agreement shall be for a period of three (3) consecutive years, unless otherwise terminated by the Department in writing. The operation, maintenance, and repair duties required by paragraph 6, below, will actually commence on _____.

4. E-VERIFY

The Agency (A) 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 Agency during the term of the contract; and (B) shall 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.

5. COMPLIANCE

The Agency shall perform this Agreement, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures,

guidelines, standards and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, St. Johns River Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard, Clay County, Florida and other local governmental entities ("Governmental Law").

6. OPERATION, MAINTENANCE & REPAIR

A. The Agency shall operate, maintain & repair the Property in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement. For purposes of this Agreement, unless otherwise noted in Exhibit "A", the locations to be maintained by the Agency shall be maintained pursuant to the maintenance standards as defined in the Department's Maintenance Rating Program ("MRP") Handbook and in accordance with Department Procedure, *Roadway and Roadside Maintenance*, Topic No. 850-000-015-i, and all Governmental Law, as defined in Paragraph 5, above. Should the Department determine that any item of maintenance related to the Property has fallen below the desired maintenance standard, the Agency agrees to immediately bring the deficient item up to the maintenance standard, at its sole cost and expense. The Agency will not be held responsible for a failed MRP rating, so long as such rating is not based on any negligence, intentional or wrongful act, omission or breach of contract by the Agency.

B. The Agency shall maintain all turf and landscaped areas within the Property, including, without limitation, performing the following:

(1) Routinely mow, cut and trim all grass and turf (total greenscape), as well as remove grass and turf clippings from the roadway/curb/sidewalk, in accordance with the State of Florida "Guide for Roadside Vegetation Management" (2012), as the same may be constituted and amended from time to time, and the local National Pollutant Discharge Elimination System (NPDES) permit requirements; and

(2) Routinely prune and trim all plants and trees, for aesthetic purposes and for the benefit of the health, safety and welfare of those members of the public traversing or otherwise utilizing the Property; and

(3) Routinely remove dead, diseased, or otherwise deteriorated plants; and

(4) Routinely keep litter removed from the Property; and

(5) Routinely remove and dispose of all trimmings, roots, litter and other material resulting from the activities described herein; and

(6) Routinely edge and sweep any excess grass from sidewalks, curbs, and gutters; and

(7) Routinely sweep roadways, curbs, and gutters, valley gutters, intersections, and barrier wall gutters.

C. The Department and the Agency shall be responsible jointly for clean-up, removal and disposal of debris within the Property following and resulting from natural disasters, including, without limitation, hurricanes and tornadoes.

D. If the Department determines that the Agency is not maintaining the Property in accordance with the terms and provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have thirty (30) days from the date of the Department's written notice, or such other time as the Department and the Agency mutually agree in writing, to correct the deficiency and provide the Department with written notice of the same.

E. If the Department determines that the deficiency remains after receipt of the Agency's written notice indicating that the deficiency was corrected, the Department, within its discretion, may: (1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to correct the deficiency; or (2) correct the deficiency at the Agency's sole cost and expense. Should the

Department elect to correct the deficiency, the Department shall provide the Agency with an invoice for the costs incurred by the Department to correct the deficiency and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

F. If at any time in the sole determination of the Department, the integrity or safety of the Property requires immediate maintenance for the benefit of public health, safety or welfare, the Department may perform such maintenance it deems appropriate under the circumstances. The Department shall attempt to notify the Agency prior to action under this section but may take necessary steps to correct emergency situations prior to such notification in order to prevent eminent danger to public health, safety or welfare.

G. The Parties' representatives and points of contact for the administration of this Agreement shall be identified in the "Notice" section of this Agreement.

7. MAINTENANCE OF TRAFFIC

A. The Agency shall be responsible for the maintenance of traffic ("MOT") at all times during the performance of this Agreement. MOT shall be performed in accordance with applicable Governmental Law and the most current edition of each of the following, as the same may be constituted and amended from time to time, all of which are incorporated herein and made part of this Agreement by reference: (1) Section 102 of the Department's Standard Specifications for Road and Bridge Construction; (2) the Manual on Uniform Traffic Control Devices; (3) the Department's Standard Plans, Index 102-600; and (4) other applicable Governmental Law.

B. If the Agency fails to perform MOT as required herein, the Department, within its discretion, may elect to perform MOT at the Agency's sole cost and expense. Should the Department perform MOT, the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

8. IMPROVEMENTS & MODIFICATIONS

A. The Department may require the Agency to improve or modify the Property if the Department determines: (1) improvements or modifications are required by applicable Governmental Law; or (2) improvements or modifications will benefit the Department in the conduct of its business.

B. Required improvements and modifications shall be subject to the terms and provisions of this Agreement, specifically including, without limitation, the "Maintenance" section of this Agreement.

C. Improvements and modifications shall be constructed and completed by the Agency within sixty (60) days of the date of the Department's written notice requiring improvements or modifications.

9. ADDITIONAL LANDSCAPING

The Agency shall not install additional landscaping within the Property without first seeking and obtaining required approvals and permits from the Department. Such additional landscaping shall be automatically included within, and subject to, the provisions of this Agreement.

10. PERMISSIVE USE

This Agreement creates a permissive use only. The Agency shall not acquire any right, title, interest or estate in the Property by virtue of the execution, operation, effect or performance of this Agreement.

11. EMINENT DOMAIN AND DAMAGES

Under no circumstances shall the Department's exercise of any right provided in this Agreement create any right, title, interest or estate entitling the Agency to full and just compensation from the Department either through inverse condemnation or eminent domain laws or any similar laws regarding the taking of property for public purposes. The Agency forever waives and relinquishes all legal rights and monetary claims which it has, or which may arise in the future, for compensation or damages, including, without limitation, special damages, severance damages, removal costs, and loss of business profits resulting in any manner from the Department's exercise of any right provided in this Agreement. This waiver and relinquishment

specifically includes all damages flowing from adjacent properties owned, leased or otherwise controlled by the Agency, as a result of the Department's exercise of any right provided in this Agreement.

12. REMOVAL

The Department may require modification, relocation or removal of the landscaping, plants, trees, and other improvements located on or within the Property without liability to the Agency if: (1) any such improvements are not maintained in accordance with the terms and provisions of this Agreement; (2) modification, relocation or removal of any such improvements is required by applicable Governmental Law; or (3) the Department determines that modification, relocation or removal of any such improvements is necessary or will benefit the Department in the conduct of its business. The Agency shall modify, relocate or remove improvements designated by the Department for modification, relocation or removal and shall restore the Property to a condition that satisfies the requirements of applicable Governmental Law within thirty (30) days of the Department's written notice requiring modification, relocation or removal. The Agency shall bear all cost and expense of the modification, relocation, removal and restorative work, including, without limitation, the cost of required permits.

13. PAYMENTS TO AGENCY

A. The Department shall compensate the Agency for the performance of this Agreement in the amount of **Nine Thousand Six-Hundred Sixty-Eight and 41/100 (\$9,668.41)** per quarter for a total sum of **Thirty-Eight Thousand Six-Hundred Seventy-Three and 64/100 (\$38,673.64)** per year. Payments shall commence at the conclusion of the first three-month period following the Effective Date of this Agreement. The Department may suspend payment of any sums due hereunder without penalty or interest if the Agency is in breach of any term or provision of this Agreement at the time payment is due. In the event this Agreement is terminated, payment shall be prorated for the quarter in which termination occurs.

B. Prior to each quarterly payment, the Agency shall provide a completed copy of the form identical to attached Exhibit "B" demonstrating completion of the maintenance responsibilities required by the terms and conditions of this Agreement.

14. PAYMENTS TO DEPARTMENT

All Department invoices submitted to the Agency for payment pursuant to the terms and provisions of this Agreement are due and payable within thirty (30) days of the date of the invoice ("Due Date"). Any portion of an invoice not received by the Department by the Due Date shall immediately thereafter begin accruing interest at a rate of interest established pursuant to §55.03, Fla. Stat., until paid in full.

15. INDEMNIFICATION

A. The Agency shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the Agency's performance, or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The Agency's duty to defend, indemnify and hold the Department harmless specifically does not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract.

B. The Agency shall notify the Department in writing immediately upon becoming aware of any Liabilities. The Agency's obligation to defend, indemnify and hold the Department harmless from any Liabilities, or at the Department's option to participate and associate with the Department in the defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the Department's written notice of claim for indemnification to the Agency. The Agency's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

16. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY

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 set forth in §768.28, Florida Statutes, as the same may be amended from time to time. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department's limits of liability set forth in sections 376.305 and 337.27(4), Florida Statutes, as the same may be amended from time to time. The Department's liability for breach of this Agreement is specifically: (1) limited to actual damages incurred by the Agency as a direct result of the Department's breach; and (2) further limited in amount and shall not, under any circumstances, exceed the limitations of liability for tort actions set forth in §768.28(5), Florida Statutes, as the same may be amended from times to time.

17. NOTICE

All notices, communications and determinations between the parties hereto and those required by this Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

Department: Florida Department of Transportation
Attn: Yongman Roberts, P.E
St. Augustine Maintenance Engineer
3600 DOT Road
St. Augustine, Florida 32084

Agency: City of Green Cove Spring
Attn: City Manager
321 Walnut Street
Green Cove Springs, FL 32043

18. GOVERNING LAW

This Agreement shall be governed in all respect by the laws of the State of Florida.

19. INITIAL DETERMINATION OF DISPUTES

The Department's District Two Secretary ("District Secretary") shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance or breach of this Agreement.

20. VENUE AND JURISDICTION

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. The Agency and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

21. JURY TRIAL

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of this Agreement, including, without limitation, damages allegedly flowing there from.

22. ASSIGNMENT

The Agency may not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the Department's District Secretary or his/her designee. The

Department has the sole discretion and authority to grant or deny proposed assignments, with or without cause. Nothing herein shall prevent the Agency from delegating its duties hereunder, but such delegation shall not release the Agency from its obligation to perform this Agreement.

23. THIRD PARTY BENEFICIARIES

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

24. VOLUNTARY EXECUTION OF AGREEMENT

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in this Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of this Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of this Agreement and executes this Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of this Agreement.

25. ENTIRE AGREEMENT

This instrument, together with the attached exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Agreement, and any part hereof, are waived, merged herein and superseded hereby.

26. SUFFICIENCY OF CONSIDERATION

By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in this Agreement and forever waive the right to object to or otherwise challenge the same.

27. WAIVER

The failure of either party to insist on the strict performance or compliance with any term or provision of this Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

28. INTERPRETATION

No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

29. CAPTIONS

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

30. SEVERANCE

If any section, paragraph, clause or provision of this Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of this Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of this Agreement remain enforceable.

31. COMPUTATION OF TIME

In computing any period of time prescribed in this Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

32. MODIFICATION OF AGREEMENT

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.

33. VENDOR OMBUDSMAN

A Vendor Ombudsman has been established with the Department of Banking and Finance. The duties of the Vendor Ombudsman include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted by calling the State Comptroller's Hotline at 1-800-848-3792.

34. ANNUAL APPROPRIATION / FUNDING

Pursuant to §339.135(6)(a), Florida Statutes, the Department's obligation to fund this Agreement is contingent upon annual appropriation by the Florida Legislature. This Agreement may be terminated by the Department without liability to the Agency if sufficient funds are not appropriated to the Department. The provisions of §339.135(6)(a), Florida Statutes, are set forth herein verbatim and made part of this Agreement, to wit:

"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 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 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 of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

35. PUBLIC RECORDS

Agency shall comply with Chapter 119, Florida Statutes. Specifically, the Agency shall:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the Department to perform this Agreement.
- B. Upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of the Agreement if Agency does not transfer the records to the Department.
- D. Upon completion of this Agreement, transfer, at no cost, to the Department all public records in possession of Applicant or keep and maintain public records required by the Department to perform this Agreement. If Agency transfers all public records to the public Agency upon completion of this Agreement, Agency shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Agency keep and maintain public records upon completion of this Agreement, Agency shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

Failure by Agency to act in accordance with Chapter 119 and the foregoing shall be grounds for immediate unilateral cancellation of this Agreement by the Department. Agency shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of Agency and shall promptly provide the Department a copy of Applicant's response to each such request.

IF THE CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S/CONTRACTOR'S/VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

District 2
386-758-3727
D2prcustodian@ dot.State.FL.us
Florida Department of Transportation
District 2 - Office of General Counsel
1109 South Marion Avenue, MS 2009
Lake City, FL 32025

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties execute this Agreement consisting of nine (9) pages, exclusive of exhibits.

Florida Department of Transportation

Attest:

By: _____

By: _____

Printed Name: Travis N. Humphries

Printed Name: Elizabeth Engle

Title: P.E. Director of Operations

Title: District Administration

Date: _____

Date: _____

Legal Review:

By: _____

Office of the General Counsel
Florida Department of Transportation

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SIGNATURES ON FOLLOWING PAGE***

Agency

By: _____

Printed Name: _____

Title: _____

Date: _____

Attest:

By: _____

Printed Name: _____

Title: _____

Date: _____

Legal Review:

By: _____
Legal Counsel for Agency

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EXHIBIT "A"

City of Green Cove Springs

MAINTENANCE LOCATIONS

State Road	Street Name	From	To	Litter Removal (AC)	Small Machine Mowing (AC)	Mechanical Sweeping (mile)	Tree Trimming (mile)	Curb/Sidewalk Edging (mile)
				541	485	543	492	545
16	SR 16 West	Green Cove Springs City Limit	SR 15 / US 17	2.2	2	2.32		6.66
16	SR 16 East	SR 15 / US 17	Beginning of 4-Lane	10.17	9.25			1.27
15	US 17	Harbor Rd	Green Cove City Limit	9.81	8.92	5.08		11.2

Totals	22.18	20.17	7.4	0	19.13
Cycles Per Year	12	9	12		2
Total Qty's Per Year	266.16	181.53	88.73	0.42	38.26
Unit Cost	\$9.18	\$67.13	\$41.94	\$1,000.00	\$520.00
Total Cost Per Year	\$2,443.79	\$12,187.32	\$3,721.25	\$424.00	\$19,897.28

Overall Yearly Cost **\$38,673.64**

Quarterly Amount **\$9,668.41**

EXHIBIT "B"
(MAINTENANCE ACTIVITIES CHART)

Activity Number	Activity Title	Activity Description
485	Small Machine Mowing	Mowing the roadside with small hand or riding mowers having a cutting width of 40 inches or less.
492	Tree Trimming	The trimming of the height and sides of trees and removal of undesirable trees (over 4 inches in diameter or trimming that cannot be done under activity 487). To include the chipping and/or removal of all debris from work site.
541	Roadside Litter Removal	Cleaning roadways and roadsides of debris, such as cans, bottles, paper, trash and Adopt-A-Highway litter. Includes the hauling and disposal of litter. Does not include wayside parks, rest areas and service plaza barrels.
543	Road Sweeping - Mechanical	Machine sweeping of roadway to protect the facility from excessive accumulation of debris.
545	Edging and Sweeping	Removal of vegetation and debris from the curb, gutter and sidewalk.

Agreement #:

Billing Period:

Work Activity Number	Unit of Measure	Units Completed	Completion Date	Completion Date	Completion Date
485	Acre				
492	Mile				
541	Acre				
543	Curb Mile				
545	Mile				

EXHIBIT "C"
(RESOLUTION)