

**LANDSCAPE CONSTRUCTION  
AND MAINTENANCE MEMORANDUM OF AGREEMENT**

REV. 6/16/17

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the “**DEPARTMENT**” and City of Maitland, a municipal corporation duly enacted under the laws of the State of Florida, hereinafter called the “**LOCAL GOVERNMENT.**”

**W I T N E S S E T H**

**WHEREAS**, the **DEPARTMENT** has jurisdiction over and maintains State Road 15/600 (US 17/92) as part of the State Highway System; and

**WHEREAS**, the **LOCAL GOVERNMENT** seeks to install and maintain certain landscaping within the right of way of State Road 15/600 (US 17/92); and

**WHEREAS**, the **LOCAL GOVERNMENT**, as part of said landscaping, seeks to remove or has removed sidewalk from a portion of said right of way and to replace existing sidewalk or connect the remaining sidewalk to a **LOCAL GOVERNMENT** sidewalk located off of said right of way; and

**WHEREAS**, the property depicted on Exhibit “E”, wherein the new sidewalk and a portion of associated landscaping covered by this **AGREEMENT** will be partially located, has been conveyed or dedicated to the **LOCAL GOVERNMENT** and the **DEPARTMENT**; and

**WHEREAS**, the **DEPARTMENT** agrees to allow the landscaping only under certain conditions necessary to protect the traveling public using said right of way; and

**WHEREAS**, Rule 14-40.003, Florida Administrative Code, requires the parties to enter into an Agreement designating and setting forth the responsibilities of each party; and

**WHEREAS**, the **LOCAL GOVERNMENT**, by Resolution No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, 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 **LOCAL GOVERNMENT** hereby agrees to install or cause to be installed landscaping as specified in the Landscape Plan(s) included as Exhibit “B.” Such installation shall be installed according to Exhibit “B” partially in existing Right of Way and partially within the property described in Exhibit “E”. Such installation shall be in conformance with Florida Administrative Code Rule 14-40.003, as it may be amended from time to time, and the Florida Highway Landscape

Guide, which is incorporated into Rule 14-40.003 by reference. The **LOCAL GOVERNMENT** shall not change or deviate from said plans(s) without written approval of the **DEPARTMENT**.

2. The **LOCAL GOVERNMENT** agrees to maintain the landscaping in accordance with the Landscape Maintenance Plan(s) included as Exhibit "C." Additionally, the **LOCAL GOVERNMENT** agrees to maintain existing sidewalk which remains within **DEPARTMENT** right of way, if any, within the area between the boundary line on either side of the abutting property extending forward to the back of curb, or if no curb then to the edge of travel lane, and within the area connecting with sidewalk as shown on Exhibit "B", as well as any newly constructed pedestrian facilities depicted on Exhibit "B". Said maintenance will be in accordance with Florida Administrative Code Rule 14-40.003 and the Florida Highway Landscape Guide, as they may be amended from time to time. The **LOCAL GOVERNMENT's** responsibility for maintenance shall be consistent with the requirements of Florida Administrative Code Rule 14-40.003. The **LOCAL GOVERNMENT** also agrees to maintain the **LOCAL GOVERNMENT** sidewalk in conformance with generally accepted standards of sidewalk maintenance. The above named functions to be performed by the **LOCAL GOVERNMENT** shall be subject to periodic inspections by the **DEPARTMENT**. The **LOCAL GOVERNMENT** shall not change or deviate from said plan(s) without written approval of the **DEPARTMENT**.
3. All landscape installation and all maintenance activities undertaken by the **LOCAL GOVERNMENT** shall be in accordance with the Maintenance of Traffic Plans(s) included as Exhibit "D" and Florida Administrative Code Rule 14-40.003.
4. If at any time after the **LOCAL GOVERNMENT** has assumed the landscaping installation or the 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** or any of the other terms of this **AGREEMENT** are not completed, the District Secretary or his/her designee may issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter to the **LOCAL GOVERNMENT** to place said **LOCAL GOVERNMENT** on notice thereof. The certified letter shall be sent to 1776 Independence Lane, Maitland, Florida 32751. Thereafter the **LOCAL GOVERNMENT** 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 in accordance with the plans in paragraph 1, the **DEPARTMENT** may complete the installation, with **DEPARTMENT** or Contractor's personnel, and invoice the **LOCAL GOVERNMENT** for expenses incurred.
  - (b) If installation has been properly completed or if the **DEPARTMENT** elects not to complete the installation under (a) above, and maintenance by the **LOCAL GOVERNMENT** is not in compliance with paragraphs 2 or 3, the **DEPARTMENT** may take action to maintain the landscaping or existing sidewalk or a part thereof, with **DEPARTMENT** or Contractor's personnel and invoice the **LOCAL GOVERNMENT** for expenses incurred, or

- (c) The **DEPARTMENT** may terminate the **AGREEMENT**, in which case the **LOCAL GOVERNMENT** 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 **LOCAL GOVERNMENT** 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 **LOCAL GOVERNMENT** being responsible for the cost of any removal.

Upon **DEPARTMENT** action under one of the above options and upon direction of the **DEPARTMENT**, the **LOCAL GOVERNMENT** 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. The **LOCAL GOVERNMENT** shall be given sixty (60) calendar days notice to remove said landscaping/hardscape after which time the **DEPARTMENT** may remove the same, with the **LOCAL GOVERNMENT** being responsible for the cost of removal.
6. The **LOCAL GOVERNMENT** may utilize its employees or third parties to accomplish its obligations under paragraphs 1, 2 or 3; however, the **LOCAL GOVERNMENT** 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 **LOCAL GOVERNMENT** agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement:
- “The contractor/subcontractor/consultant/subconsultant shall indemnify, defend, save and hold harmless the State of Florida, Department of Transportation and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor/subcontractor/consultant/subconsultant, its officers, agents or employees.”
8. The term of this **AGREEMENT** commences upon execution. The **LOCAL GOVERNMENT** shall notify or cause the Department’s Orlando Maintenance Engineer or his designee to be notified a minimum of 48 hours, excluding Saturday, Sunday, and legal holidays, prior to starting work in the right-of-way, unless said Engineer or his designee waives this period in writing. When the Department through said Engineer or his designee issues a Notice to Proceed, the **LOCAL GOVERNMENT** may proceed with the project.

9. **LEGAL REQUIREMENTS.** This Agreement is executed and entered into in the State of Florida and will be construed, performed, and enforced in all respects in strict conformity with local, state, and federal laws, rules, and regulations.
- (a) If any term or provision of the Agreement is found to be illegal or unenforceable, the remainder of the Agreement will remain in full force and effect and such term or provision will be deemed stricken.
  - (b) The **LOCAL GOVERNMENT** shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **LOCAL GOVERNMENT** in conjunction with this Agreement. Failure by the **LOCAL GOVERNMENT** to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the **DEPARTMENT**.
  - (c) The **LOCAL GOVERNMENT** and the **DEPARTMENT** agree that the **LOCAL GOVERNMENT**, its employees, contractors, subcontractors, consultants, and sub consultants are not agents of the **DEPARTMENT** as a result of this Agreement.
  - (d) The **LOCAL GOVERNMENT** shall not cause any liens or encumbrances to attach to any portion of the **DEPARTMENT** right-of-way.
  - (e) Nothing herein shall be construed as a waiver of either party's sovereign immunity.
  - (f) **LOCAL GOVERNMENT:**
    - i. 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 **LOCAL GOVERNMENT** during the term of the contract; and
    - ii. 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.
10. 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.
11. This **AGREEMENT** may not be assigned or transferred by the **LOCAL GOVERNMENT** in whole or part without the consent of the **DEPARTMENT**.
12. 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.
13. Public Entity Crime - A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real

property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

14. Anti-Discrimination - An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

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15. The Parties agree to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.

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

**CITY OF MAITLAND  
(LOCAL GOVERNMENT)**

**By:** \_\_\_\_\_

**Mayor**

**Attest:** \_\_\_\_\_ **(SEAL)**

**Clerk**

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

**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

**By:** \_\_\_\_\_

**Alan E. Hyman  
Director of Transportation Operations**

**Attest:** \_\_\_\_\_ **(SEAL)**

**Norma Mejias  
Executive Secretary**

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