



Interoffice Memorandum

January 18, 2023

TO: Mayor Jerry L. Demings  
-AND-  
County Commissioners

FROM: Joseph C. Kunkel, P.E., Director, Public Works Department

CONTACT PERSON: <sup>for</sup> Eduardo Avellaneda, P.E., Manager  
Roads & Drainage Division

PHONE NUMBER: (407) 836-7871

SUBJ: **Second Amendment to Agreement between Hunter's Creek Community Association, Inc., and Orange County, Florida, regarding maintenance of certain unpaved portions of State Road 550/441**

The Hunter's Creek Community Association (HCCA) performs additional maintenance to the unpaved portions of South Orange Blossom Trail (SR 500/441) adjacent to their development. This Right-of-Way is owned and under the jurisdiction of the State of Florida and a Memorandum of Agreement (MOA) with the Florida Department of Transportation (FDOT) is required prior to performing any contractual maintenance work within the FDOT Right-of-Way. The FDOT is prohibited from entering into any contractual agreement for maintenance with a non-governmental agency such as the HCCA.

The HCCA has asked Orange County (County) to act on its behalf and enter into this MOA with the FDOT. The MOA sets forth the responsibility for each party regarding performance and compensation for maintenance of the FDOT Right-of-Way. The County will be compensated with the State funding budgeted for maintaining this portion of SR 500/441.

This Second Amendment to the Agreement is required between the County and the HCCA describing how the HCCA is compensated through the County for maintaining this portion of the FDOT Right-of-Way. The Board approved the original agreement on June 2, 2009 and the First Amendment to the HCCA was approved on December 13, 2016.

This Second Amendment to Agreement between Hunter's Creek Community Association, Inc., was reviewed and approved by the County Attorney's Office and the Risk Management Division as to form.

**Action Requested: Approval and execution of Second Amendment to Agreement between Hunter's Creek Community Association, Inc., and Orange County, Florida regarding maintenance of certain unpaved portions of State Road 550/441. District 1.**

EA/gs

Attachment(s)

**SECOND AMENDMENT TO  
AGREEMENT BETWEEN HUNTER'S CREEK COMMUNITY  
ASSOCIATION, INC., AND ORANGE COUNTY, FLORIDA,  
REGARDING MAINTENANCE OF CERTAIN UNPAVED  
PORTIONS OF STATE ROAD 550/441**

This is an Amendment to an Agreement entered into by and between the **HUNTER'S CREEK COMMUNITY ASSOCIATION, INC.**, a not-for-profit Florida corporation (hereinafter the "Association"), and **ORANGE COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter the "County") and collectively, the "Parties."

**RECITALS**

**WHEREAS**, on May 6, 2009, and June 2, 2009, respectively, the Association and the County executed an Agreement that allows the Association to maintain unpaved portions of the right-of-way of State Road 500/441, adjacent to Hunter's Creek, for the benefit of the Association's residents (hereinafter the "Agreement"); and

**WHEREAS**, those unpaved portions of the right-of-way of State Road 500/441 that the Association maintains include shoulders and median strips, and lie along an approximately 1.83 mile stretch of State Road 500/441 (hereinafter the "Right-of-Way"); and

**WHEREAS**, the Right-of-Way is owned by and under the jurisdiction of the State of Florida; and

**WHEREAS**, in order to permit the Association to maintain those portions of the right-of-way owned by the State of Florida, in 2009 the County and the FDOT entered into a Highway Maintenance Memorandum of Agreement (hereinafter the "original MOA"); and

**WHEREAS**, prior to executing the original MOA, the County required that the Association agree to certain obligations, responsibilities, commitments and covenants to assure the

continuous and proper maintenance of the Right-of-Way by the Association, and those certain obligations, responsibilities, commitments and covenants are set forth in the Agreement; and

**WHEREAS**, in 2010, the County and the FDOT entered into another Highway Maintenance Memorandum of Agreement that was subsequently renewed in 2013; and

**WHEREAS**, in 2017, the County and the FDOT entered into an additional Highway Maintenance Memorandum of Agreement that was subsequently renewed in 2020 (hereinafter the “existing MOA”); and

**WHEREAS**, the County and the FDOT propose to enter into a new Highway Maintenance Memorandum of Agreement (hereinafter the "new MOA"), which is substantially the same as those previously-executed MOAs; and

**WHEREAS**, the new MOA also requires the County to amend the Agreement with respect to provisions related to indemnification and nondiscrimination; and

**WHEREAS**, a copy of the proposed new MOA is attached hereto and incorporated herein by reference as **Exhibit "A"**.

**NOW THEREFORE**, in consideration of the foregoing and of the terms and conditions set forth herein, the parties agree to amend the Agreement as follows:

**Section 1. Recitals.** The foregoing recitals are true and form a material part of this Agreement.

**Section 2. New Memorandum of Agreement between the County and the FDOT.**  
The County shall pursue the execution of the proposed new MOA with the FDOT, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A." The County cannot guarantee that the FDOT will ultimately execute the new MOA, and the Association understands that the County cannot make any such guarantee. Accordingly, this Amendment will not become

effective unless and until the new MOA is executed by the County and the FDOT and becomes effective pursuant to its terms (upon the issuance of a Notice to Proceed by the FDOT).

**Section 3. Effect of Agreement between the County and the Association.** If the new MOA is executed by the County and the FDOT and becomes effective pursuant to its terms, the Association shall abide by, comply with, be subject to, and obey all the terms and conditions of the new MOA, including the revised rate of compensation for maintenance, and the list of maintenance responsibilities set forth in Exhibit "C" to the new MOA. To that end, any references in the Agreement to the "MOA" will mean the new MOA. Except as specifically modified by this Amendment and all previous Amendments, the Association and the County shall continue to abide by the obligations, responsibilities, commitments and covenants of the Agreement.

**Section 4. Indemnification.** If the new MOA is executed by the County and the FDOT and becomes effective pursuant to its terms, the Agreement shall be amended at Section 5. Indemnification. by repealing Section 5 in its entirety and replacing it with the following:

***Section 5. Indemnification.*** The Association shall indemnify, defend, save and hold harmless the State of Florida, Department of Transportation and the County, and all of their 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 Association, its officers, agents or employees.

**Section 5. Non-Discrimination.** If the new MOA is executed by the County and the FDOT and becomes effective pursuant to its terms, the Agreement shall be amended at Section 10. Compliance with applicable laws. to add provisions related to employment discrimination and harassment, with new language indicated by underlines; providing that Section 10 shall hereafter read as follows:

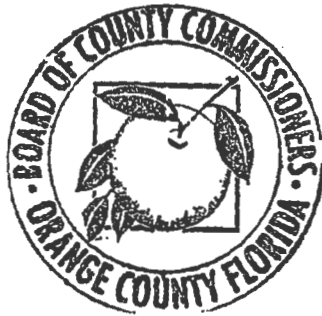
***Section 10. Compliance with applicable laws; Non-Discrimination.***

- (a) The County and the Association shall comply with and be subject to the MOA and all applicable laws, ordinances, and regulations.
- (b) The Association will not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex.
- (c) The Association shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management.

**Section 6. Effective date.** This Amendment to the Agreement shall take effect only if and when the new MOA is executed by the County and the FDOT and becomes effective.

[REST OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates inscribed below.



ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: *Ryan M. Bowers*  
for Jerry Demings  
Orange County Mayor

Date: February 7, 2023, 20  

ATTEST: Phil Diamond, County Comptroller  
As Clerk of the Board of County Commissioners

By: *Katie Smith*  
Deputy Clerk  
Print Name: Katie Smith

WITNESSES:

*Michelle L. Ouimet*  
Print Name: Michelle L. Ouimet

*Terre Bromley*  
Print Name: Terre Bromley

HUNTER'S CREEK COMMUNITY ASSOCIATION, INC.

By: *Ruthanne Conner-King*  
Ruthanne Conner-King, President

Date: 1/12/2023, 20  

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 12<sup>th</sup> day of January, ~~2022~~<sup>2023</sup> by Ruthanne Conner-King ~~President~~ of HUNTER'S CREEK COMMUNITY ASSOCIATION, INC., a Florida not for profit corporation, on behalf of said corporation and who  is personally known to me or  has produced \_\_\_\_\_ as identification.

*Anne Marie Brooms*  
Notary Public, State of Florida  
Anne Marie Brooms

Notary's Printed Name  
My Commission Expires: July 1, 2024

Notary Stamp

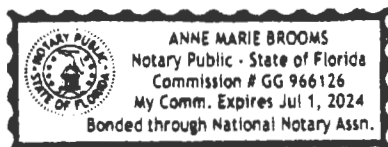


Exhibit "A"

FLORIDA DEPARTMENT OF TRANSPORTATION  
**HIGHWAY MAINTENANCE MEMORANDUM OF AGREEMENT**

REV. 11/16/2022

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**CONTRACT NO.: AST44**

**FINANCIAL PROJECT NO.: 426022-1-78-04**

This AGREEMENT, entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Florida Department of Transportation, a component agency of the State of Florida, hereinafter called the **DEPARTMENT** and Orange County, a political subdivision existing under the laws of the State of Florida, hereinafter called the **LOCAL GOVERNMENT**.

**RECITALS**

WHEREAS, as part of the continual updating of the State of Florida Highway System, the **DEPARTMENT**, for the purpose of safety and functionality, has constructed roadway, roadside areas, and medians on that part of the State Highway system within the limits of the **LOCAL GOVERNMENT** or adjacent to;

WHEREAS, the **LOCAL GOVERNMENT** acknowledges that there is mutual benefit in effectively maintaining these areas and the **LOCAL GOVERNMENT** is of the opinion that said roadway, roadside areas and median strips shall be attractively maintained;

WHEREAS, the parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party;

WHEREAS, the **LOCAL GOVERNMENT**, through its Board of County Commissioners, approved this Agreement and as such the undersigned is authorized to execute this Agreement for the **LOCAL GOVERNMENT** pursuant to Section 302.D of the Orange County Charter.

**NOW THEREFORE**, for and in consideration of mutual benefits to flow each to each other, the parties covenant and agree as follows:

**PROVISIONS**

- 1) The **LOCAL GOVERNMENT** shall be responsible for routine maintenance activities of all roadway features within the **DEPARTMENT's** right of way having limits described in **EXHIBIT "A"**, or subsequent amended limits mutually agreed upon in writing by both parties. For the purpose of this Agreement, the maintenance activities to be performed by the **LOCAL GOVERNMENT** are defined in **EXHIBIT "B"**, or as defined by amended definitions agreed upon in writing by both parties.
- 2) The **LOCAL GOVERNMENT** shall perform the maintenance activities as described in **EXHIBIT "B"** in accordance with **DEPARTMENT** publications:
  - a) Maintenance Rating Program (MRP) Handbook, latest edition, which by reference hereto shall become a part hereof. The activities shall be performed in a manner that results in a minimum MRP score of 80.



- b) Standard Plans, current edition, which by reference hereto shall become a part hereof.
- 3) The **LOCAL GOVERNMENT** shall be responsible for monitoring maintenance operations and the maintenance of traffic (“MOT”) throughout the term of the Agreement in accordance with the latest edition of FDOT Standard Specifications, Section 102. The **LOCAL GOVERNMENT** is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of FDOT Standard Plans, Index 102-600 series.
- 4) The **DEPARTMENT** may, at its discretion, perform periodic inspections of any or all locations. If it is determined that any of the roadway features defined in **EXHIBIT “B”** are not being maintained as required by this Agreement, the **DEPARTMENT** will issue a notice of such deficiency to the **LOCAL GOVERNMENT’s** point of contact by email or certified mail. The **LOCAL GOVERNMENT** shall have thirty (30) days to correct the deficiency (ies) and to notify the **DEPARTMENT** by email or certified mail, that the deficiency (ies) has been corrected. If said deficiency or deficiencies are not corrected within this time period the **DEPARTMENT** may at its option, proceed as follows:
- a) Maintain the roadway features declared deficient with the **DEPARTMENT** or **DEPARTMENT** Contractor's material, equipment and personnel. The actual cost for such work will be deducted from payment to the **LOCAL GOVERNMENT**; or
  - b) Terminate this Agreement in accordance with the provisions of this Agreement.
- 5) In the event of a Governor Declared Emergency, a natural disaster or significant occurrence (hurricane, tornado, vehicle accident, hazardous waste spills, etc.) the **LOCAL GOVERNMENT** and the **DEPARTMENT** will cooperate and coordinate the use of their respective resources to provide for clean up, removal, and disposal of debris or other substances from the **DEPARTMENT’s** right of way described in **EXHIBIT “A”** or any amended limits mutually agreed upon in writing by both parties hereto. The **DEPARTMENT** will not deduct any payment to the **LOCAL GOVERNMENT**, costs for impairment of performance of any activity or part thereof defined in **EXHIBIT “B”**, as a result of such event and the redirection of **LOCAL GOVERNMENT** forces towards fulfillment of the responsibility under this article. This paragraph shall not be interpreted to reduce the **LOCAL GOVERNMENT’s** right to compensation or reimbursement from any other sources (i.e.: FEMA) for the debris removal or other activities of the **LOCAL GOVERNMENT** subsequent to a natural disaster or accident.
- 6) During the term of this Agreement, the **DEPARTMENT** may from time to time engage in transportation projects on the roads covered by this Agreement. Some of these projects may involve the **DEPARTMENT’s** construction contractor temporarily assuming maintenance responsibility for the limits of the project. In that event, the **DEPARTMENT** will notify the **LOCAL GOVERNMENT** of the limits of the project and the time frame for that project. During that time and for those limits, the **LOCAL GOVERNMENT** may be released from its obligation to perform maintenance on those roads and the compensation to be paid under this Agreement may be reduced for the duration of the construction project. The reduction in compensation shall be based on the formula used to initially compute the amount of compensation under this Agreement. The **LOCAL GOVERNMENT** will be notified of the amount of the reduction as part of the aforementioned notice.

## TERM

- 1) After this Agreement has been executed by the parties, the **DEPARTMENT** will issue a Notice to Proceed to the **LOCAL GOVERNMENT** which may be sent by electronic mail at the **DEPARTMENT's discretion**. The term of this Agreement commences on the effective date of the Notice to Proceed and will continue for a period of three (3) years from the effective date on the Notice to Proceed. This Agreement may be renewed for a period that may not exceed one three (3) year term.
- 2) A renewal may be made at the discretion of the **DEPARTMENT** and will be subject to the same terms and conditions set forth in this Agreement. A renewal shall be contingent upon satisfactory performance evaluations by the **DEPARTMENT** and subject to the availability of funds. Renewals must be mutually agreed upon by both parties and in writing and must be executed prior to the expiration date of its preceding term.
- 3) In the event this Agreement extends beyond the **DEPARTMENT's** current Fiscal year that begins July 1 of each year and ends June 30 of each succeeding year, the **LOCAL GOVERNMENT** and the **DEPARTMENT** mutually agree that the State of Florida's performance and obligation to pay under this contract is contingent upon and annual appropriation by the Legislature. In addition, Section 339.135(6)(a), Florida Statutes, is incorporated by reference, and is set forth herein below as follows:

*F.S. "339.135(6)(a)" - The Department, during any Fiscal Year, shall not expend money, incur any liability, or enter into any Contract which, by its terms, involves any 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 under 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 any other binding commitment of funds. Nothing herein shall prevent the making of Contracts for periods exceeding one (1) year, but any Contract so made shall be executory only for the value of 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 having a term for a period of more than one year.*

## COMPENSATION

- 1) The **DEPARTMENT** agrees to pay the **LOCAL GOVERNMENT**, following a Notice to Proceed, compensation for the cost of maintenance as described in the Provisions Section of this Agreement. The payment will be for the amount of \$4,207.50 per quarter, equating to \$16,830.00 per year for the duration of the term.
- 2) Payment shall be made only after receipt of goods and services as provided in Section 215.422, Florida Statutes. Detailed quarterly invoices and any associated documents, including Maintenance Management Systems (MMS) breakdown of all activities, shall be submitted to the **DEPARTMENT's** Project Administrator: Lorraine Edwards. Delivery shall be effective upon receipt of a proper quarterly invoice and any required associated documents.
  - a) Upon receipt, the **DEPARTMENT** has seven (7) working days to inspect and approve the goods and services, unless otherwise specified herein. The **DEPARTMENT** has twenty (20) days to

deliver a request for payment (voucher) to the Department of Finance. The twenty (20) days are measured from the latter of the date the invoice is received, at the location stated herein, or the goods and services are received, inspected and approved.

- b) Any penalty for delay in payment shall be in accordance with Section 215.422, Florida Statutes. Section 215.422(5), Florida Statutes, provides that all purchasing Agreements between a State agency and a vendor, applicable to this section, shall include a statement of the vendor's rights and the State's responsibilities under this section. The vendor's rights shall include being provided with the name and telephone number of the Vendor Ombudsman within the Department of Financial Services.
  - c) If payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, will be due and payable, in addition to the invoice amount, to the **LOCAL GOVERNMENT**. Interest penalties of less than one (\$1.00) dollar shall not be enforced unless the **LOCAL GOVERNMENT** requests payment. Invoices, which have been returned to the **LOCAL GOVERNMENT** because of **LOCAL GOVERNMENT** preparation errors, will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is received by the **DEPARTMENT**.
  - d) A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from the **DEPARTMENT**. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Department of Financial Services Consumer Hotline, 1-800-342-2762.
- 3) Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
  - 4) Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request of the **DEPARTMENT** at all times during the period of this Agreement and for three (3) years after final payment is made. Copies of these documents and records shall be furnished to the **DEPARTMENT** upon request. Records of costs incurred include the **LOCAL GOVERNMENT's** general accounting records and project records, together with supporting documents and records of the **LOCAL GOVERNMENT**, all subcontractors performing work, and all other records of the **LOCAL GOVERNMENT** and subcontractors considered necessary by the **DEPARTMENT** for a proper audit of costs.

#### **CONDITIONS FOR TERMINATION**

- 1) This Agreement or any part thereof is subject to termination at the discretion of the **DEPARTMENT** under any of the following conditions:
  - a) In the event the Legislature fails to make an annual appropriation to pay for the **LOCAL GOVERNMENT's** services to be performed hereunder.
  - b) The **LOCAL GOVERNMENT** has not complied with the provisions of this Agreement as described herein, or has demonstrated a pattern of repeated non-compliance.
  - c) The **DEPARTMENT** determines that the Agreement is no longer feasible.
- 2) Either party may terminate this Agreement in writing with thirty (30) days' notice.

## NOTICES AND POINTS OF CONTACT

All correspondence regarding this Agreement shall be directed to the following points of contact:

a) For the **DEPARTMENT**:

**Title: Operations Program Engineer**

Name: Lorraine Edwards, P.E.

Address: 420 West Landstreet Road Orlando, FL 32824

Telephone: 321-319-8107

Email: lorraine.edwards@dot.state.fl.us

b) For the **LOCAL GOVERNMENT**:

**Title: Director of Public Works**

Name: Joseph C. Kunkel, P.E.

Address: 4200 South John Young Parkway Orlando, FL 32839

Telephone: 407-836-7970

Email: joseph.kunkel@ocfl.net

## ADDITIONAL PROVISIONS AND LEGAL REQUIREMENTS

- 1) **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**'s right-of-way.-
  - e) Nothing herein shall be construed as a waiver of either party's sovereign immunity.
  
- 2) **PUBLIC ENTITY CRIME.** The **LOCAL GOVERNMENT** affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes. 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 thirty six (36) months from the date of being placed on the convicted vendor list. The **LOCAL GOVERNMENT** agrees that it shall not violate Section 287.133(2)(a), Florida Statutes, and further acknowledges and agrees that any conviction during the term of this Agreement may result in the termination of this Agreement.

- 3) **UNAUTHORIZED ALIENS.** The **DEPARTMENT** will consider the employment of unauthorized aliens, by any contractor or subcontractor, as described by Section 274A(e) of the Immigration and Nationalization Act, cause for termination of this Agreement.
- 4) **NON-DISCRIMINATION.** The **LOCAL GOVERNMENT** will not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. The **LOCAL GOVERNMENT** shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. The **LOCAL GOVERNMENT** shall insert similar provisions in all contracts and subcontracts for services by this Agreement.
- 5) **DISCRIMINATORY VENDOR LIST.** The **LOCAL GOVERNMENT** affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes. 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. The **LOCAL GOVERNMENT** further agrees that it shall not violate Section 287.134(2)(a), Florida Statutes, and acknowledges and agrees that placement on the list during the term of this Agreement may result in the termination of this Agreement.
- 6) **ATTORNEY FEES.** Each Party shall bear its own attorney's fees and costs.
- 7) **TRAVEL.** There shall be no reimbursement for travel expenses under this Agreement.
- 8) **PRESERVATION OF REMEDIES.** No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default by either Party under this Agreement, will impair any such right, power or remedy of either party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default.
- 9) **MODIFICATION.** This Agreement may not be modified unless done so in a writing executed by both Parties to this Agreement.
- 10) **NON-ASSIGNMENT.** The **LOCAL GOVERNMENT** may not assign, sublicense, or otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the **DEPARTMENT**. Any assignment, sublicense, or transfer occurring without the required prior written approval of the **DEPARTMENT** will be null and void. The **DEPARTMENT** will at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental entity in the State of Florida, upon giving prior written notice to the **LOCAL GOVERNMENT**. In the event

that the **DEPARTMENT** approves transfer of the **LOCAL GOVERNMENT**'s obligations, the **LOCAL GOVERNMENT** remains responsible for all work performed and all expenses incurred in connection with this Agreement.

11) 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.”

12) **BINDING AGREEMENT.** This Agreement is binding upon and inures to the benefit of the Parties 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 in this Agreement.

13) **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.

14) **ENTIRE AGREEMENT.** This Agreement, together with the attached exhibits and documents made a part by reference, embodies the entire agreement of the Parties. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement. This Agreement supersedes all previous communication, representation, or agreement, either verbal or written, between the Parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of the **LOCAL GOVERNMENT** and the authorized officer of the **DEPARTMENT** or his/her delegate.

15) **DUPLICATE ORIGINALS.** This Agreement may be executed in duplicate originals.

16) **E-VERIFY – the LOCAL GOVERNMENT shall:**

- a) 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
- b) 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.

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17) 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.

**EXECUTION**

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

**LOCAL GOVERNMENT:**

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

\_\_\_\_\_  
Printed Name & Title

Attest: \_\_\_\_\_

\_\_\_\_\_  
Printed Name & Title

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

**DEPARTMENT:**

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

Ron Meade, P.E. District Maintenance Engineer  
Printed Name & Title

Attest: \_\_\_\_\_

Victor A. LoPiccolo, Maintenance Project Manager  
Printed Name & Title

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

**EXHIBIT A**

**PROJECT LIMITS:**

<b><u>SECTION</u></b>	<b><u>S.R.</u></b>	<b><u>LOCATION</u></b>	<b><u>LENGTH</u></b>
75010	500/600	Beginning at unnamed outfall (MP 0.290) to Deerfield Blvd (MP 2.123)	1.833 mi



## EXHIBIT B

### MAINTENANCE ACTIVITIES:

(Maintenance Activities to be included and part of this Agreement will be checked in the INC. column)

<u>INC.</u>	<u>ACTIVITY</u>	<u>DESCRIPTION</u>
<input checked="" type="checkbox"/>	433	<b>Sodding:</b> Cutting and placing sod in areas along the roadside associated with reworking non-paved shoulders, slopes, ditches, median islands, utility strips and repairing washouts.
<input type="checkbox"/>	435	<b>Seeding, Fertilizing and Mulching:</b> Seeding, fertilizing, and mulching of the roadside.
<input type="checkbox"/>	436	<b>Reworking Non-Paved Shoulders, Front Slopes, and Roadside Ditches (Mechanical):</b> Reworking non-paved shoulders, front slopes, roadside ditches and turnouts either by the addition of suitable material and reshaping, or by cutting down built-up areas.
<input type="checkbox"/>	451	<b>Clean Drainage Structures:</b> Cleaning storm drains, French drains, manholes, side drains, cross drains, inlets, piped outfalls, box culverts, and other miscellaneous drain structures.
<input type="checkbox"/>	459	<b>Concrete Sidewalk Repair:</b> Repair or replacement of existing sections of concrete sidewalk.
<input type="checkbox"/>	461	<b>Roadside Ditches – Clean and Reshape:</b> Cleaning and reshaping of ditches other than outfalls.
<input checked="" type="checkbox"/>	471	<b>Large Machine Mowing:</b> Mowing of roadside areas with large mowers where conditions accommodate the efficient use of 7 foot and larger mowers, alone or in combination.
<input type="checkbox"/>	482	<b>Slope Mowing:</b> Grass, brush, and weed cutting along slopes too steep to safely mow or are inaccessible for conventional mowing tractors.
<input checked="" type="checkbox"/>	485	<b>Small Machine Mowing:</b> Mowing the roadside with small hand or riding mowers have a cutting width of 40 inches or less.
<input checked="" type="checkbox"/>	487	<b>Manual Weed Control:</b> Brush, weed, and grass cutting 100 mm (4”) or less in diameter performed with hand tools.
<input checked="" type="checkbox"/>	490	<b>Fertilizing:</b> Fertilizing to provide required nutrients to establish and maintain an acceptable roadside turf.
<input checked="" type="checkbox"/>	492	<b>Tree Trimming &amp; Removal:</b> 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 Weed Control - Manual). To include the chipping and/or removal of all debris from work site.
<input type="checkbox"/>	493	<b>Landscaped Area Maintenance:</b> All efforts required for proper maintenance of landscaped areas, including litter removal, mowing, edging, fertilizing, weeding, mulching, etc.
<input checked="" type="checkbox"/>	494	<b>Chemical Grass and Weed Control:</b> The application (handgun, basal or cut stump) of herbicides to slopes, ditches, fence, guardrail, barrier wall, reinforced earthen walls, sidewalks, bridges, curb and gutter, obstructions, shoulders, and other areas not assessable to mowers. Not to include chemical applications within landscape or mitigation areas.

- 498      **Storm Water Management:** To maintain, to the maximum extent practicable, all surface/storm water management systems to a functioning state as designed and in compliance with the permit conditions and/or applicable rules and regulations.
- 527      **Fence Repair:** To provide highway safety and deter unauthorized and unrestrained access to highway facilities.
- 541      **Roadside Litter Removal:** Cleaning roadways and roadsides of debris, such as cans, bottles, paper, Adopt-A-Highway litter. Includes the hauling and disposal of litter. Does not include wayside parks, rest areas and service plaza barrels.
- 542      **Road Sweeping (Manual):** To remove debris from the roadway where mechanical means are not feasible before a drainage or safety problem is created or before it becomes unsightly.
- 543      **Road Sweeping (mechanical):** Machine sweeping of roadway to protect the facility from excessive accumulation of debris.
- 545      **Edging & Sweeping:** Removal of vegetation and debris from the curb, gutter and sidewalk.
- 432      Repairing Non-Paved Shoulders, Front Slopes, & Roadside Ditches-Manual:  
Pair non-paved shoulders by adding suitable material or by lowering high area to include minor work on slopes, ditches, and turnouts. This activity should only be performed in situations requiring attention which are not practical to be corrected by mechanical means. Includes small area mulched by hand.
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- 497      Chemical Weed & Grass Control Selective Weeding:  
The application of herbicides to control undesired vegetation in turf within the highway right of way. This involves application of selective chemical formulations by wiping or handgun methods. Do not include efforts within mitigation or landscape area.
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