

**STATE HIGHWAY SYSTEM PROJECTS**

**Landscape/Streetscape Maintenance Agreement**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, hereinafter called the "DEPARTMENT" and the CITY OF GAINESVILLE, FLORIDA, hereinafter called the "AGENCY".

WITNESSETH

WHEREAS the DEPARTMENT is preparing to undertake a project which is known as the Landscaping on SR 329 from SR 331 to SR 226 in Alachua County, Florida, Financial Project ID: 207785-4-52-01, which will be of benefit to the AGENCY; and

WHEREAS, the Agency, by Resolution No. \_\_\_\_\_, a copy of which is attached hereto as Exhibit "B", and made a part hereof, has authorized its officers to execute this Agreement on its behalf; and

WHEREAS, the project requires agreement by the AGENCY to maintain the section of the project on SR 329 from SR 331 to SR 226.

NOW, THEREFORE, in consideration of the premises, the parties agree:

1. The AGENCY shall appoint a representative for the administration of this Agreement. The AGENCY representative will be the "contact" for the DEPARTMENT'S local Maintenance Engineer and/or his/her representative concerning all aspects of this Agreement, including communications with the public and/or political officials. The AGENCY shall be responsible for maintenance of all landscaped and/or streetscaped areas within the DEPARTMENT'S right-of-way having limits identified in the plans prepared as a result of the associated Local Agency Program Agreement. The AGENCY shall be responsible for the maintenance of traffic during all operations covered by this Agreement, in accordance with Part VI of the Manual on Uniform Traffic Control Devices and the current Roadway and Bridge Design Standards and any other applicable standards. For the purpose of this Agreement, unless otherwise noted, the locations to be maintained by the AGENCY shall be maintained to a minimum standard so as to meet the Maintenance Rating Program's (MRP) desired rating of 80. Should any item of maintenance fall below the desired rating, the AGENCY agrees to immediately concentrate efforts and to bring the deficient item up to a minimum MRP rating of 80. The AGENCY will not be responsible for a below 80 rating if the cause and effect is not due to neglect by the AGENCY.
2. The AGENCY shall, within the right-of-ways identified in plans prepared as a result of the associated Local Agency Program Agreement, accomplish the following during the term of this Agreement:

- A. Routinely mow, cut and/or trim the grass or turf (includes total greenscape) in accordance with State of Florida "Guide for Roadside Mowing" (1990) and any amendments thereto.
  - B. Properly prune all plants, which include:
    - (1) Routinely trimming trees
    - (2) Routinely pruning such parts thereof which may present a visual or other safety hazard for those using or intending to use the right of way
  - C. Routinely remove dead, diseased or otherwise deteriorated plants.
  - D. Routinely keep litter removed from the right-of-way.
  - E. Routinely remove and dispose of all trimmings, roots, litter, etc. resulting from the activities described herein.
  - F. Routinely edge and sweep any excess grass from sidewalks, curbs and gutters.
  - G. Routinely sweep roadways, curbs and gutters, valley gutters, intersections and barrier wall gutters.
3. The AGENCY and the DEPARTMENT shall be responsible jointly for clean-up, removal and disposal of debris from DEPARTMENT right-of-ways described by the plans prepared as a result of the associated Local Agency Program Agreement, or subsequent amended limits mutually agreed to in writing by both parties, following a natural disaster (i.e. hurricane, tornadoes, etc.).
4. To the extent permitted by law, the AGENCY shall indemnify, defend, save and hold harmless the DEPARTMENT and all its officers, agents, or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because, or due to breach of this agreement by the AGENCY, its subcontractor, agents or employees, or due to any negligent act, or occurrence of omission or commission of the AGENCY, its subcontractors, agents or employees. Neither the AGENCY nor any of its agents will be liable under this section for damages arising out of injury or damages to persons or property directly caused or resulting from the sole negligence of the DEPARTMENT or any of its officers, agents, or employees. The parties agree that this clause shall not waive the provisions of Section 768.28, F. S. or any similar provision of law.
5. If, at any time during the term of this Agreement, it shall come to the attention of the DEPARTMENT'S District Secretary that the AGENCY is not properly performing its maintenance and other responsibilities under this Agreement, said District Secretary may at his option issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter to the AGENCY, to place said AGENCY on notice thereof. Therefore, the AGENCY shall have a period of thirty (30) calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the DEPARTMENT may at its option, proceed as follows:
- A. Maintain the landscaping and/or streetscaping or a part thereof and correct the listed deficiencies with DEPARTMENT or contractor's personnel and invoice the AGENCY for expenses incurred, or
  - B. Terminate the Agreement in accordance with Paragraph 7 of this Agreement and remove, by DEPARTMENT or contractor's personnel, all

of the non-standard aesthetic landscaping and/or streetscaping installed under this Agreement, install standard landscaping, and charge the AGENCY the reasonable cost of such removal and re-installation.

The obligation of the AGENCY to reimburse the DEPARTMENT under this item five (5) shall be deemed to survive the termination of this Agreement for any reason, including, but not limited to, mutual termination as provided in item seven (7)(B).

6. It is understood between the parties that all areas and landscaping and/or streetscaping covered by this Agreement may be deleted, removed, relocated, or adjusted at any time in the future as found necessary by the DEPARTMENT in order that the adjacent state road be widened, altered or otherwise changed and maintained to meet the future criteria or planning of the DEPARTMENT.
7. This Agreement or part thereof is subject to termination under any one of the following conditions:
  - A. In the event the DEPARTMENT exercises the option identified in items five (5), six (6), and nine (9) of this Agreement.
  - B. Upon thirty (30) days written notice and mutual agreement of the parties. In the event mutual termination is requested by the AGENCY, the AGENCY shall remain obligated to reimburse the DEPARTMENT for its maintenance costs for the unexpired term of this Agreement under item (5)(A) or (5)(B) at the option of the DEPARTMENT, unless otherwise agreed to, in writing, at the time of mutual termination.
8. The terms of this Agreement shall be in effect so long as the landscaping and/or streetscaping is in place, commencing on the date the project is final accepted by the DEPARTMENT.
9. In the event this Agreement extends beyond the DEPARTMENT'S current fiscal year, the AGENCY and DEPARTMENT mutually agree that the DEPARTMENT'S performance during subsequent fiscal periods is contingent upon funds being appropriated, allocated, or otherwise made available by the legislature.

Therefore, Section 339.135(6)(a), Florida Statutes (1995), is applicable to this Agreement which states as follows: - The DEPARTMENT, during any fiscal year, may 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 shall be null and void, and no money shall be paid thereon. 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 a period exceeding one (1) year, but any contract so made shall be executory only for the succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT in excess of \$25,000.00 and having a term for a period of more than one (1) year.

10. The AGENCY shall not have authority to add any landscaping to any of the DEPARTMENT'S right-of-ways without first making written application to the DEPARTMENT and receiving written approval from the DEPARTMENT pursuant to the terms of this Paragraph 10. All requests and approvals shall be deemed to have been made and given in agreement with and subject to the conditions set forth below:
  - A. Plans for any new landscaping and/or streetscaping shall be subject to prior written approval by the DEPARTMENT'S local Maintenance Engineer. The AGENCY shall not change or deviate from said approved plans without prior written approval from the Maintenance Engineer.
  - B. All landscaping and/or streetscaping shall be developed and implemented in accordance with appropriate state safety and road design standards.
  - C. The AGENCY agrees to complete, execute and comply with all applicable joint application, insurance forms and permitting requirements of the DEPARTMENT related to construction and maintenance of additional landscaping on the DEPARTMENT'S right-of-ways.
  - D. The AGENCY agrees that it shall not be entitled to receive nor shall the DEPARTMENT be required to pay any payments due to any additional landscaping and/or streetscaping that may be added pursuant to this provision, including, but not limited to, any increase in the cost incurred by the AGENCY to install, maintain, or remove the added landscaping and/or streetscaping during the term of this Agreement, and any renewal thereof, and/or subsequent to this Agreement's termination for any reason.
  - E. The AGENCY agrees to be solely responsible for the installation, continuing maintenance and/or any removal and or restoration of any approved additional landscaping and/or streetscaping, without cost to the DEPARTMENT, pursuant to the requirements and standards established by this Agreement, during the term of this Agreement and as it may be later renewed and for such additional period, upon the expiration or termination of this Agreement, as said additional landscaping remains on the DEPARTMENT'S right-of-way. This Agreement being deemed to survive its expiration and/or termination as to any additional landscaping added pursuant to this item ten (10).
11. This writing embodies the entire Agreement and understanding between the parties hereto and there are no other prior agreements or understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby.
12. This Agreement is nontransferable and nonassignable in whole or in part without the written consent of the DEPARTMENT.
13. This Agreement, shall be governed by, and construed according to the laws of the State of Florida.

AGREEMENT DATE: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals on the day and year first above written.

CITY OF GAINESVILLE

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

BY: *Paul Gellman*

BY: \_\_\_\_\_

TITLE: *City Manager*

District Secretary  
District 2

DATE: *2-1-07*

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

ATTEST: *Rosemary Shell*  
(Seal)

ATTEST: \_\_\_\_\_  
Executive Secretary (Seal)

TITLE: *Administrative Assistant*

APPROVED AS TO FORM:

APPROVED AS TO FORM AND  
LEGALITY:

*Natalie McKellips*  
Attorney

\_\_\_\_\_  
Office of District 2 General Counsel

DATE: *1/31/07*

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