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**THE CITY OF PALM COAST  
AND  
THE FLORIDA DEPARTMENT OF TRANSPORTATION  
HIGHWAY MAINTENANCE MEMORANDUM OF AGREEMENT**

**Contract No.: AQ487**

THIS Agreement, entered into this \_\_\_\_\_ day \_\_\_\_\_, 2011 by and between the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, a component agency of the State of Florida, hereinafter called the DEPARTMENT and the CITY OF PALM COAST, State of Florida, existing under the Laws of Florida, hereinafter called the CITY

W I T N E S S E T H

WHEREAS, as a part of the continual updating of the State of Florida Highway System, the DEPARTMENT, for the purpose of safety, has created roadway, roadside areas and median strips on that part of the State Highway System within the limits of the CITY or adjacent to; and

WHEREAS, the CITY hereto 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; and

WHEREAS, the CITY, by Resolution \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_, 2011 attached hereto as EXHIBIT "A", which by reference hereto shall become a part hereof, desires to enter into this Agreement and authorizes its officers to do so.

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CITY OF PALM COAST

FIN NO.:

417364-1-78-01

CONTRACT NO.: AQ487

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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 **CITY** shall be responsible for routine maintenance of all shoulders, landscaped and/or turfed areas within **DEPARTMENT** rights-of-way having limits described by Exhibit “B”, or subsequent amended limits mutually agreed to in writing by both parties. For the purpose of this Agreement, the maintenance to be provided by the **CITY** is defined in **EXHIBIT “C”**, or as defined by subsequent amended definitions agreed in writing by both parties.

2. In the event of a natural disaster (i.e. hurricane, tornado, etc.) or other normal occurrences such as vehicle accidents and hazardous waste spills, the **CITY** and the **DEPARTMENT** will cooperate and coordinate the use of their respective resources to provide for the clean up, removal and disposal of debris or other substances from the Department’s right of way (described in Exhibit “B” or subsequently amended limits mutually agreed to in writing by the parties hereto). The **DEPARTMENT** shall not deduct from the payment to the **CITY**, costs for impairment of performance of any activity or part thereof defined in Exhibit “C”, as a result of such event and the redirection of **CITY** forces towards fulfillment of the responsibility under this article. This paragraph shall not be interpreted to reduce the **CITY**’s right to compensation or reimbursement from any other sources (i.e., FEMA) for the debris removal or other activities of the **CITY** subsequent to a natural disaster or accident.

3. To the extent permitted by Florida law the **CITY** agrees that it will indemnify and hold harmless the **DEPARTMENT** and all of the **DEPARTMENT'S** officers, agents, and employees from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by the **CITY** during the performance of this Agreement, whether direct or indirect, and whether to any person or property to which the **DEPARTMENT** or said parties may be subject, except that neither the **CITY** nor any of its subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the negligence of the **DEPARTMENT** or any of its officers, agents, or

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employees. The Forgoing Provision is not intended to give rise to Rights in any third party to recover damages from the **CITY**, nor is it intention to constitute a waiver of sovereign immunity.

4. If, at any time while the terms of this Agreement are in effect, it shall come to the attention of the **DEPARTMENT'S** District Director of Transportation Operations, District 5, that the **CITY** responsibility as established herein or a part thereof is not being properly accomplished pursuant to the terms of this Agreement, said Director of Transportation Operations, District 5, may, at his option, issue a written notice in care of the Public Works Director to place said **CITY** on notice thereof. Thereafter the **CITY** shall have a period of (30) thirty calendar days within which to correct the cited deficiency or deficiencies. 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 shoulders, median strip or roadside area declared deficient with the **DEPARTMENT** or a Contractor's material, equipment and personnel. The actual cost for such work will be deducted from payment to the **CITY** or

(B) Terminate this Agreement in accordance with Paragraph 11 of this Agreement.

5. 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 those 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 the project. During that time and for those limits, the Local Government will be released from its obligation to perform maintenance on those roads and the compensation to be paid under this agreement will be temporarily reduced. The reduction in compensation shall be based on the formula used to initially compute the amount of compensation under this agreement and the Local Government will be notified of the amount of the reduction as part of the above-referenced notice.

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6. The **DEPARTMENT** agrees to pay to the **CITY**, following a Notice to Proceed, compensation for the cost of maintenance as described under Item 1 of this Agreement. The payment will be in the amount of **\$23,502.00** per quarter or a total sum of **\$94,008.00** per year. In the event this Agreement is terminated as established by Paragraph 11 herein, payment shall be prorated to the date termination occurs. Detailed quarterly invoices, as provided further herein shall be sent to the Maintenance Contract Engineer of the **DEPARTMENT** at **1650 N. KEPLER ROAD, DELAND, Florida 32724**. Delivery shall be effective upon receipt of a proper quarterly invoice and any required, associated documents.

7. Payment shall be made only after receipt of goods and services as provided in Section 215.422, Florida Statutes.

(A) Any penalty for delay in payment shall be in accordance with Section 215.422(3) (b), 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.

(B) The **CITY** should be aware of the following time frames. Upon receipt, the **DEPARTMENT** has seven working days to inspect and approve the goods and services, unless otherwise specified herein. The **DEPARTMENT** has 20 days to deliver a request for payment (voucher) to the Department of Finance. The 20 days are measured from the latter of the date the invoice is received, at the location stated herein, or the goods or services are received, inspected and approved.

(C) If payment is not available within 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 **CITY**. Interest penalties of less than one (\$1.00) dollar shall not be enforced unless the **CITY** requests payment. Invoices, which have to be returned to the **CITY**

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because of **CITY** preparation errors, will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to 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) 410-9724 or by calling the State Comptrollers Hotline, 1-800-848-3792.

8. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

9. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the **DEPARTMENT** at all times during the period of this Agreement and for three 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 **CITY's** general accounting records and the project records, together with supporting documents and records of the **CITY** and all subcontractors performing work, and all other records of the **CITY** and subcontractors considered necessary by the **DEPARTMENT** for a proper audit of costs.

10. The **CITY** 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 **CITY** in conjunction with this Agreement. Failure by the **CITY** to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the **DEPARTMENT**.

11. This Agreement or any part thereof is subject to termination under any one of the following conditions:

(A) In the event the **DEPARTMENT** exercises the option identified by Paragraph 4 of this Agreement.

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(B) In the event the Legislature fails to make an annual appropriation to pay for the **CITY's** services to be performed hereunder.

12. The term of this Agreement commences on the effective date of the Notice to Proceed issued to the **CITY** by the Department's District Maintenance Engineer, District 5, and shall continue for a period of three (3) years from the effective date of issued Notice to Proceed.

This Agreement may be renewed for a period that may not exceed **one three (3) year term. Renewal shall be contingent upon satisfactory performance evaluations by the DEPARTMENT and subject to the availability of funds. Any renewal or extension shall be in writing and shall be subject to the same terms and conditions set forth in this Agreement.**

The Renewal shall be made at the discretion and option of the **DEPARTMENT** and agreed to in writing by both parties; i.e., the Authorized Signatory for the **CITY**, and the Director of Transportation Operations, District 5, for the **DEPARTMENT**. Renewals shall be contingent upon satisfactory performance evaluations by the **DEPARTMENT** and subject to the availability of funds.

The term of this Agreement may be extended for a period not to exceed six (6) months, upon written Agreement by both parties and subject to the same terms and conditions as applicable for renewal of this Agreement.

13. In the event this Agreement extends beyond the **DEPARTMENT'S** current Fiscal Year that begins on July 1 of each year and ends on June 30 of each succeeding year, the **CITY** and the **DEPARTMENT** mutually agree that the State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature. In addition, Section 339.135(6)(a) of the Florida Statutes is incorporated by reference, and set forth herein below as follows:

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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 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 one (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 having a term for a period of more than one (1) year.

14. All work done on the **DEPARTMENT** rights-of-way shall be accomplished in accordance with the Department of Transportation Manual on Uniform Traffic Control Devices and The Department of Transportation DESIGN STANDARDS, current edition.

15. This writing embodies the whole agreement and understanding of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements either verbal or written, between the parties hereto.

16. This Agreement is nontransferable and nonassignable in whole or in part without consent of the **DEPARTMENT**.

17. This Agreement shall be governed by and construed according to the laws of the State of Florida.

18. 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, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to any public entity, may not be awarded or

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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 following the date of being placed on the convicted vendor list.

19. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to any 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.

20. **E-VERIFY**

Vendor/Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of;

1. all persons employed by the Vendor/Contractor during the term of the Contract to perform employment duties within Florida; and
2. all persons, including subcontractors, assigned by the Vendor/Contractor to perform work pursuant to the contract with the **DEPARTMENT**.

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**EXHIBIT “A”**

**RESOLUTION**

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**EXHIBIT “B”**

**THE ROADWAYS INCLUDED IN THIS AGREEMENT ARE:**

<b>73010</b>	<b>5</b>	<b>Palm Coast City Limits to Bunnell City Limits (M.P. 5.528 – 9.091)</b>
<b>73010</b>	<b>5</b>	<b>Otis Stone Hunter Road to St. John’s County Line (M.P. 13.674 – 23.673)</b>
<b>73020</b>	<b>100*</b>	<b>West of Belle Terre Parkway to Palm Coast City Limits (M.P. 2.255 – 5.500)</b>

**\*SR 100 excludes the Interchange at I-95 from M.P. 4.674 – 4.790**

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**EXHIBIT "C"**

<b><u>ACTIVITY</u></b>	<b><u>DESCRIPTION</u></b>
471	Large Machine Mowing
482	Slope Mowing
490	Fertilizing
492	Tree Trimming & Removal
541	Roadside Letter Removal
543	Roadway Sweeping (Mechanical)

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

**CITY OF PALM COAST**  
(AGENCY)

**STATE OF FLORIDA**  
**DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
(Date) (Date)

By: \_\_\_\_\_  
Director of Transportation Operations  
District Five (Date)

Attest: \_\_\_\_\_ (SEAL)  
(SEAL) (Date)

Attest: \_\_\_\_\_  
Executive Secretary (Date)

LEGAL REVIEW

LEGAL REVIEW

\_\_\_\_\_  
Legal Approval (Date)

\_\_\_\_\_  
District Counsel (Date)

District Maintenance Engineer Approval  
\_\_\_\_\_  
(Date)

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