

## **LANDSCAPE CONSTRUCTION AND MAINTENANCE AGREEMENT**

**THIS AGREEMENT**, made and entered into this day of \_\_\_\_\_, 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 DAYTONA BEACH**, a political subdivision of the State of Florida, existing under the Laws of Florida, hereinafter called the **AGENCY**.

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

**WHEREAS**, the **DEPARTMENT** has jurisdiction over and maintains State Road 600 as part of the State Highway System; and

**WHEREAS**, the **AGENCY** seeks to install and maintain certain landscaping within the unpaved areas within the right of way of State Road 600; and

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

**WHEREAS**, the **AGENCY**, by Resolution No. \_\_\_\_\_ dated \_\_\_\_\_, 2016, and attached hereto 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 **AGENCY** hereby agrees to install or cause to be installed landscaping on the highway facility as specified in the landscape plans attached hereto as Exhibit "A". Such installation shall be in accordance 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 **AGENCY** shall not change or deviate from said plans(s) without written approval of the **DEPARTMENT**.
2. The **AGENCY** agrees to maintain the landscaping within the median and areas outside the travel way within the right of way line in accordance with the Landscape Maintenance Plan(s) included as part of the landscape plans referred to in paragraph #1 above. 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 **AGENCY'S** responsibility for maintenance shall be consistent with the requirements of Florida Administrative Code Rule 14-40-003. The above named functions to be performed by the **AGENCY** shall not change or deviate from said plan(s) without written approval of the **DEPARTMENT**.
3. All landscape installation and maintenance activities undertaken by **AGENCY** shall be in accordance with the Maintenance of Traffic Plan(s) included as part of the landscape plans referred to in paragraph #1 above and Florida Administrative Code Rule 14-40.003.

4. If at any time after the **AGENCY** has assumed the landscaping installation or 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**, the District Secretary or his designee may issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter to the **AGENCY** place said **AGENCY** on notice thereof. Thereafter 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) 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 **AGENCY** for any reasonable expenses incurred.
  - (b) If installation has been properly completed or if the **DEPARTMENT** elects not to complete the landscaping under (a) above, and maintenance by **AGENCY** is not in compliance with paragraphs 2 or 3, the **DEPARTMENT** may take action to maintain the landscaping or a part thereof, with **DEPARTMENT** or Contractor's personnel and invoice the **AGENCY** for expenses incurred, or
  - (c) The **DEPARTMENT** may terminate the **AGREEMENT**, in which case the **AGENCY** 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 **AGENCY** 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 **AGENCY** being responsible for the cost of any removal.

Upon **DEPARTMENT** action under one of the above options and upon direction of the **DEPARTMENT**, **AGENCY** 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 to meet with future criteria or planning of the **DEPARTMENT**. The **AGENCY** shall be given sixty (60) calendar days notice to remove said landscaping/hardscape after which time the **DEPARTMENT** may remove the same.
6. **AGENCY** may utilize its employees or third parties to accomplish its obligations under paragraphs 1, 2 or 3; however, **AGENCY** 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 **AGENCY** shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission or negligent act by the **AGENCY**, its agents, or, during the performance of the Agreement, except that neither the **AGENCY** its agents, nor its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error omission, or negligent agent by the Department or any of its officers, agents, or employees during the performance of the Agreement. When the Department receives a notice of claim for damages that may have been caused by the **AGENCY** in the performance of services required under this Agreement, the Department will immediately forward the claim to and the Department will evaluate the claim and report their finds to each other within seven working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of the claim or to require that participation of the **AGENCY** in the defense of the claim or to require that the **AGENCY** defend the Department in such claim as described in this section. The Department's failure to notify the **AGENCY** of a claim shall not release the **AGENCY** from any of the requirements of this section. The Department and the **AGENCY** will pay their own costs for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trail, that party is responsible for all costs, but if the verdict determines that there is joint responsibility, the costs and liability for damages will be shared in the same percentage as that judicially established.
8. 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.
9. This **AGREEMENT** may not be assigned or transferred by the **AGENCY** in whole or part without the consent of the Department.
10. 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.

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

\_\_\_\_\_  
(AGENCY)

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Mayor or Chairman

By: \_\_\_\_\_  
Maintenance Engineer

Attest: \_\_\_\_\_ (SEAL)  
Clerk/Director

Attest: \_\_\_\_\_ (SEAL)  
Administrative Assistant

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

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