

RIGHT-OF-WAY MAINTENANCE AGREEMENT

FOR _____

This Agreement, made this ____ day of _____, 20__, between Martin County, a political subdivision of the State of Florida, hereinafter call the "COUNTY," and

a not-for-profit corporation of Florida, hereinafter called

WITNESSETH:

WHEREAS, COUNTY is the owner of certain right-of-way adjacent to the property maintained by _____; and

WHEREAS, pursuant to _____ of the _____ Development Agreement, recorded in Official Record Book _____ on page _____, Public Records of Martin County, which is incorporated herein by reference, _____ is required to

and

WHEREAS, the County and _____ by entering into this Agreement intend to expressly define the maintenance responsibilities being delegated to _____.

NOW THEREFORE, in consideration with the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. The

improvements associated with this project and this Agreement are described on Exhibit(s) "A" _____, prepared by _____, which are attached hereto and incorporated herein.

2. All maintenance repair and replacement of the aforementioned right-of-way landscape improvements shall be the sole responsibility of _____ and will be maintained

in accordance with the Martin County Landscape Maintenance Standards attached hereto as Exhibit "B".

3. All maintenance of the aforementioned improvements shall be the sole responsibility of _____, including, but not limited to, ensuring that the

systems are kept in proper working order, in accordance with generally accepted Commercial Standards. Maintenance shall include the repair and replacement of all improvements required to maintain the same level of improvements at the time of installation.

4. Should _____ be unable or unwilling to complete the required maintenance work, the COUNTY may complete or contract to have such maintenance performed and bill _____ for all costs incurred. _____ agrees to pay such bill within thirty (30) days of receipt of such bill. The County agrees to provide written notice of its intent to perform such maintenance at least five (5) days in advance of performing the work.

5. _____ is not exempt from paying sales taxes for goods/services used to fulfill these contractual obligations, nor is _____ authorized to use the COUNTY's Tax Exemption Number for such purposes.

6. _____ (and/or its subcontractors) shall have the following minimum insurance requirements during installation of the right-of-way improvements, with insurance issued by companies authorized under the laws of the State of Florida:

Classification required during the term of the Agreement:

Comprehensive General Liability\$30,000.00 per occurrence
Comp Automobile Liability\$100,000.00 per person / \$300,000 per occurrence
Worker's Compensation and Employment's Liability to the extent required by Florida Statute.

7. This document shall be recorded in the official public records of Martin County, Florida. All costs associated with such recordation shall be paid by _____.
8. The term of this Agreement shall be in perpetuity.

9. This Agreement or any interest herein shall not be assigned or transferred by _____ without the prior written consent of County. It is further agreed that this Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in the documents. Accordingly, it is agreed that deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the formality and of equal dignity herewith.
10. Any notice, request, demand, consent, approval or other communication required or permitted by this Agreement shall be given or made in writing and shall be service (as elected by the party giving such notice) by any of the following methods:
- (i) Hand delivery to the party; or
 - (ii) Delivery by commercial overnight courier service; or
 - (iii) Mailed by registered or certified mail (postage prepaid), return receipt requested.

For purposes of notice the addresses are as follows:

_____	Martin County
_____	County Administrator
_____	2401 SE Monterey Rd
_____	Stuart, Florida 34996

Either party may change its address by providing written notice thereof to the other party.

IN WITNESS WHEREOF, the parties hereto have accepted, made, and executed this Contract upon the terms and conditions above stated on the date first written above.

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

Reviewed

By: _____

Don G. Donaldson, P.E.

Engineering Department Director/
County Engineer

By: _____

Taryn Kryzda, Acting County
Administrator

APPROVED AS TO FORM AND

CORRECTNESS

By: _____

Sarah Woods, Sr. Assistant County Attorney

WITNESS:

President

Signature

EXHIBIT “B”

Landscape Performance Standards

MANAGEMENT

_____ is expected to have on staff or retain the necessary experts to be able to properly manage the designated landscape, streetscape project. _____ is required to schedule all maintenance activities to always meet the prescribed level of service described herein. All services performed shall comply with all laws, ordinances, codes, rules, orders and regulations relating to the performance of the service. Services must be accomplished by using professional methods in compliance with standards of the trade.

MAINTENANCE

_____’s work force shall be experienced, landscape maintenance personnel and shall be well versed in landscape maintenance, plant disease problems and needed remedies. The level of maintenance of the facilities shall consistently be within the tolerances listed below. These guidelines are not intended to be all-inclusive but a guide to describe the level of service expected by Martin County from _____.

TRAFFIC CONTROL

_____ shall be responsible for traffic control during operations performed by _____’s personnel and/or subcontractors. Traffic control shall be in conformance with the Federal Highway Administration, Manual on Uniform Traffic Control Devices, latest edition and the Florida Department of Transportation Roadway and Traffic Design Standards, latest edition. The foregoing requirements are to be considered as minimum and _____’s compliance shall in no way relieve the _____ of final responsibility for providing adequate traffic control devices for the protection of the public and employees throughout the work areas.

LITTER

_____ shall keep all areas within the work limits free of all visible litter. It is the _____’s responsibility to schedule litter removal as needed to maintain a litter free appearance. Before mowing operations begin, all visible trash and litter shall be removed from the designated work areas. Additional litter pickup should be done as needed between mowing cycles in order to maintain the required litter free appearance.

Litter collection/disposal includes the pickup, removal and disposal from the right-of-way of any obstacle such as paper, plastic, wood, tires, cans or other debris. Items such as bags of trash, newspapers, magazines, boxes, etc., which would be torn, ripped, scattered or further subdivided by the mower resulting in an objectionable appearance, should be removed. The mower operator must exercise caution to avoid creation of litter during the mowing operation. Particular attention shall be given to litter removal in planting beds. The

_____ shall be responsible for proper disposal of the litter. Litter must be removed from the site the same day it is picked up. It is not acceptable to leave bags of litter on site for pickup at a later date.

EDGING/TRIMMING

Edge grass at the curbs, sidewalks, drainage structures, edge of pavement and all other infrastructure contained in the maintained area mechanically and/or chemically to maintain no more than two (2) inches of grass over the curbs, sidewalks, pavement or structures. Grass shall not be herbicided or cut any farther than two (2) inches from the curb, sidewalk, pavement or other structures.

Trimming/edging around trees and shrubs shall be performed using hand labor, mechanical devices, or herbicides. Trimming/edging around planting beds and mulched areas shall be performed using a mechanical edger to maintain a clean, well-defined edge. Use of string trimmers or other methods that may damage the trees during trimming operations is prohibited. All light/power poles, guardrails, drainage structures, signage and other appurtenances shall be mowed, trimmed or spot-sprayed with herbicide completely around their bases as needed to keep them weed free, and turf no higher than the standard mowing height.

MOWING

Mowing height shall be 4 inches to 4.5 inches for Bahia turf and 3 inches to 3.5 inches for Floratam/St. Augustine turf. Mowing operations are to be scheduled by _____ in order to cut off no more than 1/3 (one third) of the overall turf height per mowing cycle and keep the turf height uniform and neat in appearance.

Mowing shall be performed with a mulching type mower to minimize the hazard to pedestrians and vehicles. Grass clippings should be left on the grass except in high focal areas where it may be desirable to remove them to prevent matting or build up. Grass clippings and other debris produced by the _____ maintenance activities shall be removed from planting beds, sidewalks, curbs, gutters, pavement and other hardscape areas on the same day they are generated. Where landscaping has been established or natural landscaping has been preserved, mowing shall conform to the established contours.

INSPECTION

Martin County or its duly authorized representative will inspect the maintenance provided at each area as necessary to determine whether the work is being performed in accordance with specifications, and shall review with _____ any problems found.

The County reserves the right to give written notice in the form of an inspection report listing deficiencies to be corrected within ten (10) working days from date of inspection.

VEGETATION ENCROACHMENT

_____ shall trim vegetation as it grows into the designated maintained areas from adjacent property.

COMMUNITY REDEVELOPMENT AREAS (CRA)

Particular attention shall be paid to the landscape maintenance within the Martin County Community Redevelopment Areas. The redevelopment areas tend to have low speed traffic and increased pedestrian travel allowing citizens a more detailed view of the landscaping.

TREE, SHRUB, PALM AND ORNAMENTAL CARE

Trees in general, including but not limited to: Oak, Dahoon/East Palatka Holly, Pines, Ficus, Banyan, Maple, and Loquat trees shall be trimmed by _____ per this agreement. Trained employees skilled in the field of arboriculture shall perform tree pruning/trimming. All work to be performed shall be in accordance with the standards established in the American National Standards Institute (ANSI) publication A300 "Tree Care Operations-Tree, shrub and other woody plant maintenance-Standard Practices" latest edition. The long-term goal for most trees on road rights-of-way is to develop a singular trunk, with the lower eight feet free of limbs. _____ shall trim trees in order to maintain vertical and horizontal clearance for vehicular traffic at all times. Clearances shall be maintained to the Florida Department of Transportation specifications, latest edition. _____ shall remove sprouts from the trunks of trees, especially oak trees. The maximum length of sprouts allowed on trees shall be six (6) inches.

Shrubs: All shrubs shall be pruned on an as-needed basis to either retain an attractive, natural form, or where specifically designed in a precise, formal shape. Martin County shall retain the right to determine size and shape of all plantings.

Palms: All palms, excluding Washington Palms located within landscape beds, shall receive pruning as often as necessary to have palms appear neat and orderly at all times. Removal shall only include yellowing or dead fronds and seedpods or blooms; do not remove healthy green fronds. Washington palms shall be allowed to develop a "Beard" of dead fronds around the trunk of the tree. The trunks of Washington palms will require periodic removal of frond stems or "boots" as they become loose or unsightly. All coconuts within the maintained areas shall be removed from coconut palms prior to growing to two (2) inches in size, largest measurement.

Oleander shall be trimmed at least once per year to a height of four (4) feet and old growth thinned to encourage dense foliage. Oleanders shall not be allowed to grow more than eight (8) feet tall. Wax Myrtle and similar ornamentals shall be trimmed as needed to maintain attractive compact growth no more than eight (8) feet tall.

All shrub areas shall be addressed every cycle by cleaning up and removing all paper, trash, weeds, twigs and other undesirable materials and debris.

All material trimmed and pruned from trees and shrubs shall be removed from the job site as it is generated.

_____ shall be responsible for replacement of desirable plants killed or damaged by _____ or by its subcontractor's actions or inactions.

TREE STAKING

All tree staking/supports shall be per The Florida Department of Transportation (FDOT), Roadway and Traffic Design Standards, Index 544, latest edition.

MULCH

Provide and install mulching materials for planting beds to be accomplished as required throughout the year to provide one hundred percent (100%) coverage by the material in not less than two inch (2") depth or more than four inch (4") in depth. Mulch shall not be in contact with the trunk of the trees. Keep mulch 3 to 4 inches away from tree trunks. Mulch materials shall be clean wood chips; red dyed wood chips, Eucalyptus mulch or clean recycled mulch, free of exotic plant seeds. Shredded wood from land-clearing operations that include large pieces of wood shall not be allowed. Wood chips shall not measure more than three (3) inches in the largest dimension. Cypress mulch shall not be allowed. Repair and cover with mulch, any landscape fabric or bare ground uncovered or damaged during maintenance activities.

WEED CONTROL

A weed is a plant out of place. Plants that were not part of the original landscape design or approved by the County shall be considered weeds. All planting beds, mulched areas, shrubs, hardscape, and sidewalk areas must be maintained essentially weed free. No individual weed (including grasses) shall remain more than two (2) weeks. Weed maintenance shall be performed as needed. No weed may remain that has grown to a height of six (6) inches and/or six (6) inches in diameter maximum.

Acceptable weed density within the above-described specifications shall not exceed over three (3) weeds per square yard over the worst half of any given area. Pre and post emergent herbicides may be used to control weeds. Chemicals to be applied must be approved in advance by the Engineering Department, Mosquito Control Administrator.

_____ shall notify the County in writing whenever chemical weed control is to be applied. _____ allows plantings to be killed or damaged to the point that they require replacement, _____ shall be responsible for the replacement of any plants killed or damaged by herbicide application.

INSECT AND DISEASE CONTROL

Insect and disease control shall be for specific insects or diseases identified as problematic, and treated as needed by _____. Some specific examples are Fungus, Aphids, Scales, Thrips or Leafminers for ornamentals and Fungus and Chinch Bug in turf. Insect and disease control shall only be applied in a manner consistent with Integrated Pest Management practices (IPM).

_____ is responsible for inspection of landscape areas on every visit for indications of pest problems. When treatment is necessary, the least toxic and most target-specific pesticide shall be chosen. Biological controls (such as Bacillus Thuringiensis (BT) formulations) will be the first choice, and if pesticides are necessary,

they will be applied on a spot-treatment basis when wind drift is negligible. Insect and disease control agents shall be applied at the rate recommended by the manufacturer.

_____ shall keep written records on pests identified and treatment applied for control. The _____ may utilize subcontractor(s) for pesticide application.

Pesticide applications shall be made in accordance with the rules and regulations governing use of pesticides by the State of Florida.

_____ shall be responsible for replacement of desirable plants killed or damaged by, insects, fungus or other pests.

FERTILIZATION

Application: Water plants at least 48 hours prior to the application of fertilizer. Apply the fertilizer on top of the mulch or turf areas and water thoroughly, making sure to remove any fertilizer that may have settled on foliage or near the main trunk/stem of the plant.

Ornamental and tree fertilizer shall be applied mid February, mid June and mid September at a rate of 1 Lb. of Nitrogen per 1000 square feet. Trees shall be fertilized at a rate of 1/2 Lb. of fertilizer per inch of tree DBH, (Diameter at Breast Height). Lesco 13-3-13 (mix 011389), or approved equivalent. Turf fertilizer to be Lesco 16-2-8 or approved equivalent.

Turf areas to be fertilized as follows:

St. Augustine grass; Lesco 16-2-8 or approved equivalent, slow release fertilizer in mid February, mid June and mid September at 8 Lbs. per 1000 square feet.

Bahia grass; Lesco 16-2-8 or approved equivalent, slow release fertilizer in mid February, mid June and mid September at 5 Lbs. per 1000 square feet.

Palm trees; Fertilize palms at least three (3) times per year in mid February, mid June and mid September with a slow release 10-4-12 with minor elements formulated for palm trees. Palms under 8'-0" in height: 2-5 Lbs. per application. Mature palms: 5-8 Lbs. per application.

_____ shall notify Martin County Engineering Department, Field Operations Division, two (2) business days prior to the application of fertilizer to enable the County to schedule an inspector to confirm the type, amount and application of the appropriate fertilizer.

IRRIGATION

Streetscape areas containing automatic irrigation as specified on the site location list shall be checked on a monthly basis. A check of the irrigation system will include manually activating each bed or station to check the spray heads operation and direction of spray, the rain sensors are functioning properly, the individual stations are properly timed, and timers have the correct time of day and day of week.

_____ shall repair all deficiencies.

In the event that one or more local, state or federal governing agencies impose water use restrictions in Martin County, it shall be the responsibility of the _____ to adjust irrigation systems to comply with the restrictions. The adjustments required to make the systems comply and to re-adjust once water use restrictions are lifted, shall be made by the _____.

Water use restrictions normally use odd and even addresses to determine the days of the week that irrigation systems can be operated. Roads that have a Federal, State or County route number such as SR76, USI, CR707A shall use the designated road number to determine odd or even. Roads without a numerical name shall use the general orientation of the roadway to determine odd or even. North/South roads shall be considered odd. East/West roads shall be considered even.

FENCE

Fences within the maintained areas shall be kept free of all vines and other vegetation (dead or alive). Vegetation growing into the fence shall be removed as needed to keep the fences free of vegetation.

Fence damage caused by _____'s actions shall be the responsibility of _____ to repair, with like materials and workmanship.

Herbicide may be used at the base of fences to aid in controlling vegetation. An area no more than six (6) inches wide each side of the fence may be herbicided where the fence meets the ground.

MAINTENANCE OF GUTTERS, EDGE OF PAVEMENT AND SIDEWALKS:

The gutters and edge of pavement shall be swept. _____ shall remove and dispose of litter and debris at the edge of pavement and in the gutters that cannot be picked up by a street sweeper.

The surface of concrete, brick pavers or otherwise paved medians shall be swept clean each maintenance cycle. All weeds are to be removed from all hardscape areas each cycle. Sidewalks within the maintenance area shall be edged per the edging specifications above and swept or blown off each cycle. Hardscape and sidewalks shall be kept essentially weed and debris free at all times.

REPLACEMENT PLANTS

_____ shall be responsible for the cost of replacing plants damaged or killed by traffic accidents, vandalism or natural disasters. Plants damaged or killed by _____ action or inaction of _____ or its subcontractors shall be replaced at _____'s cost, with plantings of similar type size

and quantity. Martin County reserves the right to set reasonable time deadlines for plant replacements.

UNDERGROUND UTILITY LOCATES

_____ is responsible for following the Underground Facility Damage Prevention and Safety Act, Chapter 556, Florida Statutes for all digging/excavation performed by _____ or its subcontractors.

HOURS OF MAINTENANCE

Maintenance shall be performed Monday through Saturday, between one (1) hour after sunrise and one (1) hour before sunset, unless agreed upon by the County.