

Maintenance Agreement

THIS Highway Landscape Maintenance Agreement ("Agreement") is made and entered into by and between the **City of New Port Richey**, a duly chartered municipal corporation that has been created and does exist under the laws of the State of Florida, acting by and through City Council ("City"), and Gulf Coast Highway Road Maintenance Organization, Inc. ("RMO").

WITNESSETH

WHEREAS, the City entered into a Highway Landscape Reimbursement and Maintenance Memorandum of Agreement with the State of Florida Department of Transportation on March 10, 2017 ("FDOT Agreement"); and

WHEREAS, the FDOT Agreement requires the City to maintain the highway landscape improvements pursuant to paragraph 5 (Maintenance); and

WHEREAS, RMO expressed an interest in providing the landscape maintenance work necessary pursuant to the FDOT Agreement, excluding irrigation requirements as discussed in paragraph 5 (Maintenance).

NOW THEREFORE for and in consideration of the mutual benefits set forth herein and other good and valuable consideration, the parties agree as follows:

1. Recitals. The recitals set forth above are true and correct and are incorporated herein by reference.
2. Maintenance. RMO shall provide maintenance of all improvements installed on State Road 55 (US Highway 19) right-of-way from ; the Southern Corporate Limits (North of Shamrock Dr.) to the Northern Corporate Limits (Pithlachascotee River Bridge) between M.R. 3.816 & M.P. 678787; Section #14-030-000 in Pasco County the City of New Port Richey, Florida ("Improvements") which is attached hereto and made a part here by reference ("Exhibit A"), pursuant to paragraph 5, sections a-f (Maintenance) of the FDOT Agreement which is attached hereto and made a part here of by reference ("Exhibit B"). The City shall agree to perform irrigation as required in the original FDOT Maintenance Agreement. ("Exhibit B"). Additionally, RMO shall provide sufficient funds for each Fiscal Year to provide maintenance pursuant to this paragraph 2.
3. Maintenance Plan. RMO shall maintain the Improvements in accordance with Exhibit A and the City -approved maintenance plan., attached hereto and incorporated herein as Exhibit B

4. Traffic Closure. If RMO performs maintenance activities within fifteen (15) feet of the edge of pavement, or desires to close a traffic lane, Maintenance of Traffic shall be in accordance with the project plans and the Florida Department of Transportation Maintenance of traffic regulations. RMO shall have a Worksite Traffic Supervisor certified in Advanced Maintenance of Traffic supervise the set up and operation of Maintenance of Traffic devices at the site of the maintenance activity.
5. Signage. RMO shall not install any signs on the improved property unless prior approval is granted by the Florida Department of Transportation. Such approval shall be submitted to the City prior to installation of any signage.
6. Inspection and Compliance. The City may inspect the Improvements at any time. In the event that any portion of the Improvements is at any time determined by the City to not be in conformance with all applicable laws, rules, procedures and guidelines of the City or the Florida Department of Transportation, or is determined to be interfering with the safe and efficient operation of any transportation facility, or is otherwise determined to present a danger to public health, safety, or welfare, said portion shall be immediately brought into compliance at the sole cost and expense of RMO.
7. Cost. RMO shall be responsible for all costs incurred for the services required pursuant to this Agreement. RMO shall obtain and budget adequate funds to satisfy its maintenance responsibilities under this Agreement. RMO is responsible for bidding process, contractor maintenance, and payments to contractor.
8. Termination.
 - a. The term of this Agreement shall coincide with the term of the FDOT Agreement. In the event RMO elects to terminate this Agreement, or in the event the City or FDOT elects not to renew the FDOT Agreement,, upon request by the City, RMO shall, at its sole expense, be responsible for the removal of the Improvements and shall restore the highway to the same safe condition existing prior to installation of the Improvements.
 - b. The Agreement may be terminated by the City if RMO, after fifteen (15) calendar days' written notice, fails to perform its duties under this Agreement.
 - c. The City reserves the right to unilaterally cancel this Agreement for refusal by RMO to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement.

- d. Within sixty (60) calendar days following a notice to terminate pursuant to Paragraph 8.b., if the City requests, RMO shall remove the Improvements and restore the Improvements premises to the same safe condition existing prior to installation of the Improvements. If the City does not request such restoration or the RMO fails to timely complete such restoration, the City may maintain, remove, relocate or adjust the Improvements as it deems appropriate, in its sole and absolute discretion. RMO shall reimburse the City for such maintenance, removal, relocation or adjustment within 30 days of the date of the City's invoice submitted to RMO pursuant to paragraph 12 of this Agreement.
9. Indemnification. RMO shall defend at its expense, pay on behalf of, hold harmless and indemnify the City, its officers, employees, agents, elected and appointed officials and volunteers (collectively, "Indemnified Parties") from and against any and all claims, demands, liens, liabilities, penalties, fines, fees, judgments, losses and damages (collectively, "Claims"), whether or not a lawsuit is filed, including, but not limited to Claims for damage to property or bodily or personal injuries, including death at any time resulting therefrom, sustained by any persons or entities and Claims arising from or relating to environmental contamination; and costs, expenses and attorneys' and experts' fees at trial and on appeal, which Claims are alleged or claimed to have arisen out of or in connection with, in whole or in part, directly or indirectly (i) the performance of this Agreement (including changes and amendments thereto) by RMO, its employees, agents, representatives, contractors, subcontractors, or volunteers; (ii) the failure of RMO, its employees, agents, representatives, contractors, subcontractors, or volunteers to comply and conform with applicable Laws; (iii) any negligent act or omission of RMO, its employees, agents, representatives, contractors, subcontractors or volunteers, whether or not such negligence is claimed to be either solely that of RMO, its employees, agents, representatives, contractors, subcontractors or volunteers, or to be in conjunction with the claimed negligence of others, including that of any of the Indemnified Parties; or (iv) any reckless or intentional wrongful act or omission of RMO, its employees, agents, representatives, contractors, subcontractors or volunteers. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.
10. Public Records. RMO shall comply with the requirements of Florida's Public Records Act, Chapter 119, Florida Statutes. To the extent required by Section 119.0701, Florida Statutes, RMO shall (a) keep and maintain public records required by the City to perform the service under the Agreement; (b) upon request from the County's custodian of public records provide the City with a copy of the requested records or allow the

records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for under Florida's Public Records law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Term and following completion of the Agreement if RMO does not transfer the records to the City, and (d) upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of RMO. Upon transfer, RMO shall destroy any duplicate public records that are exempt or confidential and exempt from public records requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City. All documentation produced as part of this Agreement will become the property of the City. This paragraph shall survive the expiration or termination of this Agreement.

IF THE RMO HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RMO'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY OF NEW PORT RICHEY CITY CLERK'S OFFICE

5919 MAIN STREET

NEW PORT RICHEY, FLORIDA 34652

TELEPHONE: 727-853-1021

FACSIMILE: 727-727-853-1023

EMAIL: MYERSJ@CITYOFNEWPORTRICHEY.ORG

11. E-verify. RMO shall verify the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by RMO during the term of this Agreement. RMO shall expressly require any subcontractors performing any work or providing services to likewise utilize the U.S. Department of Homeland Security's E-verify system to verify the employee eligibility of all new employees hired by the subcontractor during this Agreement's term.
12. Notice. Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals and other communications which are required to be

given by either party to the other shall be in writing and shall be deemed given and delivered on the date delivered in person to the authorized representative of the recipient provided below, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, return receipt requested to the authorized representative of the recipient at the address provided below, or upon the date delivered by overnight courier (signature required) to the authorized representative of the recipient at the address provided below.

City of New Port Richey
Public Works Department
6132 Pine Hill Road
Port Richey, FL 34668
Phone: 727-841-4536

Email: riverar@cityofnewportrichey.org

Gulf Coast Highway Road
Maintenance Organization, LLC
9180 U.S. Highway 19
Port Richey, FL 34668
Phone: 727-495-2424
Email: greg@cbfigrey.com

13. Governing Law and Venue. This Agreement shall be governed by all applicable Florida and federal laws, rules, and regulations and any and all other federal, state, and local laws, rules, and regulations that apply. The venue for any claims, disputes, or other matters in question between the parties arising from this Agreement shall be in the Sixth Judicial Circuit of Florida, in and for Pasco County (Westside).
14. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matters covered herein and there are no oral representations, arrangements or understandings between or among the parties relating to the subject matters of this Agreement.
15. Severability. Should any paragraph or portion of any paragraph of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other paragraph or portion of this Agreement.
16. Assignment. RMO shall not assign this Agreement without the prior written consent of the City, which consent may be withheld by the City in its sole and absolute discretion. Any assignment of this Agreement contrary to this Paragraph 15 shall be void and shall confer no rights upon the assignee.
17. Non-Discrimination. RMO shall not discriminate against anyone on the basis of race, color, religion, gender, national origin, marital status, age, disability, sexual orientation, genetic information or other protected category.

18. Due Authority. Each party to this Agreement represents and warrants to the other party that: (i) it is duly organized, qualified and existing entity under the laws of the State of Florida; and (ii) all appropriate action has been taken so as to duly authorize the person executing this Agreement to so execute the same and fully bind the parties on whose behalf he or she is executing.

19. Amendment. This Agreement may be amended only in writing executed by the parties.

20. Headings. The paragraph headings are inserted herein for convenience and reference only, and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Assignment.

(SEAL)

ATTEST:

By: _____

JUDY MYERS,
CITY CLERK

CITY OF NEW PORT RICHEY

By: _____

DEBBIE MANNS,
CITY MANAGER

WITNESSES:

GULF COAST HIGHWAY ROAD
MAINTENANCE
ORGANIZATION, LLC:

By: Kay Van Etten

Print: Kay Van Etten

By: Kelly Parker-Towell

Print: Kelly Parker-Towell

By: Greg Armstrong

Print: Greg Armstrong

Title: President

Exhibit B

5. MAINTENANCE

a. At such time as the Department issues a Notice to Proceed with Project installation and until such time as the Project is removed pursuant to Paragraph 5. f. and 6. a., the Agency shall maintain the Project in a reasonable manner and with due care in accordance with Project standards. Specifically, the Agency agrees to:

- (1) remove litter from all landscaped areas of the Project;
- (2) remove fallen palm fronds, fallen fruit, and flower stalks and fallen twigs and limbs from all landscaped areas of the Project;
- (3) water and fertilize all plants;
- (4) mulch all plants beds;
- (5) keep plants as free as practicable from disease and harmful insects;
- (6) weed the Project premises routinely;
- (7) mow and/or cut grass within the areas delineated by the landscape plans;
- (8) prune all plants, specifically remove all dead or diseased parts of plants and prune of all parts of plants that present a visibility hazard to those using the roadway;
- (9) replace, or at the Agency's option remove all dead or diseased plants or other parts of the Project that have fallen below Project standards. Replace with plants of substantially the same grade, size and specifications as originally provided for in the plans and specification, unless otherwise authorized by the Department; and
- (10) perform routine maintenance as prescribed by the manufacturer of any Project irrigation system; and
- (11) Trim, alter, relocate or remove landscaping as needed for any future Intelligent Transportation System (ITS).

b. Maintenance of the Project shall be subject to periodic inspections by the Department. In the event that any of the aforementioned responsibilities are not carried out or are otherwise determined by the Department not to be in conformance with the applicable Project standards, the Department may terminate the agreement in accordance with Paragraph 6.b.

c. The Operations Center Engineer shall be notified two (2) business days in advance of commencing any scheduled construction or maintenance activities. Emergency repairs shall be performed without delay and the Operations Center Engineer notified immediately. The Operations Center Engineer responsibility for the roadway within this Project is located at 5211 Ulmerton Rd. Clearwater, FL. 33760; Telephone 727-575-8300

d. Prior to any Project construction or reconstruction activity, the Agency shall submit plans to the Department for review and approval of the proposed work. Additionally, such plans shall be submitted to all utilities with facilities within the limits the limits of work for their review and comment. The Agency shall resolve any conflicts and/or concerns raised by the utilities prior to commencement of such activities. Work shall not start until the Department has issued a Design any field activity on this Project, the Agency shall notify all the utilities of their work schedule enabling facilities to be field located and marked to avoid damage.

e. The Department will require the Agency to cease operations and remove all personnel and equipment from the Department's right-of-way if any actions on the part of the Agency or representatives of the Agency violate the conditions or intent of this agreement as determined by the Department.

f. It is understood between the parties hereto that any or all of the Project may be removed, relocated, or adjusted at any time in the future criteria or planning of the Department. The Agency shall be given notice regarding such removal, relocation, or adjustment and shall be allowed sixty (60) calendar days to remove all or part of the Project at its own cost. The Agency will own that part of the Project it removes. After the sixty (60) calendar days to remove all or part of the Project at its own cost. The Agency will own that part of the Project it removes. After the sixty (60) calendar day's removal period, the Department may remove, relocate, or adjust the Project as it deems best. Where the Agency removes improvements pursuant to this agreement, the Agency shall restore the surface of the affected portion of the Project premises to the same safe and trafficable condition as it was before installation of improvements.

g. The Agency covenants to appropriate in its annual budget, for each Fiscal Year, non-ad valorem funds lawfully available to satisfy its maintenance responsibilities under this Agreement. This covenant does not create any lien upon, or pledge of, such non-ad valorem funds, nor does it preclude the Agency from pledging such funds in the future, or from levying and collecting any particular non-ad valorem funds.