

**MAINTENANCE AGREEMENT**

**THIS MAINTENANCE AGREEMENT** ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and Nassau County, Florida ("County").

**WITNESSETH:**

**WHEREAS**, the Department is presently undertaking certain improvements along State Road A1A in Nassau County, Florida, including, without limitation, the installation of roundabout at the intersection of State Road A1A and a new access point for Amelia Island Plantation near Racquet Club Drive; and

**WHEREAS**, Amelia Island Plantation ("AIP") communicated a request to the Department to make certain improvements to the roundabout, including, without limitation, landscaping and the installation of irrigation and lighting; and

**WHEREAS**, the Department is amenable to the request given the County's willingness to execute this Agreement; and

**WHEREAS**, there are two (2) additional previously existing permitted roundabouts which include improvements that are presently maintained by AIP and the County pursuant to one or more written agreements; and

**WHEREAS**, this Agreement shall concern the following roundabouts located in Nassau County, Florida (collectively "Roundabouts"):

- Roundabout 1            Section 74130            Milepost 3.150            Permit # 00 K 294 0083  
A1A at Amelia Island Plantation (previously existing)
- Roundabout 2            Section 74130            Milepost 3.290            Permit # 00 K 294 0083  
A1A at Amelia Island Plantation (previously existing)
- Roundabout 3            Section 74130            Milepost 3.600            Permit # 10 A 294 0017  
A1A near Racquet Club Drive (new)

**WHEREAS**, improvements and non-standard features existing or installed within any of the Roundabouts, including, without limitation, landscaping, irrigation and lighting, shall be referred to herein collectively as the "Improvements"; and

**WHEREAS**, this Agreement supersedes and replaces any prior agreements concerning maintenance of Improvements on or within roundabouts 1 and 2.

**NOW THEREFORE**, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound hereby, acknowledge and agree as follows:

**1. RECITALS & EXHIBITS**

The recitals set forth above and Exhibits attached hereto, if any, are specifically incorporated herein by reference and made part of this Agreement.

**2. EFFECTIVE DATE**

The effective date of this Agreement shall be the date the last of the parties to be charged executes the Agreement ("Effective Date").

**RECEIVED**  
DEC 20 2010

**CERTIFIED TRUE COPY**  
*John A. Crawford, Esq. - Officer Clerk*  
*Dr. Brenda K. Brinkley, D.C.*  
EX-OFFICIO, Clerk of the Board of County Comm.  
Nassau County, Florida

### **3. TERM**

The initial term of this Agreement shall be for a period of one (1) year, commencing on the Effective Date. This Agreement shall automatically renew for successive and continuing one (1) year terms unless terminated by the Department.

### **4. COMPLIANCE**

The County shall perform this Agreement, including, without limitation, its obligations to operate, maintain and repair the Improvements, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, St. Johns River Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard, Nassau County, Florida and other local governmental entities ("Governmental Law").

### **5. DEPARTMENT PERMITS**

In performance of this Agreement, the County may be required to obtain one or more Department permits which may include a copy of this Agreement as an exhibit. Notwithstanding the inclusion or incorporation of this Agreement as part of any such Department permits, this Agreement shall remain separate and apart from such permits and shall not be merged into the same absent the prior written express consent of the parties. Should any term or provision of this Agreement conflict with any term, provision or requirement of any Department permit, the terms and provisions of this Agreement shall control unless specifically noted otherwise in any such Department permit.

### **6. OPERATION, MAINTENANCE & REPAIR**

A. From the Effective Date of this Agreement, the County shall continually operate, maintain and repair the Improvements at its sole cost and expense, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement. Nothing in this Agreement shall obligate the Department to operate, maintain, repair or improve the Improvements, said obligations to remain the sole responsibility of the County.

B. If the Department determines that the County is not operating, maintaining and repairing the Improvements in accordance with the terms and provisions of this Agreement, the Department shall deliver written notification of such to the County. The County shall have thirty (30) days from the date of the Department's written notice, or such other time as the Department and the County mutually agree in writing, to correct the deficiency and provide the Department with written notice of the same ("Notice of Correction").

C. If the Department determines that the deficiency remains after receipt of the County's Notice of Correction, the Department, within its discretion, may: (1) provide the County with written authorization granting such additional time as the Department deems appropriate to correct the deficiency; or (2) correct the deficiency at the County's sole cost and expense. Should the Department elect to correct the deficiency, the Department shall provide the County with an invoice for the costs incurred by the Department to correct the deficiency and the County shall pay the invoice in accordance with the "Payment" section of this Agreement.

D. If at any time in the sole determination of the Department, the integrity or safety of the Improvements requires immediate maintenance or repair for the benefit of public health, safety or welfare, the Department may perform such maintenance and repairs it deems appropriate under the circumstances. The Department shall attempt to notify the County prior to action under this section, but may take necessary steps to correct emergency situations prior to such notification in order to prevent eminent danger to public health, safety or welfare. The Department shall provide the County with written notice of the emergency maintenance and repairs performed by the Department and an invoice for the same. The County shall pay the invoice in accordance with the "Payment" section of this Agreement.

## **7. MAINTENANCE OF TRAFFIC**

A. The County shall be responsible for the maintenance of traffic ("MOT") at all times during the performance of this Agreement. MOT shall be performed in accordance with applicable Governmental Law and the most current edition of each of the following, as the same may be constituted and amended from time to time, all of which are incorporated herein and made part of this Agreement by reference: (1) Section 102 of the Department's Standard Specifications for Road and Bridge Construction; (2) the Manual on Uniform Traffic Control Devices; (3) the Department's Roadway Design Standards Index 600 Series; and (4) other applicable Governmental Law.

B. If the County fails to perform MOT as required herein, the Department, within its discretion, may elect to perform MOT at the County's sole cost and expense. Should the Department perform MOT, the Department shall provide the County with an invoice for the costs incurred by the Department and the County shall pay the invoice in accordance with the "Payment" section of this Agreement.

## **8. PAYMENT**

All Department invoices submitted to the County for payment pursuant to the terms and provisions of this Agreement are due and payable within thirty (30) days of the date of the invoice ("Due Date"). Any portion of an invoice not received by the Department by the Due Date shall immediately thereafter begin accruing interest at a rate of interest established pursuant to §55.03, Fla. Stat., until paid in full.

## **9. INDEMNIFICATION**

A. To the maximum extent permissible under applicable Florida law, the County shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, penalties, costs, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the County's performance, or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include, without limitation, all civil and criminal environmental liability arising, directly or indirectly from the Environmental Investigation and Remediation Work, under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The County's duty to defend, indemnify and hold the Department harmless specifically does not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract.

B. The County shall notify the Department in writing immediately upon becoming aware of any Liabilities. The County's obligation to defend, indemnify and hold the Department harmless from any Liabilities, or at the Department's option to participate and associate with the Department in the defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the Department's written notice of claim for indemnification to the County. The County's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

## **10. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY**

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Fla. Stat. (2010). The Department's liability for breach of this Agreement is specifically: (1) limited to actual damages incurred by the County as a direct result of the Department's breach; and (2) further limited in amount and shall not, under any circumstances, exceed the limitations of liability for tort actions set forth in §768.28(5), Fla. Stat. (2010).

## **11. NOTICE**

All notices, communications and determinations between the parties hereto and those required by this Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

Department: Florida Department of Transportation  
Attention: District 2 Maintenance Engineer  
1109 South Marion Avenue, Mail Station 2010  
Lake City, Florida 32025

County: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**12. GOVERNING LAW**

This Agreement shall be governed in all respect by the laws of the State of Florida.

**13. INITIAL DETERMINATION OF DISPUTES**

The Department's District Two Secretary ("District Secretary") shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance or breach of this Agreement.

**14. VENUE AND JURISDICTION**

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. The County and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

**15. JURY TRIAL**

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of this Agreement, including, without limitation, damages allegedly flowing there from.

**16. ASSIGNMENT**

The County may not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the Department's District Secretary or his/her designee. The Department has the sole discretion and authority to grant or deny proposed assignments, with or without cause. Nothing herein shall prevent the County from delegating its duties hereunder, but such delegation shall not release the County from its obligation to perform this Agreement.

**17. THIRD PARTY BENEFICIARIES**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

**18. VOLUNTARY EXECUTION OF AGREEMENT**

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in this Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of this Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of this Agreement and executes this Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of this Agreement.

**19. ENTIRE AGREEMENT**

This instrument, together with the attached exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Agreement, and any part hereof, are waived, merged herein and superseded hereby.

**20. SUFFICIENCY OF CONSIDERATION**

By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in this Agreement and forever waive the right to object to or otherwise challenge the same.

**21. WAIVER**

The failure of either party to insist on the strict performance or compliance with any term or provision of this Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

**22. INTERPRETATION**

No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

**23. CAPTIONS**

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

**24. SEVERANCE**

If any section, paragraph, clause or provision of this Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of this Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of this Agreement remain enforceable.

**25. COMPUTATION OF TIME**

In computing any period of time prescribed in this Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

**26. MODIFICATION OF AGREEMENT**

A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

**IN WITNESS WHEREOF**, intending to be legally bound hereby, the parties execute this Agreement consisting of six (6) pages.

***SIGNATURES ON FOLLOWING PAGE***

Florida Department of Transportation

By: [Signature]

Printed Name: HANNIGAN

Title: DME

Date: FEB 2 2011

Legal Review:

By: [Signature]

Office of the General Counsel  
Florida Department of Transportation

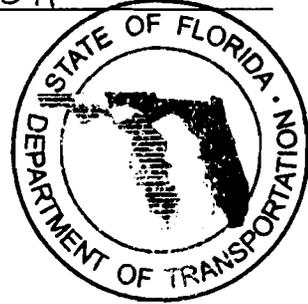
Attest:

By: [Signature]

Printed Name: Lisa Lambert

Title: Admin. Asst.

Date: Feb. 2, 2011



Nassau County, Florida

By: [Signature]

Printed Name: Walter J. Boatright

Title: Chairman

Date: 12-13-10

Legal Review:

By: [Signature]

Legal Counsel for Nassau County, Florida  
David A. Hallman

Attest:

By: [Signature]

Printed Name: John A. Crawford

Title: Ex-Officio Clerk

Date: 12-16-10

RECEIVED  
NOV 22 2010  
COUNTY CLERK'S OFFICE  
NASSAU COUNTY, FLORIDA

**RESOLUTION NO. 2010- 182 A**

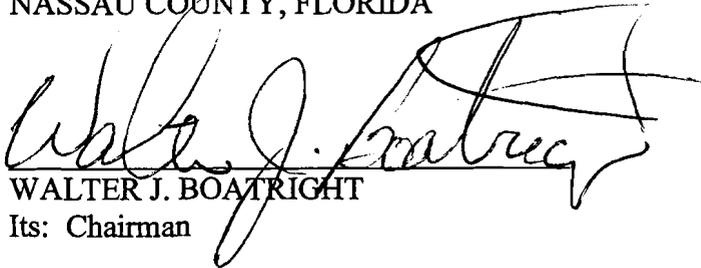
**A RESOLUTION AUTHORIZING THE EXECUTION OF THE AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA**

WHEREAS, the Public Works Director has recommended that the Board of County Commissioners of Nassau County, Florida, execute a Maintenance Agreement between the State of Florida Department of Transportation and Nassau County, Florida regarding the Maintenance of Roundabouts located A1A at Amelia Island Plantation, Section 74130, Milepost 3.150; A1A at Amelia Island Plantation Section 74130 Milepost 3.290; and A1A near Racquet Club Drive Section 74130, Milepost 3.6.

NOW, THEREFORE, BE IT RESOLVED, this 13th day of December, 2010, by the Board of County Commissioners of Nassau County, Florida as follows:

1. The Maintenance Agreement between the State of Florida Department of Transportation and Nassau County is hereby approved and the Chairman is authorized to execute said agreement.

BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA

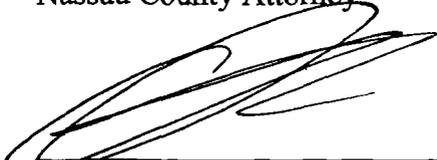
  
WALTER J. BOATRIGHT  
Its: Chairman

Attest as to Chairman's  
Signature:

  
JOHN A. CRAWFORD  
Its: Ex-Officio Clerk

*CBK*  
*12/13/10*

Approved as to form by the  
Nassau County Attorney:

  
DAVID A. HALLMAN

A CERTIFIED TRUE COPY  
*John A. Crawford, Ex-Officio Clerk*  
*By: Brenda S. Finwick, D.C.*  
EX-OFFICIO, Clerk of the Board of County Comm.  
Nassau County, Florida