

OFF SYSTEM MAINTENANCE AGREEMENT
Between
STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
("DEPARTMENT")

and
THE CITY OF ORLANDO, FLORIDA, a municipal corporation duly enacted under the laws of
the State of Florida
("LOCAL GOVERNMENT")

WHEREAS, the DEPARTMENT has jurisdiction over SR 50 and certain connecting drainage easements, along with highway features necessary for the intended operation of the state highway; and

WHEREAS, the LOCAL GOVERNMENT seeks assistance from the DEPARTMENT for improvements on certain drainage facilities which are located within areas outside of the State Highway Right of Way and in control of and under the jurisdiction of the LOCAL GOVERNMENT which will hereinafter be referred to as the "Outside of Right of Way Area." The DEPARTMENT has determined that this Outside of Right of Way Area is necessary to be included in this Project in order to complete the said improvements on those certain drainage facilities which provide for the storm water discharge to the water body known as Spring Lake, located near Rio Grand Avenue; and

WHEREAS, the DEPARTMENT has agreed to construct, or cause to be constructed, such drainage improvements to include a hydrodynamic separator located within the Outside of Right of Way Area to collect trash and other refuse that would be typically generated by normal highway operations in order to protect Spring Lake from excessive chemical or nutrient intrusion; and

WHEREAS, it is necessary for the Department to enter onto the Outside of Right of Way Area, under the control and jurisdiction of LOCAL GOVERNMENT to construct the drainage improvements;

WHEREAS, the LOCAL GOVERNMENT has agreed to service the Project, as hereinafter described, in perpetuity; and

WHEREAS, the parties agree that it is in the best interest of each party for the DEPARTMENT to undertake and to complete all aspects of the improvements.

NOW THEREFORE,

1. The parties agree that the DEPARTMENT shall undertake and complete Financial Project Number 431734-1-72-09, generally described as the hydrodynamic separator, located entirely within the Outside of Right of Way Area, and hereinafter referred to as the "Project". The Project shall include the tasks listed and the limits of right of way described in Exhibit "A", hereto, and all other tasks associated with, or arising out of the tasks listed therein. Plans depicting the Project are attached as Exhibit "B" and incorporated herein. The parties hereto agree that the DEPARTMENT has agreed to construct the Project and to incur the costs thereof in consideration for the LOCAL GOVERNMENT'S agreement to perpetually service the Project as described herein. Servicing shall include periodically cleaning out the sediment, debris, trash and any other obstruction from the Project/structure on a periodic basis so as to prevent flooding of the roadway and minimize the release of such sediment, debris, trash and obstruction into the water body. The LOCAL GOVERNMENT hereby grants to the DEPARTMENT, it's Contractors, representatives, employees and agents the reasonable right, upon notice to LOCAL GOVERNMENT, to enter onto LOCAL GOVERNMENT right of way and the Outside of Right of Way Area to accomplish the tasks required by the Project. This right of entry shall continue in full force and effect throughout the period of time that the Project is ongoing. Should any repair of the Project be required in the future this Agreement shall serve as a right of entry to the DEPARTMENT, it's Contractors, representatives, employees and agents, upon notice to

LOCAL GOVERNMENT, to enter onto LOCAL GOVERNMENT right of way and the Outside of Right of Way Area to accomplish any tasks required during such repair.

2. To the extent necessary, the LOCAL GOVERNMENT hereby appoints the DEPARTMENT as its agent for purposes of right of way acquisition; construction; reconstruction, and relocation of utilities under section 337.403(1), Florida Statutes. The LOCAL GOVERNMENT agrees to fully cooperate with the DEPARTMENT in the construction, reconstruction and relocation of utilities that may be located within the existing or acquired right of way. The parties agree to meet on a periodic basis, as determined to be necessary by the DEPARTMENT, during the planning, design, construction and post-construction phases to identify, plan and to relocate utilities. The responsibility for the costs associated with the relocation of utilities shall be based on Florida law as it relates to said matters. The parties agree that if existing utilities owned by the LOCAL GOVERNMENT are required to be reconstructed or relocated as a result of the Project, that the costs associated therewith shall be deemed to be a cost of the Project to be paid for by the LOCAL GOVERNMENT.

3. The LOCAL GOVERNMENT acknowledges that the DEPARTMENT will be utilizing state funds on the Project, and as a result thereof, the LOCAL GOVERNMENT agrees to maintain, in perpetuity, the Outside of Right of Way Area within the limits of the Project, according to the DEPARTMENT standards.

4. The LOCAL GOVERNMENT acknowledges that the DEPARTMENT will require the LOCAL GOVERNMENT to service the Project in perpetuity, according to the DEPARTMENT standards. If at any time the LOCAL GOVERNMENT has not performed the servicing responsibility on the Project as described herein and in Exhibit "A", the DEPARTMENT shall have the option of (a) notifying the LOCAL GOVERNMENT of the deficiency with a requirement that it be corrected within a specified time; or (b) the DEPARTMENT may perform the necessary servicing and send an invoice to the LOCAL GOVERNMENT, equal to the cost to the DEPARTMENT for such servicing; (c) take whatever action is deemed appropriate by the DEPARTMENT. Any action taken, hereunder, does not relieve any obligation of the LOCAL GOVERNMENT under the terms and conditions of this Agreement.

5. The DEPARTMENT shall have the sole authority with respect to making all decisions relating to the design and construction of the Project, and including the need for, change orders and supplemental agreements.

6. All payment and performance bonds shall be issued in favor of the DEPARTMENT. The warranties for the Outside of Right of Way Area shall be made in favor of the LOCAL GOVERNMENT.

7. Upon completion of the Project, the DEPARTMENT shall issue a Notice of Final Acceptance to the contractor with a copy of said notice being provided to the LOCAL GOVERNMENT. Upon issuance of the Notice of Final Acceptance, the LOCAL GOVERNMENT shall be immediately responsible for the perpetual servicing of the Project, specified in Exhibit "A". The DEPARTMENT shall also have the right to assign interim servicing responsibility to the LOCAL GOVERNMENT for specified portions of the Project, which the DEPARTMENT has inspected and approved, before the issuance of the Notice of Final Acceptance. Said assignment of servicing responsibility shall be sent by the DEPARTMENT to the LOCAL GOVERNMENT in writing with sufficient description to place the LOCAL GOVERNMENT on notice of the interim servicing responsibility. Notwithstanding the issuance of the Notice of Final Acceptance, the DEPARTMENT shall have the right to assure completion of any punch list by the contractor. Additionally, the LOCAL GOVERNMENT understands and agrees that the

DEPARTMENT shall transfer all permits, pertaining to the Outside of Right of Way Area, to the LOCAL GOVERNMENT as the operational maintenance entity and the LOCAL GOVERNMENT agrees to accept said transfer and to become fully responsible to comply with all operational and maintenance conditions of the permits.

8. This agreement shall become effective as of the date both parties hereto have executed the agreement and shall continue in full force and effect until the Project is completed by the DEPARTMENT and the Project has been turned over to the LOCAL GOVERNMENT by the DEPARTMENT by formal notice from the DEPARTMENT. The DEPARTMENT reserves the right to unilaterally cancel its performance hereunder if it determines that it is in the best interest of the public to do so. This discretion shall include, but shall not be limited to, budgetary and bid cost considerations. The DEPARTMENT'S performance and obligation to commence and complete the construction phase of the Project is contingent upon an annual appropriation by the Florida Legislature. The parties agree that in the event funds are not appropriated to the DEPARTMENT for the Project, this Agreement may be terminated, which shall be effective upon the DEPARTMENT giving written notice to the LOCAL GOVERNMENT to that effect.

9. Pursuant to Section 287.058, Florida Statutes, the DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT 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 by the LOCAL GOVERNMENT in conjunction with this Agreement, except for the obligation of the LOCAL GOVERNMENT to maintain the Project and said Agreement shall be perpetual as to that obligation.

10. In the event that any election, referendum, approval or permit, notice or other proceeding or authorization is required to be undertaken by the LOCAL GOVERNMENT to enter into this Agreement or to undertake the Project, the LOCAL GOVERNMENT will expeditiously initiate and consummate, as provided by law, all actions necessary with respect to any such matters with time being of the essence.

11. It is understood that the DEPARTMENT'S participation in said Project is subject to:
- a.) Florida Legislative approval of the DEPARTMENT'S appropriation request in the work program year that the project is scheduled;
 - b.) Availability of funds based on the following limitations:
 - i.) The DEPARTMENT'S performance and obligations to pay under this Agreement is contingent upon an annual appropriation by the Florida Legislature. If the DEPARTMENT'S funding for this Project is in multiple years, funds approved from the DEPARTMENT'S Comptroller must be received every year prior to costs being incurred.
 - ii.) In the event this Agreement is in excess of \$25,000.00, and has a term of a period of more than one year, the provisions of §339.135(6)(a), Florida Statutes, are hereby incorporated. 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 executor only for the value of the services to be rendered or agreed to be paid 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 \$25,000.00 and which have term for a period of more than one (1) year.”

12. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

13. The LOCAL GOVERNMENT 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:

- a) All persons employed by the LOCAL GOVERNMENT during the term of the Agreement to perform employment duties within Florida; and
- b) All persons, including subcontractors, assigned by the LOCAL GOVERNMENT to perform work pursuant to the Agreement with the Department.

14. All notices required pursuant to the terms hereof, may be sent by first class United States Mail, facsimile transmission, hand delivery or express mail and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. Each party hereto shall have the continuing obligation to notify each other of the appropriate persons for notices to be sent to pursuant to the terms of this Agreement. Unless otherwise notified in writing, notices shall be sent to the following:

To the Local Government:
City of Orlando
Director Public Works Department
Orlando, Florida

To the Department:
State of Florida, Department of Transportation
Director of Transportation Operations
719 South Woodland Boulevard
DeLand, Florida 32720-6834

The individual identified as the person to receive notice hereunder shall have the authority to act on behalf of and to bind the LOCAL GOVERNMENT and the DEPARTMENT, respectively, as to all determinations required to be made under the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates exhibited, by the signatures below.

CITY OF ORLANDO

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____

Name:

Title:

Date: _____

Attest: _____

By:

Title:

Approved as to form and legality:

By:

City Attorney

By: _____

Alan E. Hyman, P.E.

Director of Transportation Operations

Date: _____

Attest: _____

Norma Mejias

Executive Secretary

Department Legal Review:

Exhibit “A”

Scope of Services

Financial Management Number: 431734-1-72-09

Spring Lake Hydrodynamic Separator

The Project includes the installation of a hydrodynamic separator in the LOCAL GOVERNMENT right of way and in the Outside of Right of Way Area off of State Road 50, which provides for stormwater discharge into Spring Lake in Orange County.

The purpose of this Off-System Maintenance Agreement is to specifically assign permanent and perpetual servicing responsibility for the hydrodynamic separator to the LOCAL GOVERNMENT.

The LOCAL GOVERNMENT acknowledges that the DEPARTMENT will require the LOCAL GOVERNMENT to maintain the entire Project and the Outside of Right of Way Area, in perpetuity, according to the DEPARTMENT standards. If at any time the LOCAL GOVERNMENT has not performed the servicing responsibility on the Project as described in Exhibit “A”, the DEPARTMENT shall have the option of (a) notifying the LOCAL GOVERNMENT of the deficiency with a requirement that it be corrected within a specified time; or (b) the DEPARTMENT may perform the necessary servicing and send an invoice to the LOCAL GOVERNMENT equal to the cost to the DEPARTMENT for such servicing; (c) take whatever action is deemed appropriate by the DEPARTMENT. Any action taken, hereunder, does not relieve any obligation of the LOCAL GOVERNMENT under the terms and conditions of this Agreement.

Exhibit “B”

Project Plans