

RESOLUTION NUMBER 00-27

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE INTERLOCAL AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR LIMITED MAINTENANCE OF MATANZAS PASS BRIDGE ON STATE ROAD 865 FOR A PERIOD OF THREE YEARS; PROVIDING AN EFFECTIVE DATE

WHEREAS, negotiations between the State of Florida, Department of Transportation, a component agency of the State of Florida, and the Town of Fort Myers Beach, a political subdivision of the State of Florida, have resulted in an interlocal agreement which provides for the manual weed control, graffiti removal, litter removal and sweeping of Matanzas Bridge; and

WHEREAS, the Town of Fort Myers Beach hereby declares its intent to enter into a maintenance agreement which is attached hereto and made a part hereof, for a period of three years commencing July 1, 2000 to provide eminence necessary to the described area;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, that:

1. The Town Council hereby authorizes the maintenance agreement attached hereto and made a part hereof, for a period of three years commencing July 1, 2000.
2. The Mayor of the Town of Fort Myers Beach is hereby authorized to execute it on behalf of the Town.
3. This resolution shall become effective immediately upon adoption.
4. The foregoing resolution was offered by Council member Murphy, who moved for its adoption. The motion was seconded by Council member Cereceda, and upon being put to vote, the vote was as follows:

Contract No.: \_\_\_\_\_  
FM No.: 40882517201

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
MAINTENANCE AGREEMENT**

This is an Agreement by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter referred to as the "DEPARTMENT", and TOWN OF FT. MYERS BEACH, hereinafter referred to as the "AGENCY".

**WITNESSETH**

WHEREAS, the AGENCY has the authority to enter into said Agreement and to undertake the project hereinafter described, and the DEPARTMENT has been granted the authority to function adequately in all areas of appropriate jurisdiction and is authorized under Section 334.044 F. S. to enter into this Agreement; and

WHEREAS, the AGENCY by Resolution No. \_\_\_\_\_ dated the \_\_\_\_ day of \_\_\_\_\_, 2000, a copy of which is attached hereto and made a part hereof, has authorized its officers to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties agree as follows:

**1-SERVICES AND PERFORMANCE**

A. The DEPARTMENT does hereby retain the AGENCY to furnish certain services as described in EXHIBIT A, attached hereto and made a part hereof.

B. Before any additions or deletions to the work described in EXHIBIT A, and before undertaking any changes or revisions to such work, the parties shall enter into a Supplemental Agreement covering such modifications and the compensation to be paid therefore. Performance of any such services prior to the execution of a Supplemental Agreement will result in nonpayment of those services. Reference herein to this Agreement shall be considered to include any supplemental thereto.

C. The DEPARTMENT will be entitled at all times to be advised, at its request, as to the status of work being done by the AGENCY and of the details thereof. Coordination shall be maintained by the AGENCY with representatives of the DEPARTMENT.

D. All services shall be performed by the AGENCY to the satisfaction of the Director who shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Agreement. The Director's decision upon all claims, questions and disputes shall be final and binding upon all parties. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable shall be left to the absolute discretion of the Director.

Reference herein to Director shall mean the DEPARTMENT's District Secretary for District One.

## 2-TERM

A. This Agreement has a term of three (3) years, which term shall begin immediately following the execution of this Agreement by the DEPARTMENT.

B. The services to be rendered by the AGENCY shall commence subsequent to the execution of this Agreement, upon written notice from the DEPARTMENT's Project Manager, and shall continue until its expiration date of June 30, 2003, unless terminated in accordance with paragraph 6 of this Agreement.

## 3-COMPENSATION AND PAYMENT

A. The DEPARTMENT agrees to pay the AGENCY for the herein described services at a compensation as detailed in EXHIBIT A attached hereto and made a part hereof. The DEPARTMENT shall have the right to retain out of any payment due the AGENCY under this Agreement an amount sufficient to satisfy any amount due and owing to the DEPARTMENT by the AGENCY on any other Agreement between the AGENCY and the DEPARTMENT.

B. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the State Comptroller under Section 215.422(14), Florida Statutes.

C. If this contract involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.

D. Any penalty for delay in payment shall be in accordance with Section 215.422(3)(b), Florida Statutes.

E. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

F. Bills for travel expenses specifically authorized by this Agreement shall be submitted and paid in accordance with Section 112.061, Florida Statutes.

G. AGENCY providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt, the DEPARTMENT has five (5) working days to inspect and approve the goods and services, unless the Agreement specifies otherwise. The DEPARTMENT has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

H. If a payment is not available within 40 days, a separate interest penalty in accordance with Section 215.422(3)(b), Florida Statutes, will be due and payable, in addition to the invoice amount, to the AGENCY. Interest penalties of less than one (1) dollar will not be enforced unless the AGENCY requests payment. Invoices which have to be returned to an AGENCY because of AGENCY preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.

I. A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as a advocate for contractors/vendors who may be experiencing problems in obtaining timely payments(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the State Comptroller's Hotline, 1-800-848-3792.

J. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for three years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred includes the AGENCY's general accounting records and the project records, together with supporting documents and records of the AGENCY and all subcontractors performing work on the project, and all other records of the AGENCY and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.

K. 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 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.

L. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

#### 4-INDEMNITY AND INSURANCE

A. INDEMNITY. AGENCY agrees, to the extent allowed by Section 768.28 F. S., that it will indemnify, defend, and hold harmless DEPARTMENT and all of DEPARTMENT's officers, agents, and employees from any claim, loss, damage, cost, charge or expense arising out of any acts, actions, neglect or omission by AGENCY, its agents, employees, or subcontractors during the performance of the contract, whether direct or indirect, and whether to any person or property to which DEPARTMENT or said parties may be subject, except that neither AGENCY nor any of its subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the negligence of DEPARTMENT or any of its officers, agents, or employees.

B. LIABILITY INSURANCE. The AGENCY shall carry and keep in force during the period of this Agreement a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$100,000 per person and \$300,000 each occurrence, and property damage insurance of at least \$100,000 each occurrence, for the services to be rendered in accordance with this Agreement.

C. WORKER'S COMPENSATION. The AGENCY shall also carry and keep in force Worker's Compensation insurance as required for the State of Florida under the Worker's Compensation Law.

## 5-COMPLIANCE WITH LAWS

A. The AGENCY shall 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 AGENCY in conjunction with this Agreement. Failure by the AGENCY to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.

B. The AGENCY shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex or national origin in the performance of work under this Contract.

## 6-TERMINATION AND DEFAULT

A. This Contract may be canceled by the DEPARTMENT in whole or in part at any time the interest of the DEPARTMENT requires such termination. The DEPARTMENT also reserves the right to seek termination or cancellation of this Agreement in the event the AGENCY shall be placed in either voluntary or involuntary bankruptcy. The DEPARTMENT further reserves the right to terminate or cancel this Agreement in the event an assignment be made for the benefit of creditors. This Contract may be canceled by the AGENCY upon (60) days written notice to the DEPARTMENT.

B. If the DEPARTMENT determines that the performance of the AGENCY is not satisfactory, the DEPARTMENT shall have the option of (a) immediately terminating the Agreement, or (b) notifying the AGENCY of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) take whatever action is deemed appropriate by the DEPARTMENT.

C. If the DEPARTMENT requires termination of the Agreement for reasons other than unsatisfactory performance of the AGENCY, the DEPARTMENT shall notify the AGENCY of such termination, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

D. If the Agreement is terminated before performance is completed, the AGENCY shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress will become the property of the DEPARTMENT and will be turned over promptly by the AGENCY.

## 7-MISCELLANEOUS

A. The AGENCY and the DEPARTMENT agree that the AGENCY, its employees, and subcontractors are not agents of the DEPARTMENT as a result of this Contract for purposes other than those set out in Section 337.274, Florida Statutes.

B. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

C. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Contract shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.

D. It is understood and agreed by the parties hereto that if any part, term or provision of this Contract is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular part, term or provision held to be invalid.

E. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

F. Attachments.

IN WITNESS WHEREOF, the AGENCY has caused this Agreement to be executed in its behalf this \_\_\_\_ day of \_\_\_\_\_, 2000, by the \_\_\_\_\_, authorized to enter into and execute same by Resolution Number \_\_\_\_\_ dated \_\_\_\_\_, 2000, and the DEPARTMENT has executed this Agreement through its District Secretary for District One, Florida Department of Transportation, this \_\_\_\_ day of \_\_\_\_\_, 2000.

AGENCY

ATTEST: *Marsha Segal-George*

BY: *Daniel Hughes*

NAME: Marsha Segal-George

NAME: Daniel Hughes

TITLE: Town Manager

TITLE: Mayor

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

ATTEST: \_\_\_\_\_ (SEAL)  
EXECUTIVE SECRETARY

BY: \_\_\_\_\_  
DISTRICT SECRETARY  
DISTRICT ONE

NAME: \_\_\_\_\_

DOT District Maintenance Engineer  
Approval:

DOT Legal Review:

\_\_\_\_\_

\_\_\_\_\_

Availability of Funds  
Approval:

\_\_\_\_\_  
Date

EXHIBIT "A"

1 - TERM

The services to be rendered by the Agency shall commence, subsequent to the execution of this Agreement, upon written notice from the Department's Project Manager ("Notice") and shall continue for three years from the date of said Notice. Said Notice to become Attachment 1 to this Exhibit.

2 - COMPENSATION

The Department agrees to pay the Agency for services rendered in accordance with this Agreement. A lump sum payment will be made in the amount of One Thousand Dollars (\$ 1,000.00 ) per quarter for a total of Four Thousand Dollars (\$ 4,000.00 ) per year.

3 - LOCATION AND DESCRIPTION OF MAINTENANCE ACTIVITIES TO BE PERFORMED.

WORK LOCATION

SR 867, SECTION 12004, M.P. 0.659 TO M.P. 0.0000 FROM MAIN STREET TO ESTERO BLVD.

A)	ACTIVITY 487	WEED CONTROL, MANUAL COST . . . . .	\$ 1,000.00
B)	ACTIVITY 540	GRAFFITI REMOVAL COST . . . . .	\$ 500.00
C)	ACTIVITY 541	ROADSIDE LITTER REMOVAL COST . . . . .	\$ 2,000.00
D)	ACTIVITY 542	ROAD SWEEPING, MANUAL COST . . . . .	\$ 500.00
		ANNUAL COST . . . . .	\$ 4,000.00