

**Agency Maintenance Agreement  
for Work Performed by the Department  
Sheet 1 of 3**

Financial Project ID: \_\_\_\_\_

Federal Aid No. \_\_\_\_\_

Local Agency: \_\_\_\_\_

Project Description: \_\_\_\_\_

\_\_\_\_\_

Bridge No.: \_\_\_\_\_

**MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter called "DEPARTMENT"), and \_\_\_\_\_, Florida (hereinafter called "LOCAL AGENCY");

WITNESSETH:

WHEREAS, the DEPARTMENT is preparing to undertake a project within the LOCAL AGENCY and LOCAL AGENCY identified and known to the parties by Financial Project I.D. \_\_\_\_\_ which will be of benefit to the LOCAL AGENCY; and

WHEREAS, approval of federal aid necessary to the project requires agreement by the LOCAL AGENCY to maintain the project;

NOW, THEREFORE, in consideration of the premises, the parties hereby agree as follows:

1. The DEPARTMENT will undertake the project and obtain approval of the Federal Highway Administration for federal participation.
2. Upon completion and acceptance, the LOCAL AGENCY will assume responsibility for maintenance of the project and will conduct such maintenance in accordance with approved state standards.
3. To the extent permitted by law, LOCAL AGENCY must indemnify, defend, and hold harmless the DEPARTMENT and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission or negligent act by LOCAL AGENCY, its agents, or employees, during the performance of the Agreement, except that neither LOCAL AGENCY, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the DEPARTMENT or any of its officers, agents, or employees during the performance of the Agreement. Nothing herein must waive the rights of sovereign immunity of either party.

**Sample Local Agency Maintenance Agreement  
For Work Performed by the Department  
Sheet 2 of 3**

4. In the event there are cost overruns, supplemental agreements (specifically incurred in the areas located off the State Highway System), and or liquidated damages not eligible to be paid for by federal funds due to the Federal Highway Administration determining that said costs are non-participating costs, the LOCAL AGENCY must be responsible for one-hundred percent (100%) of the funds required to make up the shortfall not paid by federal funds. The Project is off of the "State Highway System," therefore, in accordance with **Section 339.08(1), Florida Statutes**, State funding cannot be used for payments of non-participating costs on this Project. (Examples of non-participating items could be fishing piers; premium costs due to design or CEI errors or omissions; material or equipment called in for the plans but not used in the construction, as referenced in the Federal Aid Policy Guide 23, **CFR Section 635.120**).
  - a. Should such shortfalls occur, due to a determination that said costs are non-participating, the LOCAL AGENCY agrees to provide, without delay, a deposit within fourteen (14) calendar days of notification from the Department, to ensure that cash on deposit with the Department is sufficient to fully fund the shortfall. The Department must notify the LOCAL AGENCY as soon as it becomes apparent there is a shortfall; however, failure of the Department to so notify the LOCAL AGENCY must not relieve the LOCAL AGENCY its obligation to pay for its full participation of non-participating costs during the Project and on final accounting, as provided herein below. If the LOCAL AGENCY cannot provide the deposit within fourteen (14) days, a letter must be submitted to and approved by the Department's project manager indicating when the deposit will be made. The LOCAL AGENCY understands the request and approval of the additional time could delay the project, and additional non-participating costs may be incurred due to the delay of the project.
5. The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty days (360) of final payment to the Contractor. The Department considers the Project complete when the final payment has been made to the Contractor, not when the construction work is complete. All non-participating Project cost records and accounts must be subject to audit by a representative of the LOCAL AGENCY for a period of three (3) years after final close out of the Project. The LOCAL AGENCY will be notified of the final non-participating cost of the project. Both parties agree that in the event the final accounting of total non-participating costs pursuant to the terms of this Agreement is less than the total deposits to

date, a refund of the excess will be made by the Department to the LOCAL AGENCY. If the final accounting is not performed within three hundred and sixty (360) days, the LOCAL AGENCY is not relieved from its obligation to pay.

6. In the event the final accounting of total non-participating costs are greater than the total deposits to date, the LOCAL AGENCY will pay the additional amount within forty (40) calendar days from the date of the invoice from the Department. The LOCAL AGENCY agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes, on any invoice not paid within forty (40) calendar days until the invoice is paid.
  
7. Any payment of funds under this Agreement provision will be made directly to the Department for deposit.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

\_\_\_\_\_  
LOCAL AGENCY OFFICIAL

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
District Secretary

\_\_\_\_\_  
(Type Name)

ATTEST:

ATTEST:

\_\_\_\_\_  
Clerk (Seal)

\_\_\_\_\_  
Executive Secretary (Seal)

LEGAL APPROVAL:

LEGAL APPROVAL:

\_\_\_\_\_  
LOCAL AGENCY Attorney

\_\_\_\_\_  
Senior Attorney

\_\_\_\_\_  
(Type Name)