

TAB 4

POINT PAPER

**TERMINATION OF INTERLOCAL AGREEMENT
FOR MEDIAN MAINTENANCE
OCTOBER 20, 2008**

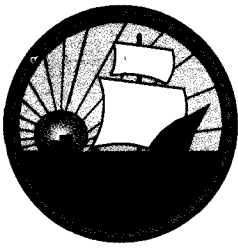
Problem: The City Commission must take official action to terminate the Interlocal Agreement with Manatee County regarding the City's maintenance of the medians located on US 41 at 17th Street.

Background: The City of Palmetto entered into an agreement with Manatee County in 2000 to maintain the medians located on US 41 at 17th Street. The City has spent a good deal of time and energy improving and maintaining the medians, but has encountered some difficulty, in that we do not control the right-of-way, or the water supply to the irrigation system. This year, the County Commission expressed their willingness to resume the maintenance responsibility for these medians.

Recommendation: Authorize the Mayor to advise the County Commission of the City of Palmetto's action to terminate the Interlocal Agreement.

(MOTION: To authorize the Mayor, on behalf of the City Commission, to terminate the Interlocal Agreement with Manatee County regarding the maintenance of the medians on US 41 and 17th Street, and to advise the County Commission of the same.)

Budget Impact: Negligible savings will be realized by the City, in eliminating this maintenance responsibility.

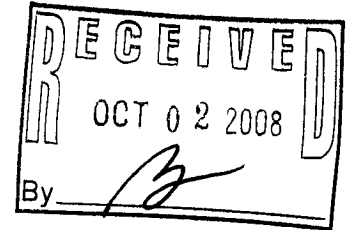


Jim/Michelle - Action pls. B

MANATEE COUNTY
BOARD OF COUNTY COMMISSIONERS

September 24, 2008

The Honorable Lawrence E. Bustle
Mayor, City of Palmetto
PO Box 1209
Palmetto, FL 34220-1209



RE: Termination of Interlocal Agreement for Median Maintenance

Dear Mayor Bustle:

The Board of County Commissioners (BCC) met in Regular Session on September 9, 2008, and reviewed staff recommendation to accept the maintenance of two medians on US 41 from the City of Palmetto. Motion carried to support the recommendation, and this letter is confirming Manatee County's willingness to take over the maintenance of these medians.

The medians, one to the north of 17th St. E., and one to the south of 17th St. E., were to be maintained by the City of Palmetto per the enclosed Interlocal Agreement for Landscaping Maintenance, dated October 24, 2000. Since the Interlocal Agreement names the City as the responsible party, the County requests that the Palmetto City Council take official action to terminate the Interlocal Agreement and notify the BCC of this action.

Once notification has been received from the City, the BCC will then follow up with official action to terminate the Interlocal Agreement and have both actions recorded with the Manatee County Clerk of the Circuit Court, Board Records.

We look forward to hearing from you, and appreciate your assistance in this matter.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA


JANE W. VON HAHMANN
Chairman

JWH/cb

Enclosure

cc: Board of County Commissioners
Ed Hunzeker, County Administrator
Ron Schulhofer, Public Works Director
Chad Butzow, P.E., Deputy Director-Operations

INTERLOCAL AGREEMENT FOR LANDSCAPING MAINTENANCE

THIS INTERLOCAL AGREEMENT is made and entered into by and between the COUNTY OF MANATEE, FLORIDA, hereinafter referred to as the "COUNTY," and the City OF PALMETTO, FLORIDA, hereinafter referred to as the "CITY."

WITNESSETH:

WHEREAS, on October 20, 1998, the COUNTY entered into a Highway Landscape Installation and Maintenance Memorandum Of Agreement with the Florida Department of Transportation (FDOT), as related to the installation and maintenance of landscaping features within the right-of-way of State Road 55 (U.S. 41), between Mile Post 4.383 and Mile Post 4.823; and,

WHEREAS, the COUNTY is desirous of transferring its landscaping maintenance obligations pursuant to the above-referenced Agreement to the CITY, and the CITY has expressed a willingness to perform said maintenance functions for the COUNTY; and,

WHEREAS, FDOT has consented to such an arrangement.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual benefits to be derived, it is agreed by and between the parties hereto as follows:

1. The CITY hereby agrees to undertake the duties and obligations of the COUNTY pursuant to Paragraph 3, as they relate solely to the COUNTY's obligation for provision of maintenance of the installed landscaping features in the Project after

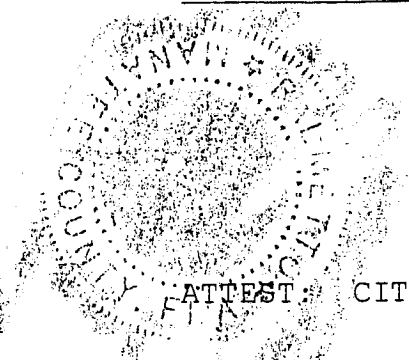
completion by the COUNTY, under that certain Highway Landscape Installation and Maintenance Memorandum Of Agreement dated October 20, 1998, a true copy of which is attached hereto, incorporated herein and labeled as Exhibit "A." The CITY shall undertake these duties and obligations regarding maintenance at no cost or expense to the COUNTY. To the extent required pursuant to Section 768.28, F.S., the CITY will be liable to third parties only for damages caused by the negligent acts or omissions of the CITY's employees or agents in performing said maintenance duties.

2. The COUNTY reserves the right to unilaterally terminate this Interlocal Agreement on at least thirty (30) days advance written notice to the CITY in the event that the FDOT determines to terminate the above-referenced Agreement with the COUNTY. Otherwise, this Interlocal Agreement shall remain in effect until such time as the parties hereto shall mutually determine to terminate same.

3. Each of the parties hereto covenants to the other party that it has lawful authority to enter into this Interlocal Agreement, that its governing body has approved this Interlocal Agreement, and that its governing body has authorized the execution of this Interlocal Agreement in the manner hereinafter set forth. The date of this Agreement shall be the later of the respective dates upon which the parties have approved and

executed this document. This Agreement must receive the consent of FDOT in order to be effective.

IN WITNESS WHEREOF, the parties hereto have caused this Interlocal Agreement to be approved this 2 th day of _____, 2000.



CITY OF PALMETTO, FLORIDA

By: [Signature]
Mayor PAT Whitesel
DATED: 9-27, 2000

ATTEST: CITY CLERK

By: [Signature]
City Clerk/Deputy Clerk

ALAN H. PRATHER
Approved as to
legal form
and sufficiency
9/20/00

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

By: [Signature]
Chairman
DATE: October 24, 2000

ATTEST: R. B. SHORE
Clerk of the Circuit Court

By: [Signature]



\\Law_order\sys\DATA\Docs\Palmetto, City\Utilities\Landscape Maint. MC.FDOT.doc

EXHIBIT "A"

Financial Management No: AA38017901
State Project No.:
Work Program Item Number:
County: MANATEE

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
HIGHWAY LANDSCAPE INSTALLATION
AND MAINTENANCE MEMORANDUM OF AGREEMENT

This Agreement, made and entered into this ^{20th}~~29~~ day of ^{October}~~August~~, 1998, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the DEPARTMENT, and MANATEE COUNTY, hereinafter referred to as the AGENCY.

WITNESSETH

WHEREAS, the DEPARTMENT has jurisdiction over and maintains State Road 55 (U.S. 41) as part of the State Highway System; and

WHEREAS, the AGENCY seeks to install and maintain certain landscape development improvements within the right-of-way of State Road 55 (U.S. 41); from Mile Post 4.383 to Mile Post 4.823, hereinafter referred to as the PROJECT; and

WHEREAS, the parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party; and

WHEREAS, the AGENCY by Resolution R-98-23, dated January 20, 1998, a copy of which is attached hereto and made a part hereof, has authorized its officer(s) to enter into this Agreement on behalf of the AGENCY;

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. The AGENCY hereby assures the DEPARTMENT, that prior to submitting this Agreement, it has:
 - a. Ascertained the location of all existing utilities, both aerial and underground. A letter of notification and plan of the landscape development improvements was mailed on 07 / 20 / 98 to the following utilities/municipalities:
Florida Power & Light City of Palmetto
Time Warner Cable Co.
Peoples Gas Co.
General Telephone Co.
 - b. Complied with all permit requirements from the appropriate agencies (county, municipality, etc.) in connection with the activities described hereunder.

Outdoor advertising is specifically excluded from this Agreement in accordance with Section 479.11, Florida Statutes.

EXHIBIT A

2. The AGENCY hereby agrees to install the landscape improvements in accordance with the Landscape Development Plans included as Exhibit "A", attached hereto and by this reference made a part hereof. Such installation shall be in conformance with Rule 14-40, Florida Administrative Code, and the Highway Landscape Beautification and Plan Review Procedure (Topic 650-050-001c), as they may be amended from time to time.
3. The AGENCY agrees to maintain the landscape improvements in accordance with the Technical Maintenance Plan included as Exhibit "B", attached hereto and by this reference made a part hereof.
4. Designated personnel as directed by the District Secretary or his designee may inspect and evaluate this project and issue a written report if a deficiency or unsatisfactory condition is noted. If deficiencies and/or unsatisfactory conditions are not corrected within thirty (30) days, the District Secretary or his designee shall have the option to do one of two things:
 - a. Correct and maintain the landscape improvements with DEPARTMENT's contractor or DEPARTMENT's personnel and charge the AGENCY for the reasonable value of said work.
 - b. Remove by DEPARTMENT's contractor or DEPARTMENT's personnel all landscape improvements, return the right-of-way to its original condition and charge the AGENCY the reasonable value for such work.
5. To the extent permitted by Section 768.28, Florida Statutes, the AGENCY shall indemnify, defend, save and hold harmless, the DEPARTMENT and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to breach of this Agreement by the AGENCY, its officers, agents, or employees or due to any negligent act or occurrence of omission or commission of the AGENCY, its officers, agents, or employees. Neither the AGENCY, nor any of its officers, agents, or employees 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 the DEPARTMENT or any of its officers, agents or employees.
6. The AGENCY covenants to keep in force during the period of this Agreement public liability insurance, property damage insurance and worker's compensation insurance through an insurance policy(ies) or the AGENCY's self insurance program.
7. This Agreement shall remain in effect until such time the AGENCY or DEPARTMENT wishes to cancel said agreement and this shall be done in writing giving the AGENCY or DEPARTMENT thirty (30) days notice. All landscape improvements shall be removed by the AGENCY and the DEPARTMENT's right-of-way returned to its original condition. If, after thirty (30) days, the landscape improvements have not been removed, the DEPARTMENT may, at its option, proceed as follows:

- a. Maintain the landscape improvements within the limits of said project with DEPARTMENT's contractor or personnel and charge the AGENCY for the reasonable value of said work;
 - OR
 - b. Remove by DEPARTMENT's contractor or personnel all of the landscape improvements, return the right-of-way to its original condition, and charge the AGENCY for the reasonable value of such work.
8. The term of this Agreement commences upon execution by both parties.
 9. This writing embodies the entire Agreement and understanding between the parties hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
 10. This Agreement may not be assigned or transferred by the AGENCY in whole or part without the consent of the DEPARTMENT.
 11. This Agreement shall be governed by and construed in accordance with the laws of the state of Florida. In the event of a conflict between any portion of the Agreement and Florida law, the laws of Florida shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

MANATEE COUNTY, FLORIDA
 BY: Patricia M. Glass
 CHAIRMAN PATRICIA M. GLASS 8/18/98
 BOARD OF COUNTY COMMISSIONERS

STATE OF FLORIDA
 DEPARTMENT OF TRANSPORTATION
 BY: [Signature]
 District Secretary
 District One

ATTEST: [Signature] (SEAL)
 CLERK

ATTEST: [Signature] (SEAL)
 Executive Secretary

Approval as to Form & Legality:

[Signature]
 District Legal Counsel

H:\USERS\LO150R\LAW\HOLEGALL\LANDSCAP.IN3