Rev: November 08, 2012

RIGHT OF WAY MOWING AND MAINTENANCE AGREEMENT

By and Between

THE

GEORGIA DEPARTMENT OF TRANSPORTATION

AND

LUMPKIN COUNTY

THIS AGREEMENT made and entered into this _____ day of _____, 20____ by and between the **DEPARTMENT** of Transportation, an agency of the State of Georgia, hereinafter alternately referred to as **"DEPARTMENT"** or **"LICENSOR"**, and the Lumpkin County, hereinafter referred to as **"LICENSEE"**.

WHEREAS, the **DEPARTMENT** desires to enter into an agreement to perform certain services relating to mowing and maintenance within **DEPARTMENT'S** right of way, hereinafter called the **"PROJECT"**, and

WHEREAS, the **LICENSEE** has represented to the **DEPARTMENT** that, if such permission is granted to the **LICENSEE**, **LICENSEE** shall bear all costs and liability associated with the **PROJECT**; and

WHEREAS, the **LICENSEE** has represented to the **DEPARTMENT** that they are qualified and experienced to provide such services and the **DEPARTMENT** has relied upon such representations;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants as herein contained, it is agreed by and between the parties hereto that:

ARTICLE I
SCOPE OF PROJECT

The **DEPARTMENT** shall permit the **LICENSEE** to perform or cause to be performed, the **PROJECT** consisting of certain services related to maintaining an identified section of the **DEPARTMENT'S** rights of way.

This permission shall be granted by the means of this Agreement for the entire scope of the **PROJECT**, as set forth herein.

The maintenance duties and responsibilities of the **LICENSEE** are defined and set forth in Article XI – **MAINTENANCE WORK PLAN** of this Agreement for a Department-approved construction **PROJECT**. The required Special Encroachment Permit and/or the construction **PROJECT** final working drawings are to be approved or issued by the **DEPARTMENT**.

Should the **LICENSEE** desire that these maintenance services be performed by a third party, **LICENSEE** and the third party shall enter into subsequent agreement, whereby the **LICENSEE** shall assume all responsibility of repayment to the third party for those services to be rendered as set forth in Article XI - **MAINTENANCE WORK PLAN**. The Agreement between **LICENSEE** and any third parties to this Agreement, shall meet all operational and administrative requirements, including the provisions of liability insurance, set forth by the **DEPARTMENT**, and all liability associated with the **PROJECT** shall be borne by **LICENSEE** and any third parties, as set forth in Article VIII, herein.

ARTICLE II
EXECUTION OF CONTRACT AND AUTHORIZATION
TIME OF PERFORMANCE

Time is of the essence in this agreement. The **LICENSEE** shall execute this Agreement and return it to the **DEPARTMENT** within thirty (30) days after receipt of contract forms from the **DEPARTMENT**.

The **LICENSEE** shall begin work on the **PROJECT** under this Agreement immediately after receiving a signed and executed copy of the Agreement (unless noted otherwise in Exhibit A or upon **PROJECT** construction completion).

Subject to the terms and conditions set forth in this Agreement, and upon execution of this Agreement, the **DEPARTMENT** grants the right to the **LICENSEE** to mow, edge, and maintain, as set forth in Article XI- **MAINTENANCE WORK PLAN**, that specific section of right-of-way identified in this Agreement, and herein defined as the **PROJECT**.

The duration of this Agreement shall be for fifty years from the date above first written unless terminated sooner by the **DEPARTMENT** or **LICENSEE**.

ARTICLE III
SUBSTANTIAL CHANGES

If, prior to the satisfactory completion of the services under this Agreement, any party materially alters the scope, character or complexity of the services from those required under the Agreement, a Supplemental Agreement shall be executed between the parties. It is understood, however, that **LICENSEE** shall not engage in any activities or conduct any work which would be considered to be outside the scope of the permission granted to **LICENSEE** by the **DEPARTMENT**. Minor changes in the work which do not involve increased compensation, extensions of time or changes in the goals and objectives of the work may be made by written notification of such change by any party with written approval by the other parties.

ARTICLE IV
ASSIGNMENT

It is understood by the **LICENSEE** that the work is considered personal and, except as provided for in Article I, **LICENSEE** agrees not to assign, sublet or transfer any or all of their interest in this Agreement without prior written approval of the **DEPARTMENT**.

ARTICLE V
CONTRACT DISPUTES

This Agreement shall be deemed to have been executed in _Fulton_ County, Georgia and all questions of interpretation and construction shall be governed by the laws of the State of Georgia.

ARTICLE VI
INSURANCE

Prior to beginning work, the **LICENSEE** shall obtain and certify to the **DEPARTMENT** that it has the following minimum amounts of insurance coverage:

(a) Workmen's Compensation Insurance in accordance with the laws of the State of Georgia.

(b) Public Liability Insurance in an amount of not less than one hundred thousand dollars ($100,000) for injuries, including those resulting in death to any one person, and in an amount of not less than three hundred thousand dollars ($300,000) on an account of any one occurrence, or proof of self insurance.

(c) Property Damage Insurance in an amount of not less than fifty thousand dollars ($50,000) from damages on account of any occurrence, with an aggregate limit of one hundred thousand dollars ($100,000), or proof of self insurance.

(d) Valuable Papers Insurance in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work covered by the **PROJECT**.

(e) Insurance shall be maintained in full force and effect during the life of the **PROJECT**.

The **LICENSEE** shall furnish upon request to the **DEPARTMENT**, certificates of insurance evidencing such coverage. These certificates **shall** also provide that the insurance will not be modified or canceled without a 30 day prior written notice to the **DEPARTMENT**. Failure by the **LICENSEE** to procure and maintain the insurance as set forth above shall be considered a default and cause for termination of this Agreement and forfeiture of the Performance and Payment Bonds. The **LICENSEE** shall, at least fifteen (15) days prior to the expiration date or dates of expiring policies, deposit certified copies of renewal, or new policies, or other acceptable evidence of insurance with the **DEPARTMENT**.

ARTICLE VII
COMPENSATION

It is agreed that **LICENSEE** shall conduct all work at no cost to the **DEPARTMENT**, and without compensation from the **DEPARTMENT**. It is further agreed that any **and all** issues relating to compensation and payment shall be resolved by and between **LICENSEE** and any successors, subcontractors, or assigns thereto.

The **DEPARTMENT** and **LICENSEE** further agree that, should the **DEPARTMENT** be required to conduct any inspections and/or supervision of the **PROJECT** beyond that which would normally occur in the ordinary course of the **DEPARTMENT'S** maintenance activities, **LICENSEE** shall reimburse the **DEPARTMENT** for such inspection and supervision. The rate of reimbursement for the **DEPARTMENT'S** inspection and supervision shall in no case exceed a rate determined to be reasonable by the parties.

Should **LICENSEE** and the **DEPARTMENT** desire to change this agreement at a later date to provide for compensation to **LICENSEE**, or any successors or assigns thereto, such change shall only be permitted by a supplemental agreement as set forth in Article III herein. Any supplemental agreements involving compensation shall be subject to the **DEPARTMENT** review and approval.

ARTICLE VIII
RESPONSIBILITY FOR CLAIMS AND LIABILITY
LICENSEE NOT AGENT OF DEPARTMENT

LICENSEE, and all successors and assigns thereto, shall save harmless the **DEPARTMENT**, its officers, agents, and employees from all suits, claims, actions or damages of any nature whatsoever resulting from the performance of work assigned to **LICENSEE** under this Agreement. **LICENSEE** further agrees that they shall be fully responsible for injury or damage to landscaping, landscape related items, and any other non-standard and decorative elements installed by or for the **LICENSEE** within the right of way, and for any damage to the **DEPARTMENT'S** signs, structures, or roadway fixtures, if **LICENSEE** causes the damage. These indemnities shall not be limited by reason of the listing of any insurance coverage.

The **LICENSEE** shall be responsible to perform all work required to obtain all applicable **PROJECT** permits, including, but not limited to, Cemetery, Tennessee Valley Authority (TVA) and US Army Corps of Engineers permits, Stream Buffer Variances and Federal Emergency Management Agency (FEMA) approvals. The **LICENSEE** shall provide all mitigation required for the project, including but not limited to permit related mitigation. All mitigation costs are considered PE costs. **PROJECT** permits and non-construction related mitigation must be obtained and completed 3 months prior to the scheduled let date. These efforts shall be coordinated with the **DEPARTMENT**.

It is further understood and agreed that **LICENSEE**, or any successor or assigns thereto, in the conduct of any work involved in the **PROJECT**, shall not be considered the agent of the **DEPARTMENT** or of the State of Georgia.

ARTICLE IX
TERMINATION OF CONTRACT

The **DEPARTMENT** may terminate this contract for just cause at any time by giving of thirty (30) days written notice of such termination. Upon receipt of such notice of termination, **LICENSEE** shall discontinue and cause all work under this contract to terminate upon the date

specified in the said notice. In the event of such termination, the **DEPARTMENT** shall be paid for any amounts as may be due it as specified in Article VII up to and including the specified date of termination. **LICENSEE** shall have the right to terminate this contract at any time, provided that such termination is first approved by the **DEPARTMENT**, and that the **DEPARTMENT** is reimbursed in full for all services rendered pursuant to Article VII.

The **DEPARTMENT** and **LICENSEE** further agree that, should the **DEPARTMENT** allow the **LICENSEE** to terminate the agreement, the termination, unless determined otherwise in writing by the **DEPARTMENT**, shall be contingent upon the following:

A. The **LICENSEE** removing as determined by the DEPARTMENT the planted landscaping, landscape related items, and any other non-standard and decorative elements that were installed by or for the **LICENSEE** at no cost to the **DEPARTMENT**.
B. The **LICENSEE** restoring the removed landscape areas to their original condition or a condition that meets federal standards and is acceptable to the **DEPARTMENT**.
C. The **LICENSEE** restoring the removed non-standard and decorative elements with standard **DEPARTMENT** elements that meet federal and state requirements.
D. The **LICENSEE** reimbursing the **DEPARTMENT** in full any state and/or federal funds used to purchase and install the landscaping, landscape related items, and other non-standard and decorative elements that are no longer to be maintained by the **LICENSEE**.

The **DEPARTMENT** and the **LICENSEE** agree that, should the **LICENSEE** fail to perform the maintenance, as set forth in Article XI - **MAINTENANCE WORK PLAN**, the **DEPARTMENT** may require the **LICENSEE** to remove, restore, and reimburse according to items "A", "B", "C", and "D" above, as applicable, and then terminate the agreement.

ARTICLE X

COMPLIANCE WITH APPLICABLE LAW

The undersigned certify that:

A. This Agreement is subject to applicable state and federal laws, standards, and rules and regulations.

B. The provisions of Sections 45-10-20 through 45-10-28 of the Official Code of Georgia Annotated relating to Conflict of Interest and State Employees and Officials Trading with the State have been complied with in full.

C. The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-Free Workplace Act" have been complied with in full.

The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

ARTICLE XI

EXHIBIT A MAINTENANCE WORK PLAN/LANDSCAPE MAINTENANCE AGREEMENT

For all maintenance activities, at a minimum, abide by the Federal Manual of Uniform Traffic Control Devices (MUTCD) standards, current edition, for temporary traffic control. Move equipment or materials on or across a traveled way in a manner as not to unduly interfere with traffic.

Irrigation systems

- Winterize entire system each year – draining lines and adjust control settings to avoid freeze damage
- Maintain and monitor spray heads so they do not overspray on to paved areas or in pedestrian circulation paths
- Replace broken sprinkler heads or piping immediately
- Test system for operation efficiency a minimum of once a quarter – Check the controller settings and manually test each zone
- Adjust automatic controller settings for least amount of evapotranspiration
- Maintain a working shut-off valve at the meter connection and monitor system for leaks to avoid safety issues

Watering

- Provide adequate water to maintain healthy plant material
- Water in a manner that it does not endanger pedestrian or vehicular traffic
- Water according to the state or local government restrictions

Seasonal Color (Annuals and Herbaceous Perennials and Roses)

- Install and maintain plant material at a height that does not interfere with clear sight lines for both pedestrians and vehicular traffic according to the Department's sight distance criteria
- Maintain bare areas in seasonal beds with a minimum 3 inch cover of mulch
- Cut back perennials each year after they are spent to keep the beds free of vegetative debris
- Maintain any rose shrubs at a height that will not obstruct existing directional signs or driver sight lines.

Ornamental Grasses

- Trim away dead foliage from ornamental grass clumps in February.

Pruning

- Remove dead or diseased planted vegetation.
- Prune trees, shrubs and ground covers to maintain the health of the plants and to maintain in the intended design character of the plant (no stump pruning or lollipop/ball shapes)
- Prune trees, shrubs, and ground covers as needed to remove damage by storm or accident events and to prevent safety hazards. Prune to maintain open sight distances, clear zone areas and traffic sign visibility. Provide clearance for pedestrian and vehicular traffic mobility.
- Prune according to American National Standards Institute, latest edition, A300 Part 1 pruning standards

Plant Replacement

- Replacement of dead or diseased vegetation of planted material within the project limits is the responsibility of the LICENSEE
- Replacement plant material must be according to Policy 6755-9 – Policy for Landscaping and Enhancements on GDOT Right of Way and GDOT Specification Section 702.

Weeding

- Maintain right of way free of weeds, exotic and invasive pest plants, undesired vegetation and other noxious weeds
- All Pesticide/Herbicide use shall be under the direct supervision of someone with the appropriate Commercial Category 27 (right of way use) license.
- When pesticides/herbicides are being applied the person applying shall have in their possession all labeling associated with the pesticide/herbicide and their license/certification.
- Post warning signs for pesticide/herbicide use as required by state code.

Mowing and trimming of grass

- Maintain a neat appearance and clear sight lines for pedestrian and vehicular traffic.

Mulching

- Replace mulch in plant beds as needed to maintain an attractive, fresh look at a 2-3" depth
- Maintain mulch so that it will not spread or wash on to pedestrian paths or traveled lanes

Litter

- Completely remove all litter and debris and other objectionable material on site.
- Do not deposit or blow litter, debris and vegetation into gutters or drainage structures.
- Make disposal in accordance with local and state laws.
- Remove all graffiti within project limits

Installed Sidewalks

- Maintain and repair sidewalks according to the Americans With Disabilities Act (ADA)

Installed Non-standard Crosswalks

- Include a statement of how the local government entity will handle the non-standard pavement treatment when GDOT resurfaces. Will the adjustments required to meet new grade be met by the local government entity signing the Mowing and Maintenance Agreement?

Installed Non-standard Fencing/Site Furnishings/Murals/Signs/Walls

- Repair and/or replace damaged components.
- Replace or install a temporary construction work fence immediately if the damage involves a safety issue.

LICENSEE is responsible for all maintenance of non-standard fencing/site furnishings/murals/signs

Installed Low Voltage Lighting

- Repair and/or replace damaged components. Repair and/or replacement must be done immediately if the damage involves a safety issue.
- LICENSEE is responsible for all maintenance of low voltage lighting.

NOTE:

All major maintenance repair activities and activities that may interfere with traffic or pedestrian flow within the right of way project limits, such as travel lane/walkway closures, require the LICENSEE notify the Department at least 48 hours prior to the activity to coordinate and gain Department approval.

IN WITNESS WHEREOF, said parties have hereunto set their hand and affixed their seals the day and year above first written.

DEPARTMENT OF TRANSPORTATION **LUMPKIN COUNTY**

Commissioner (SEAL)

Commission Chairman

ATTEST:

Witness

Treasurer

Signed, Sealed & Delivered

This 7 Day of July, 2015
in the presence of:

NOTARY PUBLIC

MELISSA Z. RICH NOTARY PUBLIC LUMPKIN COUNTY, GA

I attest that the Corporate Seal attached to this Document is in fact the seal of the Corporation and that the Officer of this Corporation executing this Document does in fact occupy the official position indicated and is duly authorized to execute such document on behalf of this Corporation.

ATTEST:

58-6000857

Federal Employer Tax No.

Keeping Georgia on the Move

GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT

Contract No. and Name: PI 0009105, Lumpkin County – Entrance Corridor Beautification Project

Name of Contracting Entity: Lumpkin County

By executing this affidavit, the undersigned person or entity verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the Georgia Department of Transportation has registered with, is authorized to participate in, and is participating in the federal work authorization program commonly known as E-Verify*, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91.

The undersigned person or entity further agrees that it will continue to use the federal work authorization program throughout the contract period, and it will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the undersigned with the information required by O.C.G.A. § 13-10-91(b).

The undersigned person or entity further agrees to maintain records of such compliance and provide a copy of each such verification to the Georgia Department of Transportation at the time the subcontractor(s) is retained to perform such service.

126740
EEV / E-Verify™ User Identification Number

6/12/2008
Date of Authorization

BY: Authorized Officer or Agent
(Contractor Name)

7 Jul 2015
Date

Chairman, Lumpkin County Board of Commissioners
Title of Authorized Officer or Agent of Contractor

CHRIS DOCKERY
Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
7th DAY OF July, 2015

Kathleen C. Walker
Notary Public

[NOTARY SEAL]

KATHLEEN C. WALKER NOTARY PUBLIC LUMPKIN COUNTY, GA

My Commission Expires: 11 May 2018

* or any subsequent replacement operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603