

AGREEMENT

This Agreement made and entered into by and between **POLK COUNTY**, a Political Subdivision of the State of Florida (the "COUNTY"), and the **ASSOCIATION OF POINCIANA VILLAGES, INC.**, a Florida non-profit Corporation (the "APV"), as evidenced by the signatures affixed below.

WITNESSETH

WHEREAS, the COUNTY is granted all powers necessary to carry out County government pursuant to Florida Statutes, Section 125.01(1) and the Polk County Charter; and

WHEREAS, Florida Statutes, Section 336.02 invests the County with general superintendence and control of the county road system; and

WHEREAS, APV is the master homeowners' association for the various villages comprising the planned development of Poinciana which is located in both Polk and Osceola Counties;

WHEREAS, the County owns and controls many miles of right-of-way for County Roads within the Poinciana development which roads require routine maintenance including mowing and ditch cleaning; and

WHEREAS, the APV has, pursuant to prior agreements, assumed the mowing and ditch cleaning requirements for County rights-of-way in Poinciana for many years; and

WHEREAS, APV is willing to continue mowing and ditch cleaning the County rights-of-way in Poinciana and it represents that it has the resources necessary to properly carry out that work; and

WHEREAS, in light of the distance between County Roadway Maintenance facilities and Poinciana and limited resources of the County's Roadway Maintenance Division, it is in the best interest of the public that the County contract

with APV to provide mowing and ditch cleaning services in Poinciana; and

WHEREAS, the parties hereto wish to set out the terms, conditions and responsibilities of the parties relating to the mowing and ditch cleaning of County rights-of-way in Poinciana.

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

ARTICLE 1 RESPONSIBILITIES OF THE APV

1.1 APV shall mow and clean the ditches along the County Roads. Mowing will generally be done using bat-wing type mowers which yield a 15-foot cut for a majority of the roads with one cut on each side and 3.64 acres of cutting area per linear mile of road surface. The ditch cleaning will be done using a versa ditcher machine.

1.2 APV shall routinely mow the following County Road facilities:

ROAD LOCATION	ACCEPTED MILEAGE
Villages 3, Neighborhood 1 East	4.18
Villages 3, Neighborhood 1 West	3.21
Villages 3, Neighborhood 2	3.35
Villages 3, Neighborhood 3	12.13
Villages 3, Neighborhood 5 North	20.97
Villages 3, Neighborhood 6 South	4.35
Villages 7, Neighborhood 2 East	2.1
Villages 7, Neighborhood 2 West	22.5
Villages 7, Neighborhood 4	19.5
Villages 7, Neighborhood 5	18
Villages 7, Neighborhood 6	17.48
Villages 8, Neighborhood 2	18.22
Cypress Parkway	3.4
Marigold Avenue	4.56
Poinciana Parkway	4.9
TOTAL MILAGE	158.85

APV shall clean the ditches along County Road facilities on an as needed basis.

1.3 APV shall provide Worker's Compensation Insurance for all employees in compliance with the Worker's Compensation Law of the State of Florida and applicable Federal Law and shall, annually, beginning with the commencement of this Agreement, provide proof of such coverage to the County.

1.4 APV shall provide, at its expense, and shall maintain during the existence of this Agreement, General Liability Insurance in limits acceptable to the COUNTY'S Risk Management Department. The policy shall name the COUNTY as a second insured and shall provide that the COUNTY receive at least thirty (30) days prior written Notice of Cancellation or Discontinuation. Proof of that insurance shall be provided annually, beginning with the commencement of this Agreement, to the County.

1.5 APV shall provide Business Automobile Liability Coverage, in limits acceptable to the COUNTY'S Risk Management Department, for all employees who operate an automobile in furtherance of the terms and conditions of this agreement. Proof of that insurance shall be provided annually, beginning with the commencement of this Agreement, to the County.

1.6 (1) APV shall be liable for any and all damages, losses, and expenses incurred by the COUNTY as a result of errors, omissions and/or negligence of APV, its employees, agents, or subcontractors while performing and furnishing the mowing and ditch cleaning services as required by this Agreement or any amendments hereto.

(2) APV shall indemnify, defend and hold the COUNTY harmless for any and all claims, suits, judgments, or damages, losses and expenses, including but not limited to, court costs, expert witnesses, consultation services, and attorney's fees, caused by any errors, omissions, and/or negligence of APV, its employees, agents, or subcontractors while performing and furnishing mowing and ditch cleaning services as required by this Agreement or any amendments hereto.

1.7 APV shall not discriminate against any employee or applicants for employment for work under this Agreement on the basis of race, color, religion, sex, age or national origin and will take affirmative steps to ensure that applicants are employed, and employees are treated, during employment, without regard to race, color, religion, sex, age or national origin. This provision

shall include, but not be limited to, the following: employment, employment upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships.

1.8 APV shall adhere to all existing and applicable COUNTY Ordinances, rules, and other policies relating to the maintenance of COUNTY Roads.

1.9 APV shall not enter into any agreements pertaining to the mowing and/or cleaning of ditches of County Roads without prior written approval of the Polk County Director of Roads & Drainage Division.

ARTICLE 2 RESPONSIBILITIES OF THE COUNTY

2.1 Within forty-five (45) days of receipt of a quarterly itemized invoice the County shall reimburse the APV for work performed under this Agreement.

2.2 The Payment to APV for mowing services shall be calculated based on the following example formula:

Acres Mowed @ X.X Acres/Mile X \$22.99/Acre = Invoice Amount

2.3 The Payment to APV for ditch cleaning services shall be calculated based on the following formula:

\$1.35 per foot x linear ft of versa ditching performed = Invoice Amount

ARTICLE 3 NOTICE

All notice pursuant to the Agreement shall be made in writing and shall be delivered through the United States Postal Service, first class mail, postage prepaid and addressed to the following:

AS TO THE COUNTY

WITHA
COPY
TO:

Jay Jarvis, PE, Director of Roads & Drainage
3000 Sheffield Road
Winter Haven, FL 33880

WITHA
COPY
TO:

Office of the County Attorney
P.O. Box 9005 Drawer AT-01
Bartow, FL 33831-9005

AS TOAPV:

Mark Maldonado, LCAM
General Manager
Association of Poinciana Villages
401 Walnut Street! Poinciana, FL 34759
mark.maldonado@fsresidential.com

WITH A COPY TO:

APV General Counsel
Thomas R. Slaten, Jr.
Attorney at Law
Larsen Slaten PLLC
5323 Millenia Lakes Blvd., Suite 300
Orlando, FL 32839
Phone: 407-841-6555 extension 217
tslaten@larsenslaten.com

ARTICLE 4 WAIVER

Waiver by either part, of a breach of any provision of this agreement, by the other part, shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this agreement.

ARTICLE 5 AMENDMENTS

The covenants, terms and provisions contained herein may be amended, altered and/or modified upon express written consent of the parties hereto. In the event of conflict between the covenants, terms and/or provisions hereof (and any amendment(s) hereto, the latest executed amendment(s) shall take precedent.

ARTICLE 6 ASSIGNMENT

APV shall not assign or transfer any of its rights, benefits or obligations hereunder, or sub-contract any of its service obligations hereunder, to third parties without prior written approval of the COUNTY. Such approval shall not be unreasonably withheld; however, the COUNTY shall have the right to withhold approval without cause.

ARTICLE 7 EFFECTIVE DATE

The effective date of this Agreement shall be the date upon which the Agreement is approved and executed by the COUNTY which shall occur after execution by APV.

ARTICLE 8 TERM AND TERMINATION

In consideration of the terms and conditions of this agreement, which APV acknowledges is good and valuable consideration, APV shall provide mowing and ditch cleaning services for the County Roads in Poinciana under the terms and conditions set out in Article I above for a term of this Agreement. This Agreement shall expire on **December 31, 2025**. The term of this Agreement may be extended for one additional two-year period if an extension is agreed to in writing by the parties prior to the end of the initial term. This Agreement may be terminated by the COUNTY without cause, upon thirty (30) days written notice by certified letter. This Agreement may be terminated by APV only after giving written notice by

certified letter to the COUNTY 180 days prior to the start of the Fiscal Year in which the termination shall take effect.

ARTICLE 9 ENTIRE AGREEMENT

This agreement, including all attachments hereto, constitutes the entire Agreement between the parties and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein.

ARTICLE 10 MAINTENANCE OF RECORDS

10.1 APV shall maintain adequate records and supporting documentation applicable to all services, work, information, expenses, costs, invoices and materials provided and performed pursuant to the requirements of this agreement. APV must include these record keeping requirements in any of the contracts it enters into with any party providing services pursuant to this agreement. Said records and documentation shall be retained by APV for a minimum of three (3) years from the date of termination of this agreement.

10.2 The COUNTY shall, through its authorized agents and after providing reasonable notice to APV, have the right to audit, inspect and copy all such records and documentation as often as the COUNTY deems necessary during the term of this Agreement and during the subsequent three (3) years required above, provided that such activity is conducted during normal business hours and at the expense of the COUNTY.

ARTICLE 11 PUBLIC RECORDS LAW

11.1 The Contractor acknowledges the County's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and comply in the handling of the materials created under this Agreement. The Contractor further acknowledges that the constitutional and statutory provisions control over the terms of this Agreement. In association with its performance pursuant to this Agreement, the Contractor shall not release or otherwise disclose the content of any documents or information that is specifically exempt from

disclosure pursuant to all applicable laws.

11.2 Without in any manner limiting the generality of the foregoing, to the extent applicable, the Contractor acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

(a) keep and maintain public records required by the County to perform the services required under this Agreement;

(b) upon request from the County's Custodian of Public Records or his/her designee, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if the Contractor does not transfer the records to the County; and

(d) upon completion of this Agreement, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

11.3 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:

**RECORDS MANAGEMENT LIASON OFFICER
POLK COUNTY
330 WEST CHURCH ST.
BARTOW, FL 33830
TELEPHONE: (863) 534-7527
EMAIL: RMLO@POLK-COUNTY.NET**

ARTICLE 12 SEVERABILITY

It is declared to be the intent of the parties hereto that if any section, subsection, sentence, clause, phrase or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

ARTICLE 13 EMPLOYMENT ELIGIBILITY VERIFICATION (E-Verify)

A. Unless otherwise defined herein, terms used in this Section which are defined in Section 448.095, Florida Statutes, as may be amended from time to time, shall have the meaning ascribed in said statute.

B. Pursuant to Section 448.095(5), Florida Statutes, the contractor hereto, and any subcontractor thereof, must register with and use the E-Verify system to verify the work authorization status of all new employees of the contractor or subcontractor. The contractor acknowledges and agrees that (i) the County and the contractor may not enter into this Agreement, and the contractor may not enter into any subcontracts hereunder, unless each party to this Agreement, and each party to any subcontracts hereunder, registers with and uses the E-Verify system; and (ii) use of the U.S. Department of Homeland Security's E-Verify System and compliance with all other terms of this Certification and Section 448.095, Fla. Stat., is an express condition of this Agreement, and the County may treat a failure to comply as a material breach of this Agreement.

C. By entering into this Agreement, the contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The contractor shall maintain a copy of such affidavit

for the duration of this Agreement. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute or Section 448.09(1), Fla. Stat., the subcontract must be terminated immediately. If this Agreement is terminated pursuant to Section 448.095, Fla. Stat., such termination is not a breach of contract and may not be considered as such. Any challenge to termination under this provision must be filed in the Tenth Judicial Circuit Court of Florida no later than 20 calendar days after the date of termination. If this Agreement is terminated for a violation of Section 448.095, Fla. Stat., by the contractor, the contractor may not be awarded a public contract for a period of 1 year after the date of termination. The contractor shall be liable for any additional costs incurred by the County as a result of the termination of this Agreement. Nothing in this Section shall be construed to allow intentional discrimination of any class protected by law.

(Continued on following page with signatures of the parties)

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

**ASSOCIATION OF POINCIANA
VILLAGES, INC., a Florida Non-
Profit Corporation**

By: JOEL HAUGH dataop verified
01/30/24 11:28 AM EST
LMJ1-VGT4-TZVH-ZMOC

Print Name: JOEL HAUGH

Title: ASSISTANT SECRETARY/TREASURER

Date: JANUARY 30, 2024

**BOARD OF COUNTY
COMMISSIONERS
OF POLK COUNTY, FLORIDA**

ATTEST:
Stacy M. Butterfield Clerk to the Board

By: _____
Deputy Clerk

By: _____
Bill Braswell, Chair
Board of County Commissioners

This ____ day of February 2024.