

RESOLUTION NO. 2011- 291

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS AND CONDITIONS OF A LANDSCAPE MAINTENANCE AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND ST. JOHNS COUNTY, FLORIDA ALONG A PORTION OF SR A1A NORTH ST. JOHNS COUNTY AND A PORTION ALONG SR 13 NORTHWEST ST. JOHNS COUNTY, AND AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE THE LANDSCAPE AGREEMENT ON BEHALF OF THE COUNTY.

WHEREAS, the Board of County Commissioners in 1993 requested landscaping on SR A1A North from the southern extend of 4 lane roadway (Mile Post 2.401) to the Duval County line (Mile Post 7.151) using Federal funds available to the Florida Department of Transportation through the Transportation Enhancement Program; and

WHEREAS, the Board of County Commissioners in 2001 requested landscaping on SR 13 from Davis Pond Blvd. (Mile Post 15.390) to Roberts Road (Mile Post 14.281) as part of the widening of the road; and

WHEREAS, the Florida Department of Transportation desires the County to include additional landscaping maintenance along SR 13 (Mile Post 16.387) from the south end of the Julington Creek Bridge to Davis Pond Blvd (Mile Post 15.390); and

WHEREAS, the Florida Department of Transportation does not perform landscape maintenance within the State Road right of way; and

WHEREAS, the Florida Department of Transportation is willing to pay the County up to their maximum allowable amount of mowing costs for these road segments; and

WHEREAS, it is the mutual interests of both parties to have the landscaping and routine right of way maintenance performed by the same entity; and

WHEREAS, the Florida Department of Transportation has submitted to St. Johns County, a Landscape Maintenance Agreement for road segments, noted above; and

WHEREAS, St. Johns County has reviewed the term, provisions and conditions of the above referenced Landscape Maintenance Agreement (attached hereto and incorporated herein); and

WHEREAS, St. Johns County has determined that accepting the terms, provisions and conditions of the above referenced Landscape Maintenance Agreement, and entering into

said Landscape Maintenance Agreement will serve the best interest of St. Johns County.

NOW, THEREFORE BE IT RESOLVED, by the Board of County Commissioners of St. Johns County, Florida that:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution, and such Recitals are adopted as Findings of Fact.

Section 2. The Board of County Commissioners hereby approves the terms, provisions and conditions of a Landscape Maintenance Agreement between the State of Florida Department of Transportation and St. Johns County, Florida, along a portion of State Road A1A North St. Johns County and a portion along State Road 13 in Northwest St. Johns County, and authorizing the County Administrator, or his designee, to execute the Landscape Maintenance Agreement on behalf of St. Johns County.

Section 3. To the extent that there are typographical, administrative or scrivener's errors that do not change the tone, tenor or concept of this Resolution, then this Resolution may be revised without further action by the Board of County Commissioners.

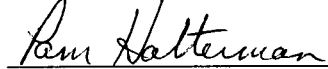
Section 4. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 4th day of October, 2011.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**


Ken Bryan, Chair

ATTEST: CHERYL STRICKLAND, CLERK

By: 
Deputy Clerk

RENDITION DATE 10/10/11



MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and St. Johns County, Florida ("Agency").

-RECITALS-

1. The Department is presently maintaining those portions of the state highway system identified in Exhibit "A" hereto ("Property"); and

2. The Agency desires to assume maintenance of the Property in order to improve the aesthetic appearance of the Agency; and

3. The Property is within or adjacent to the corporate limits of the Agency; and

4. The Agency, by Resolution No. _____ dated _____, attached hereto as Exhibit "B", authorized its officers to enter this Agreement.

NOW THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound hereby, acknowledge and agree as follows:

1. RECITALS & EXHIBITS

The recitals set forth above and Exhibits attached hereto, if any, are specifically incorporated herein by reference and made part of this Agreement.

2. EFFECTIVE DATE

The effective date of this Agreement shall be the date the last of the parties to be charged executes the Agreement ("Effective Date").

3. TERM

The initial term of this Agreement shall be for a period of one (1) year, commencing on the Effective Date. This Agreement may be renewed at the discretion of the parties for no more than two (2) consecutive one (1) year renewal periods. Renewals shall be in writing, prepared by the Department and executed by the parties.

4. E-VERIFY

The Agency (A) shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the contract; and (B) shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

5. COMPLIANCE

The Agency shall perform this Agreement, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, St. Johns River Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard, St. Johns County, Florida and other local governmental entities ("Governmental Law").

6. MAINTENANCE

A. The Agency shall maintain the Property in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement. For purposes of this Agreement, unless otherwise noted in Exhibit "A", the locations to be maintained by the Agency shall be maintained pursuant to the Maintenance Rating Program's ("MRP") desired minimum standard rating of 80. Should the Department determine that any item of maintenance has fallen below the desired minimum standard rating, the Agency agrees to immediately bring the deficient item up to a minimum MRP rating of 80. The Agency will not be held responsible for an MRP rating below 80 so long as such rating is not based on any negligence, intentional or wrongful act, omission or breach of contract by the Agency.

B. The Parties' representatives and points of contact for the administration of this Agreement shall be identified in the "Notice" section of this Agreement.

C. The Agency shall maintain all turf and landscaped areas within the Property, including, without limitation, performing the following:

(1) Routinely mow, cut and trim all grass and turf (total greenscape) in accordance with the State of Florida "Guide for Roadside Mowing" (1990), as the same may be constituted and amended from time to time; and

(2) Routinely prune and trim all plants and trees, for aesthetic purposes and for the benefit of the health, safety and welfare of those members of the public traversing or otherwise utilizing the Property; and

(3) Routinely remove dead, diseased, or otherwise deteriorated plants; and

(4) Routinely keep litter removed from the Property; and

(5) Routinely remove and dispose of all trimmings, roots, litter and other material resulting from the activities described herein; and

(6) Routinely edge and sweep any excess grass from sidewalks, curbs, and gutters; and

(7) Routinely sweep roadways, curbs, and gutters, valley gutters, intersections, and barrier wall gutters.

D. The Department and the Agency shall be responsible jointly for clean-up, removal and disposal of debris within the Property following and resulting from natural disasters, including, without limitation, hurricanes and tornadoes.

E. If the Department determines that the Agency is not maintaining the Property in accordance with the terms and provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have thirty (30) days from the date of the Department's written notice, or such other time as the Department and the Agency mutually agree in writing, to correct the deficiency and provide the Department with written notice of the same.

F. If the Department determines that the deficiency remains after receipt of the Agency's written notice indicating that the deficiency was corrected, the Department, within its discretion, may: (1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to correct the deficiency; or (2) correct the deficiency at the Agency's sole cost and expense. Should the Department elect to correct the deficiency, the Department shall provide the Agency with an invoice for the costs incurred by the Department to correct the deficiency and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

G. If at any time in the sole determination of the Department, the integrity or safety of the Property requires immediate maintenance for the benefit of public health, safety or welfare, the Department may

perform such maintenance it deems appropriate under the circumstances. The Department shall attempt to notify the Agency prior to action under this section, but may take necessary steps to correct emergency situations prior to such notification in order to prevent eminent danger to public health, safety or welfare.

7. MAINTENANCE OF TRAFFIC

A. The Agency shall be responsible for the maintenance of traffic ("MOT") at all times during the performance of this Agreement. MOT shall be performed in accordance with applicable Governmental Law and the most current edition of each of the following, as the same may be constituted and amended from time to time, all of which are incorporated herein and made part of this Agreement by reference: (1) Section 102 of the Department's Standard Specifications for Road and Bridge Construction; (2) the Manual on Uniform Traffic Control Devices; (3) the Department's Roadway Design Standards Index 600 Series; and (4) other applicable Governmental Law.

B. If the Agency fails to perform MOT as required herein, the Department, within its discretion, may elect to perform MOT at the Agency's sole cost and expense. Should the Department perform MOT, the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

8. ADDITIONAL LANDSCAPING

The Agency shall not install additional landscaping within the Property without first seeking and obtaining required approvals and permits from the Department. Such additional landscaping shall be automatically included within, and subject to, the provisions of this Agreement.

9. PERMISSIVE USE

This Agreement creates a permissive use only. The Agency shall not acquire any right, title, interest or estate in the Property by virtue of the execution, operation, effect or performance of this Agreement.

10. REMOVAL

The Department may require modification, relocation or removal of the landscaping, plants, trees and other improvements located on or within the Property without liability to the Agency if: (1) any such improvements are not maintained in accordance with the terms and provisions of this Agreement; (2) modification, relocation or removal of any such improvements is required by applicable Governmental Law; or (3) the Department determines that modification, relocation or removal of any such improvements is necessary or will benefit the Department in the conduct of its business. The Agency shall modify, relocate or remove improvements designated by the Department for modification, relocation or removal and shall restore the Property to a condition that satisfies the requirements of applicable Governmental Law within thirty (30) days of the Department's written notice requiring modification, relocation or removal. The Agency shall bear all cost and expense of the modification, relocation, removal and restorative work, including, without limitation, the cost of required permits.

11. PAYMENTS TO AGENCY

The Department shall compensate the Agency for the performance of this Agreement in the amount of \$15,610.00 per quarter for a total sum of \$62,440.00 per year. Payments shall commence at the conclusion of the first three-month period following the Effective Date of this Agreement. The Department may suspend payment of any sums due hereunder without penalty or interest if the Agency is in breach of any term or provision of this Agreement at the time payment is due. In the event this Agreement is terminated, payment shall be prorated for the quarter in which termination occurs.

12. PAYMENTS TO DEPARTMENT

All Department invoices submitted to the Agency for payment pursuant to the terms and provisions of this Agreement are due and payable within thirty (30) days of the date of the invoice ("Due Date"). Any portion of an invoice not received by the Department by the Due Date shall immediately thereafter begin accruing interest at a rate of interest established pursuant to §55.03, Fla. Stat., until paid in full.

13. INDEMNIFICATION

A. The Agency shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the Agency's performance, or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The Agency's duty to defend, indemnify and hold the Department harmless specifically does not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract.

B. The Agency shall notify the Department in writing immediately upon becoming aware of any Liabilities. The Agency's obligation to defend, indemnify and hold the Department harmless from any Liabilities, or at the Department's option to participate and associate with the Department in the defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the Department's written notice of claim for indemnification to the Agency. The Agency's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

14. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving either party's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Florida Statutes, as the same may be amended from time to time.

15. NOTICE

All notices, communications and determinations between the parties hereto and those required by this Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

Department: Ben Bright
Florida Department of Transportation
3600 DOT Road
St. Augustine, FL 32084

Agency:

16. GOVERNING LAW

This Agreement shall be governed in all respect by the laws of the State of Florida.

17. INITIAL DETERMINATION OF DISPUTES

The Department's District Two Secretary ("District Secretary") shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance or breach of this Agreement.

18. VENUE AND JURISDICTION

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. The Agency and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

19. JURY TRIAL

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of this Agreement, including, without limitation, damages allegedly flowing there from.

20. ASSIGNMENT

The Agency may not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the Department's District Secretary or his/her designee. The Department has the sole discretion and authority to grant or deny proposed assignments, with or without cause. Nothing herein shall prevent the Agency from delegating its duties hereunder, but such delegation shall not release the Agency from its obligation to perform this Agreement.

21. THIRD PARTY BENEFICIARIES

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

22. VOLUNTARY EXECUTION OF AGREEMENT

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in this Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of this Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of this Agreement and executes this Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of this Agreement.

23. ENTIRE AGREEMENT

This instrument, together with the attached exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Agreement, and any part hereof, are waived, merged herein and superseded hereby.

24. SUFFICIENCY OF CONSIDERATION

By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in this Agreement and forever waive the right to object to or otherwise challenge the same.

25. WAIVER

The failure of either party to insist on the strict performance or compliance with any term or provision of this Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

26. INTERPRETATION

No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

27. CAPTIONS

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

28. SEVERANCE

If any section, paragraph, clause or provision of this Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of this Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of this Agreement remain enforceable.

29. COMPUTATION OF TIME

In computing any period of time prescribed in this Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

30. MODIFICATION OF AGREEMENT

A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

31. CONTRACTUAL SERVICES

In the event this Agreement is for a "contractual service" as defined by §287.012, Florida Statutes, as the same may be amended from time to time, then all applicable provisions of Chapter 287, Florida Statutes shall apply.

32. VENDOR OMBUDSMAN

A Vendor Ombudsman has been established with the Department of Banking and Finance. The duties of the Vendor Ombudsman include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted by calling the State Comptroller's Hotline at 1-800-848-3792.

33. ANNUAL APPROPRIATION / FUNDING

Pursuant to §339.1365(6)(a), Florida Statutes, the Department's obligation to fund this Agreement is contingent upon annual appropriation by the Florida Legislature. This Agreement may be terminated by the Department without liability to the Agency if sufficient funds are not appropriated to the Department. The provisions of §339.135(6)(a), Florida Statutes, are set forth herein verbatim and made part of this Agreement, to wit:

"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 1 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; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties execute this Agreement consisting of seven (7) pages.

SIGNATURES ON FOLLOWING PAGE

Florida Department of Transportation

By: _____

Printed Name: _____

Title: _____

Date: _____

Attest:

By: _____

Printed Name: _____

Title: _____

Date: _____

Legal Review:

By: _____

Office of the General Counsel
Florida Department of Transportation

Agency

By: _____

Printed Name: _____

Title: _____

Date: _____

Attest:

By: _____

Printed Name: _____

Title: _____

Date: _____

Legal Review:

By: _____

Legal Counsel for Agency

EXHIBIT "A"
ST. JOHNS COUNTY
MAINTENANCE LOCATIONS

STATE ROAD NUMBER

LIMITS

A1A

FROM: Beginning of 4 lane (MP 2.401)
TO: Duval County Line (MP 7.151)

13

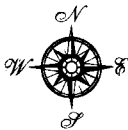
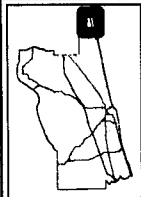
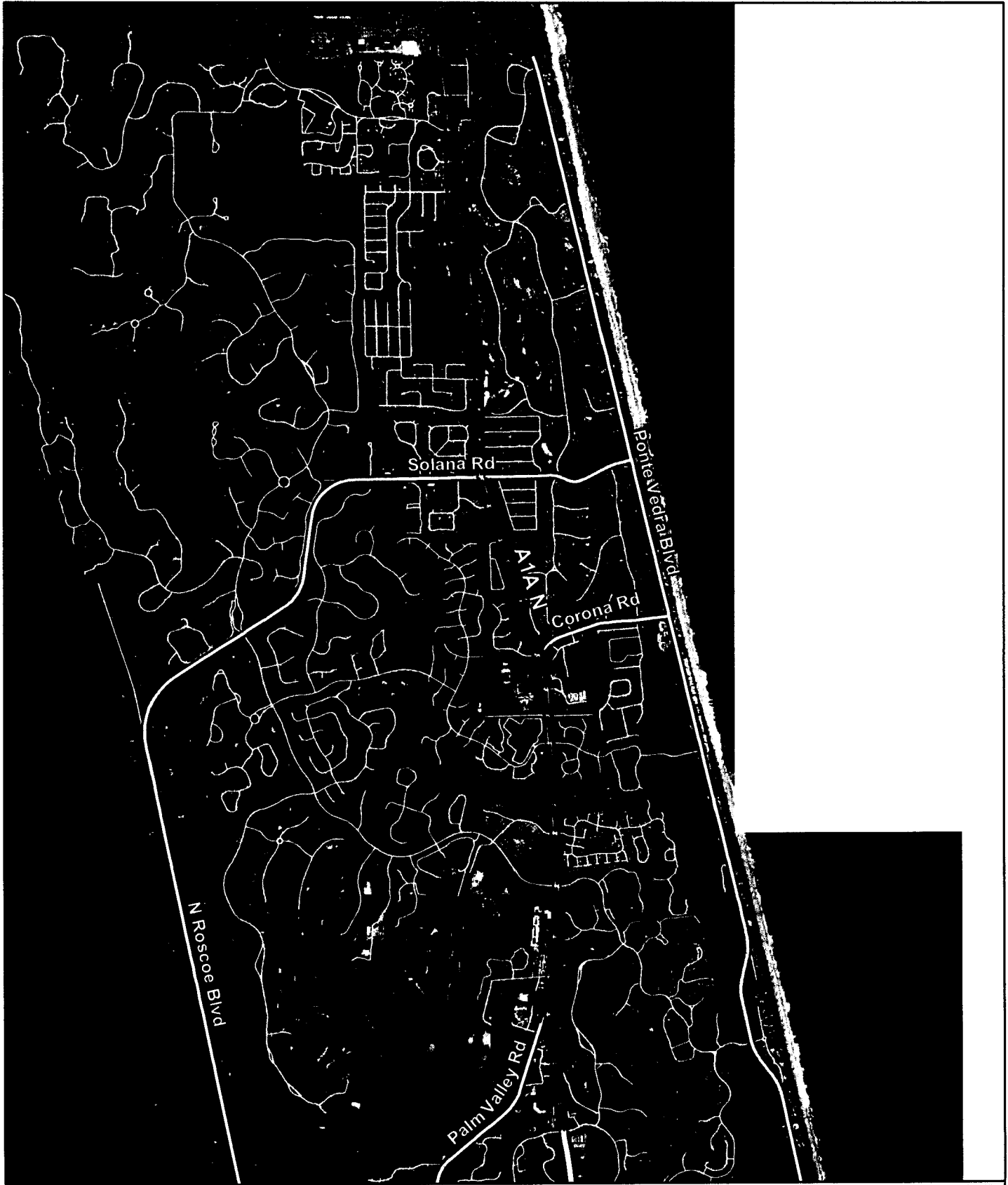
FROM: South end of the Julington Creek Bridge (MP16.837)
TO: Racetrack Road (MP 16.311)

*NOTE: Includes dry pond at Wentworth Avenue.

FROM: Racetrack Road (MP 16.311)
TO: Davis Pond Blvd. (MP 15.390)

*NOTE: Items 1-6 of 6.C. on the northbound side and
median are exempted.

FROM: Davis Pond Blvd. (MP 15.390)
TO: Roberts Rd. (MP 14.281)



Mowed Areas - A1A North FDOT Right-of-Way

0 0.25 0.5 1



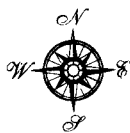
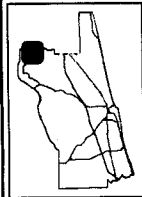
Miles

2009 Aerial Imagery

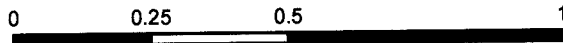
Disclaimer:
This map is for reference use only. Data provided are derived from multiple sources with varying levels of accuracy. The St. Johns County GIS Division disclaims all responsibility for the accuracy or completeness of the data shown hereon.

j14745 8/31/11





**Mowed Areas - State Road 13 North
FDOT Right-of-Way**



Miles
2009 Aerial Imagery

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