STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

**BRIDGE DEBRIS USE AGREEMENT**

This Agreement has beenentered into this *XX* day of *Month, Year*, by and between the State of Florida Department of Transportation, hereinafter called the Department, and *Agency Name*, hereinafter called the Agency.

WHEREAS, the Department through its Contractor will be demolishing the *Bridge Name/Description* bridge at *Project Location* resulting in approximately *###* cubic yards of debris; and

WHEREAS, the Agency desires to use the bridge debris for shore erosion control and stabilization, ecosystem management, and / or marine habitat creation; and

WHEREAS, this Agreement has been entered into prior to the letting of the Department’s Contract for the bridge work and this Agreement will be reflected in the Department’s Contract and Specifications Package so that the Contractor’s bid reflects knowledge of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the State of Florida Department of Transportation (Department) and *Agency Name* (Agency) agree as follows:

(1) General:

(a) The recitals hereinbefore set forth are true and correct.

(b) The Agency will provide a storage area or staging area (hereinafter the “storage area”) of sufficient size to accommodate the delivery of all the bridge debris (Debris). The storage area must be outside the limits of the Project and must not interfere with access to the Project or the work of the Department’s Contractor.

(c) The Department will deliver the unprocessed bridge debris to the Agency’s storage area The Agency will be responsible for all off-loading of the Debris at the storage area. The Agency may enter into a separate agreement with the Department’s Contractor to perform this work.

(d) The Agency will be responsible for transporting the Debris from the storage area to the final location where the Debris will be used (final location).

(e) The Agency will be responsible for any and all processing, cleaning, environmental approvals, de-contamination, permitting, application fees, and for compliance with all applicable laws necessary to use the Debris, transport the Debris to the final location where the Debris will be used, and/or store the Debris at the storage area.

(f) The Agency will be responsible for all claims of the Department’s Contractor related to or concerning delay claims, inefficiency claims, and/or claims for extra work incurred in off-loading and/or storing the Debris at the Agency’s storage area. The Agency will defend and hold harmless FDOT from all such claims.

(g) The Agency shall comply with all applicable Federal, State, County, and Municipal laws in the performance of this Agreement, including those laws applicable to the transportation, storage, and/or use of the Debris.

(2) Indemnification and Insurance:

(a) To the extent provided by law, the Agency shall 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 the Agency, its agents, or employees related to the use of the Debris, transport of the Debris to the final location, storage of the Debris at the storage area, and loading and off-loading of the Debris after arrival of the Debris at the storage area. When the Department receives a notice of claim for damages that may have been caused by the Agency or an agent or employee of the Agency, the Department will promptly forward the claim to the Agency. The Agency and the Department will evaluate the claim and report their findings to each other within fourteen (14) working days. The Agency agrees to provide independent counsel to the Department, at the Agency's expense, to defend such claims. The Department's failure to promptly notify the Agency of a claim shall not release the Agency of the above duty to indemnify, defend, and hold harmless.

(b) The Agency shall carry or cause its contractor/consultant to carry and keep in force for the duration of this Agreement, or until the Debris has been used as contemplated under this Agreement, or properly disposed of, whichever is later, public liability insurance protecting the Department and its agents and employees against any and all claims for injury and/or damage to persons and/or property, and for the loss of life or property occurring in, on, or about the storage area for the Debris, and the Debris arising out of the act, negligence, omission, nonfeasance, or malfeasance of the Agency, its agents, and/or employees occurring during or after off-loading of the Debris at the storage area. Such insurance shall be for a limit of not less than $5,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of $10,000,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence, and not less than $500,000 for all damages arising out of injury to, or destruction of, property in any one occurrence. All such insurance policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the insurance policy cannot be canceled or modified unless the Department is given at least sixty (60) days prior written notice of such cancellation or modification. The Agency shall provide the Department with certificates showing such insurance to be in place and showing the Department as an additional named insured under the policy.

(3) Miscellaneous:

(a) This Agreement may be terminated immediately by the Department upon default by the Agency.

(b) This Agreement contains the complete understanding of the Department and the Agency with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the Department and the Agency are merged into this Agreement, which alone, fully and completely expresses the intent and agreement between the Department and the Agency with respect to the subject matter hereof. No modification, waiver, or amendment of this Agreement or any of its conditions or provisions shall be binding upon either the Department or the Agency unless in writing and signed by both parties. Nothing in this Agreement is intended nor shall it be construed to give any person or entity, other than the Department and the Agency any right, remedy, or claim under or by reason of this Agreement. Nothing in this Agreement is intended nor shall it be construed to give any member or members of the public any right, remedy, or claim under or by reason of this Agreement.

(c) This Agreement shall be governed by the laws of the State of Florida.

(d) All notices to the Department shall be sent to:

*Department Contact Information*.

(e) All notices to the Agency shall be sent to:

*Agency Contact Information*.

(f) If any part of this Agreement is determined to be invalid in any court of law, the remaining provisions of this Agreement shall remain in full force and effect and may be enforced in accordance with the provisions hereof.

(g) This Agreement was jointly negotiated and drafted by the undersigned and shall not be construed by a court of law against either the Department or the Agency as the drafter thereof.

(h) The prevailing party in any litigation arising out of this Agreement shall be entitled to reasonable attorney’s fees and expenses incurred in such litigation.

(i) The undersigned hereby acknowledge that they have read each page of this Agreement, they fully understand them, they agree to them, and voluntarily sign them.

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

Agency: *Agency Name* State of Florida, Department of Transportation

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 Authorized Agent Authorized Agent

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 Print Name Print Name

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

Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL) Legal Review:

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 Print Name

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