

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**STATE HIGHWAY LIGHTING, MAINTENANCE, AND
COMPENSATION AGREEMENT**

CONTRACT NO. AS167
FINANCIAL PROJECT NO. 439217-1-78-01
F.E.I.D. NO. F 473 445 874 001

THIS AGREEMENT, entered into this 10th day of July, year of 2016, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as "FDOT", and **THE VILLAGE OF ESTERO**, hereinafter referred to as the "MAINTAINING AGENCY";

WITNESSETH:

WHEREAS, FDOT is authorized under Sections 334.044 and 335.055, Florida Statutes to enter into this Agreement, and the **MAINTAINING AGENCY** has the authority to enter into this Agreement and to undertake the maintenance and operation of lighting on the State Highway System; and

WHEREAS, the **MAINTAINING AGENCY** has authorized its undersigned officers to enter into and execute this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, FDOT and the **MAINTAINING AGENCY** hereby agree as follows:

1. Maintenance of Facilities

- a. The **MAINTAINING AGENCY** shall maintain all the lighting now or hereafter located on the State Highway System within the jurisdictional boundaries of the **MAINTAINING AGENCY**, hereinafter referred to as the "Facilities," throughout its expected useful life. For the purposes of this Agreement, the term Facilities shall be deemed to include, but not necessarily be limited to, lighting for roadways, as well as park and ride, pedestrian overpasses, and recreational areas owned by or located on the property of FDOT, but shall exclude those systems listed in Exhibit "A" attached hereto and by this reference made a part hereof, and shall exclude lighting located in weigh stations, rest areas, or on Interstate highways.
- b. In maintaining the Facilities, the **MAINTAINING AGENCY** shall perform all activities necessary to keep the Facilities fully operating, properly functioning, with a minimum of 90% of the lights burning for any lighting type (ex. high mast, standard, underdeck, sign) or roadway system at all times for their normal expected useful life in accordance with the original design thereof, whether necessitated by normal wear and tear, accidental or intentional damage, or acts of nature. Said maintenance shall include, but shall not be limited to, providing electrical power and paying all charges associated therewith, routine inspection and testing, preventative maintenance, emergency maintenance, replacement of any component parts of the Facilities (including the poles and any and all other component parts installed as part of the Facilities), and locating (both vertically and horizontally) the Facilities, as may be necessary.
- c. All maintenance shall be in accordance with the provisions of the following:
 - (1) Manual of Uniform Traffic Control Devices; and,
 - (2) All other applicable local, state, or federal laws, rules, resolutions, or ordinances, and FDOT procedures.
- d. For lighting installed as part of an FDOT project, the **MAINTAINING AGENCY's** obligation to maintain shall commence upon the **MAINTAINING AGENCY's** receipt of notification from FDOT that FDOT has formally accepted the project, except for the obligation to provide for electrical power, which obligation to provide for electrical power shall commence at such time as the lighting system is ready to be energized; provided, however, that the **MAINTAINING AGENCY** shall not be required to perform any activities which are the responsibilities of FDOT's contractor.

Prior to any acceptance by FDOT, the **MAINTAINING AGENCY** shall have the opportunity to inspect and request modifications/corrections to the installation(s) and FDOT agrees to undertake those prior to acceptance so long as the modifications/corrections comply with the contract and specifications previously approved by both FDOT and the **MAINTAINING AGENCY**

- e. The continuing obligations under this paragraph 1 beyond the first fiscal year hereof are subject to the voluntary negotiation of the amount to be paid as set forth in subparagraph 2b hereof.

2. Compensation and Payment

- a. FDOT agrees to pay to the **MAINTAINING AGENCY** a lump sum of \$ 5,999.18 for the fiscal year in which this Agreement is signed (fiscal year as referenced in this Agreement shall be FDOT's

fiscal year). Payments will be made in accordance with Exhibit B.

- b. For each future fiscal year, **FDOT** and the **MAINTAINING AGENCY** shall agree on the amount to be paid prior to the fiscal year beginning. **FDOT** will issue a work order confirming the amount and authorizing the performance of maintenance for each new fiscal year. The Work Order shall be an **FDOT** signed letter of authorization to the **MAINTAINING AGENCY** with a subject line containing the terms "State Highway Lighting, Maintenance, And Compensation Agreement Work Order." The Work Order shall reflect the contract number, financial project number, FEID No. of the **MAINTAINING AGENCY**, the fiscal year, and the lump sum amount to be paid for the fiscal year indicated. The Work Order shall be signed by the **MAINTAINING AGENCY** and returned to **FDOT**. No payment will be made on Work Orders which are not properly signed and returned to **FDOT** prior to performing services.
- c. Payment shall be made in one annual lump sum as provided in paragraph 4.

3. Record Keeping

The **MAINTAINING AGENCY** shall keep records of all activities performed pursuant to this Agreement. The records shall be kept in a format approved by **FDOT**.

Records shall be maintained and made available upon request to **FDOT** during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to **FDOT** upon request.

4. Invoicing

The **MAINTAINING AGENCY** shall invoice **FDOT** yearly in an acceptable format. Invoices may be submitted between May 1 to June 15 of the fiscal year in which the services were provided in order to be processed for payment by June 30.

Upon receipt, **FDOT** has five (5) working days to inspect and approve the goods and services. **FDOT** has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the **MAINTAINING AGENCY**. Interest penalties of less than one (1) dollar shall not be enforced unless the **MAINTAINING AGENCY** requests payment. Invoices returned to a **MAINTAINING AGENCY** because of **MAINTAINING AGENCY** preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to **FDOT**.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual 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 at (850) 410-9724 or by calling the Chief Financial Officer's Hotline, 1-800-848-3792.

The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

FDOT, 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 shall be null and void, and no money may be paid on such contract. **FDOT** shall require a statement from the Comptroller of **FDOT** 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 one (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 **FDOT** which are for an amount in excess of \$25,000 and which have a term for a period of more than one (1) year.

5. Default

In the event that the **MAINTAINING AGENCY** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, **FDOT** may exercise one or more of the following options, provided that at no time shall **FDOT** be entitled to receive double recovery of damages:

- a. Pursue a claim for damages suffered by **FDOT** or the public.
- b. Pursue any other remedies legally available.

- c. As to any work not performed by the **MAINTAINING AGENCY**, perform such work with its own forces or through contractors and seek reimbursement for the cost thereof from the **MAINTAINING AGENCY** if the **MAINTAINING AGENCY** fails to cure the non-performance within fourteen (14) days after written notice from **FDOT** of the non-performance; provided, however, that advance notice and cure shall not be preconditions in the event of an emergency.

6. Force Majeure

Neither the **MAINTAINING AGENCY** nor **FDOT** shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimate duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

7. Miscellaneous

- a. **FDOT** shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.
- b. The **MAINTAINING AGENCY** shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **MAINTAINING AGENCY** in conjunction with this Agreement. Failure by the **MAINTAINING AGENCY** to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by **FDOT**.
- c. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto.
- d. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining provisions hereof.
- e. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided. The **MAINTAINING AGENCY** shall have a continuing obligation to notify each District of **FDOT** of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

MAINTAINING AGENCY:

Village of Estero
21500 Three Oaks Parkway
Estero, FL 33928

FDOT:

District Maintenance
MS 1-7
801 North Broadway Avenue
Bartow, FL 33830

- f. **PUBLIC ENTITY CRIME INFORMATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for **CATEGORY TWO** for a period of thirty six (36) months from the date of being placed on the convicted vendor list.
- g. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on

leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

h. Nothing herein shall be construed as a waiver of either party's sovereign immunity.

i. **MAINTAINING AGENCY:**

1. 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 **MAINTAINING AGENCY** during the term of the contract; and
2. 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.

8. Certification

This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by the **MAINTAINING AGENCY** in the form of additions, deletions or substitutions are reflected only in an Appendix entitled "Changes To Form Document" and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the **MAINTAINING AGENCY** hereby represents that no change has been made to the text of this document except through the terms of the Appendix entitled "Changes to Form Document."

You **MUST** signify by selecting or checking which of the following applies:

- No changes have been made to this Forms Document and no Appendix entitled "Changes to Form Document" is attached.
- No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Forms Document."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first written.

MAINTAINING AGENCY

BY: (Signature) 

(Typed Name: Nicholas Bates)

DATE: 4/4/16

(Typed Title: Mayor)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

BY: (Signature) 

(Typed Name: Sharon Harris)

DATE: 7/6/16

(Typed Title: District Maintenance Administrator)

FDOT Legal Review

BY: (Signature) 
Counsel

(Typed Name: DON CONWAY JR ATTY)

DATE: 4/15/16

Exhibit A

Systems listed below are excluded from this Agreement:

1. N/A
2. _____
3. _____
4. _____
5. _____
6. _____

EXHIBIT B

STATE HIGHWAY LIGHTING, MAINTENANCE AND COMPENSATION AGREEMENT

1.0 PURPOSE

This exhibit defines the method and limits of compensation to be made to the **Maintaining Agency** for the services described in this Agreement and Method by which payments will be made.

2.0 COMPENSATION

For the satisfactory completion of all services detailed in this Agreement, the Department will pay the **Maintaining Agency** the Total Lump Sum as indicated in Section 2 of the Agreement. The **Maintaining Agency** will receive one lump sum payment at the end of each fiscal year for satisfactory completion of service.

Total Lump Sum Amount for each Fiscal Year is calculated by taking all of the actual number of qualifying lights times 90% times the FY Unit Rate.

Example: $330 \text{ lights} \times 0.90 \times \$201.58 = \$59,869.26$

FY	12-13	\$201.58
	13-14	\$244.00
	14-15	\$251.32
	15-16	\$258.86

Beginning FY 14-15, the Unit Rate for each fiscal year will be 3% more than the Unit Rate from the previous fiscal year, unless otherwise specified in an amendment to this Agreement or changed through an update of this exhibit.

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VILLAGE OF ESTERO, FLORIDA

RESOLUTION NO. 2016 - 02

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, APPROVING THE ROADWAY LIGHTING SYSTEM MAINTENANCE AGREEMENT BETWEEN THE VILLAGE OF ESTERO AND STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION; AUTHORIZING THE VILLAGE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, be it resolved by the Village Council of the Village of Estero, Florida:

Section 1. The Roadway Lighting System Maintenance Agreement between the Village of Estero and State of Florida, Department of Transportation (FDOT), attached and incorporated herein as Exhibit A, is hereby approved.

Section 2. The Village Council authorizes the Village Mayor to execute the Roadway Lighting System Maintenance Agreement between the Village of Estero and State of Florida, Department of Transportation.

Section 3. Fiscal impact of this agreement is estimated at 10% annual recurring electric and maintenance cost which is approximately \$8,200 in the initial twelve months based upon FDOT compensation agreement projections. The project is expected to be completed in January 2017; therefore, fiscal year 2016-2017 budget expenditures would be for nine months, approximately \$6,200.

Section 4. This Resolution shall take effect immediately upon adoption.

ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this 6th day of January, 2016.

Attest:

VILLAGE OF ESTERO, FLORIDA

By: Kathy Hall
Kathy Hall, MMC, Village Clerk

By: Nicholas Batos
Nicholas Batos, Mayor

Reviewed for legal sufficiency:

By: Burt Saunders
Burt Saunders, Esq., Village Attorney

Kathleen Hall

From: Smith, Shelly <Shelly.Smith@dot.state.fl.us>
Sent: Wednesday, July 06, 2016 3:40 PM
To: Kathleen Hall
Cc: D1-Maintenance Contracts; Huff, Dolores; D1 Contract Status Changes
Subject: New Executed State Highway Lighting, Maintenance, and Compensation Agreement AS167, Village of Estero
Attachments: AS167 Master Agreement.pdf; AS167 Approved Encumbrance.pdf; AS167 Contract Status Change Request Form.pdf

Good afternoon,

Attached you will find the new executed State Highway Lighting, Maintenance, and Compensation Agreement for the Village of Estero. The Agreement was executed on July 6, 2016. You will receive one (1) original, via U.S. Mail.

Please disregard the Contract Status Change Request Form, this is for Financial Services.

Should you have any questions, please let me know.

Thank you,

Shelly Smith

Contract Specialist
District One Maintenance
801 N. Broadway Avenue
Bartow, Florida 33830
Phone: (863) 519-2761
Shelly.Smith@dot.state.fl.us



Did my service meet your expectations?
Contact my supervisor [Melody Joyner](#) with any feedback.

Kathleen Hall

From: Smith, Shelly <Shelly.Smith@dot.state.fl.us>
Sent: Friday, March 18, 2016 9:05 AM
To: Kathleen Hall
Cc: D1-Maintenance Contracts
Subject: Village of Estero Highway Lighting Reimbursement Agreement
Attachments: Proposed Village of Estero Highway Lighting Compensation Agreement.pdf

Good morning,

Attached please find the new proposed Highway Lighting, Maintenance, and Compensation Agreement between the Village of Estero and the Department of Transportation. Please print out two (2) copies; when executed, each copy should have original signatures. The Village will also need to provide two (2) copies of the Resolution with original signatures and seals. Please ensure that the individual executing the Agreement is the same person named/listed on the Resolution.

Please return the two (2) executed Agreements and Resolutions to me for final processing. If possible, please return the executed documentation **no later than Friday, May 13, 2016**.

Please do not fill in the executed date on page 1; we will do that after it has been approved, signed by our District Maintenance Administrator. Please confirm that you have received this e-mail and can print the attachment. After you have had a chance to review, please let me know your best guess of when you can return the executed Agreement.

Thank you,

Shelly Smith

Contract Specialist
District One Maintenance
801 N. Broadway Avenue
Bartow, Florida 33830
Phone: (863) 519-2761
Shelly.Smith@dot.state.fl.us



Did my service meet your expectations?
Contact my supervisor [Melody Joyner](#) with any feedback.



William Ribble
District One

Howard Levitan
Vice Mayor
District Two

Donald Brown
District Three

Katy Errington
District Four

Jim Boesch
District Five

Nick Batos
Mayor
District Six

Jim Wilson
District Seven

Steve Sarkozy
Village Manager

Burt Saunders
Village Attorney

April 4, 2016

Shelly Smith
Contract Specialist
FDOT
District One Maintenance
801 N. Broadway Avenue
Bartow, FL 33830

Dear Ms. Smith:

Enclosed please find two executed copies of the new proposed Highway Lighting, Maintenance, and Compensation Agreement along with two copies of Village of Estero Resolution No. 2016-02, adopted by the Village Council on January 6, 2016.

Sincerely,

Kathy Hall, MMC
Village Clerk

Enc.

7014 3490 0000 4831 5267

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Postage \$	Postmark Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	
Sent To	Shelly Smith, Contract Specialist FDOT District One Maintenance 801 N. Broadway Avenue Bartow, FL 33830
Street & Apt. No., or PO Box No.	801 N. Broadway Avenue
City, State, ZIP+4	Bartow, FL 33830
PS Form 3800, July 2014 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) DANNY HOOPER</p> <p>C. Date of Delivery 4-7-16</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p>Shelly Smith, Contract Specialist FDOT District One Maintenance 801 N. Broadway Avenue Bartow, FL 33830</p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7014 3490 0000 4831 5267</p>
PS Form 3811, July 2013	Domestic Return Receipt

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**STATE HIGHWAY LIGHTING, MAINTENANCE, AND
COMPENSATION AGREEMENT**

CONTRACT NO. TBD
FINANCIAL PROJECT NO. 439217-1-78-01
F.E.I.D. NO. F 473 445 874 001

THIS AGREEMENT, entered into this _____ day of _____, year of _____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as "**FDOT**", and **THE VILLAGE OF ESTERO**, hereinafter referred to as the "**MAINTAINING AGENCY**";

WITNESSETH:

WHEREAS, **FDOT** is authorized under Sections 334.044 and 335.055, Florida Statutes to enter into this Agreement, and the **MAINTAINING AGENCY** has the authority to enter into this Agreement and to undertake the maintenance and operation of lighting on the State Highway System; and

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 - (1) Manual of Uniform Traffic Control Devices; and,
 - (2) All other applicable local, state, or federal laws, rules, resolutions, or ordinances, and **FDOT** procedures.
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- a. Pursue a claim for damages suffered by **FDOT** or the public.
- b. Pursue any other remedies legally available.

- c. As to any work not performed by the **MAINTAINING AGENCY**, perform such work with its own forces or through contractors and seek reimbursement for the cost thereof from the **MAINTAINING AGENCY** if the **MAINTAINING AGENCY** fails to cure the non-performance within fourteen (14) days after written notice from **FDOT** of the non-performance; provided, however, that advance notice and cure shall not be preconditions in the event of an emergency.

6. Force Majeure

Neither the **MAINTAINING AGENCY** nor **FDOT** shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimate duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

7. Miscellaneous

- a. **FDOT** shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.
- b. The **MAINTAINING AGENCY** shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **MAINTAINING AGENCY** in conjunction with this Agreement. Failure by the **MAINTAINING AGENCY** to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by **FDOT**.
- c. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto.
- d. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining provisions hereof.
- e. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided. The **MAINTAINING AGENCY** shall have a continuing obligation to notify each District of **FDOT** of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

MAINTAINING AGENCY:

Village of Estero
21500 Three Oaks Parkway
Estero, FL 33928

FDOT:

District Maintenance
MS 1-7
801 North Broadway Avenue
Bartow, FL 33830

- f. **PUBLIC ENTITY CRIME INFORMATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for **CATEGORY TWO** for a period of thirty six (36) months from the date of being placed on the convicted vendor list.
- g. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on

leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

h. Nothing herein shall be construed as a waiver of either party's sovereign immunity.

i. **MAINTAINING AGENCY:**

1. 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 **MAINTAINING AGENCY** during the term of the contract; and
2. 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.

8. **Certification**

This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by the **MAINTAINING AGENCY** in the form of additions, deletions or substitutions are reflected only in an Appendix entitled "Changes To Form Document" and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the **MAINTAINING AGENCY** hereby represents that no change has been made to the text of this document except through the terms of the Appendix entitled "Changes to Form Document."

You **MUST** signify by selecting or checking which of the following applies:

- No changes have been made to this Forms Document and no Appendix entitled "Changes to Form Document" is attached.
- No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Forms Document."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first written.

MAINTAINING AGENCY

BY: (Signature) 

(Typed Name: Nicholas Batos)

(Typed Title: Mayor)

DATE: _____

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (mg)

BY: (Signature) _____

(Typed Name: Sharon Harris)

(Typed Title: District Maintenance Administrator)

DATE: _____

FDOT Legal Review

BY: (Signature) _____

Counsel

(Typed Name: _____)

DATE: _____

Exhibit A

Systems listed below are excluded from this Agreement:

1. N/A
2. _____
3. _____
4. _____
5. _____
6. _____

EXHIBIT B

STATE HIGHWAY LIGHTING, MAINTENANCE AND COMPENSATION AGREEMENT

1.0 PURPOSE

This exhibit defines the method and limits of compensation to be made to the **Maintaining Agency** for the services described in this Agreement and Method by which payments will be made.

2.0 COMPENSATION

For the satisfactory completion of all services detailed in this Agreement, the Department will pay the **Maintaining Agency** the Total Lump Sum as indicated in Section 2 of the Agreement. The **Maintaining Agency** will receive one lump sum payment at the end of each fiscal year for satisfactory completion of service.

Total Lump Sum Amount for each Fiscal Year is calculated by taking all of the actual number of qualifying lights times 90% times the FY Unit Rate.

Example: $330 \text{ lights} \times 0.90 \times \$201.58 = \$59,869.26$

FY	12-13	\$201.58
	13-14	\$244.00
	14-15	\$251.32
	15-16	\$258.86

Beginning FY 14-15, the Unit Rate for each fiscal year will be 3% more than the Unit Rate from the previous fiscal year, unless otherwise specified in an amendment to this Agreement or changed through an update of this exhibit.

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VILLAGE OF ESTERO, FLORIDA

RESOLUTION NO. 2016 - 02

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, APPROVING THE ROADWAY LIGHTING SYSTEM MAINTENANCE AGREEMENT BETWEEN THE VILLAGE OF ESTERO AND STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION; AUTHORIZING THE VILLAGE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, be it resolved by the Village Council of the Village of Estero, Florida:

Section 1. The Roadway Lighting System Maintenance Agreement between the Village of Estero and State of Florida, Department of Transportation (FDOT), attached and incorporated herein as Exhibit A, is hereby approved.

Section 2. The Village Council authorizes the Village Mayor to execute the Roadway Lighting System Maintenance Agreement between the Village of Estero and State of Florida, Department of Transportation.

Section 3. Fiscal impact of this agreement is estimated at 10% annual recurring electric and maintenance cost which is approximately \$8,200 in the initial twelve months based upon FDOT compensation agreement projections. The project is expected to be completed in January 2017; therefore, fiscal year 2016-2017 budget expenditures would be for nine months, approximately \$6,200.

Section 4. This Resolution shall take effect immediately upon adoption.

ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this 6th day of January, 2016.

Attest:

VILLAGE OF ESTERO, FLORIDA

By: Kathy Hall
Kathy Hall, MMC, Village Clerk

By: Nicholas Batos
Nicholas Batos, Mayor

Reviewed for legal sufficiency:

By: Burt Saunders
Burt Saunders, Esq., Village Attorney

EXHIBIT A

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ROADWAY LIGHTING SYSTEM MAINTENANCE AGREEMENT

Form No. 710-010-52
Utilities
10/04

Financial Project ID: 432755-1-52-02	Federal Project ID: 3012 136 P
County: Lee	State Road No.: 45
District Document No:	
Utility Agency/Owner (UAO): Village of Estero	

THIS AGREEMENT, entered into this _____ day of _____, year of _____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "**FDOT**" and **Village of Estero**, hereinafter referred to as the "**MAINTAINING AGENCY**";

WITNESSETH:

WHEREAS, there exists or is about to be installed on the state highway system a lighting system more particularly described in Exhibit A attached hereto, and by this reference made a part hereof, hereinafter referred to as the Roadway Lighting System; and;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the **FDOT** and the **MAINTAINING AGENCY** hereby agree as follows:

1. Maintenance of the Roadway Lighting System

- a. The **MAINTAINING AGENCY** shall, at its sole cost and expense, maintain the Roadway Lighting System throughout its expected useful life.
- b. In maintaining the Roadway Lighting System, the **MAINTAINING AGENCY** shall perform all activities necessary to keep the Roadway Lighting System fully and properly functioning at all times for its normal expected useful life in accordance with the original design thereof, whether necessitated by normal wear and tear, accidental or intentional damage, or acts of nature. Said maintenance shall include, but shall not be limited to, routine inspection and testing, preventative maintenance, emergency maintenance, replacement of any component parts of the Roadway Lighting System (including the poles and any and all other component parts installed as part of the Roadway Lighting System), and the locating of facilities as may be necessary.
- c. All maintenance shall be in accordance with the provisions of the following:
 - (1) Roadway and Roadside Maintenance Procedure, Topic No. 850-000-015;
 - (2) Manual of Uniform Traffic Control Devices and Safe Procedures for Streets and Highway Construction; and
 - (3) All other applicable local, state or Federal laws, rules resolution, or ordinances and **FDOT** procedures.

2. Operating Costs

In addition to the costs of maintaining the Roadway Lighting System, the **MAINTAINING AGENCY** shall be responsible for all costs of operating the Roadway Lighting System, including, but not limited to, all costs of electrical power consumed by the Roadway Lighting System and all other electrical charges.

3. Record Keeping

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ROADWAY LIGHTING SYSTEM MAINTENANCE AGREEMENT

Form No. 710-010-52
Utilities
10/04

The **MAINTAINING AGENCY** shall keep records of all activities performed and costs expended pursuant to this Agreement. The records shall be kept in such format as is approved by the **FDOT**. All such records shall be deemed to be public records subject to the provisions of Chapter 119, Florida Statutes.

4. Default

In the event that the **MAINTAINING AGENCY** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, the **FDOT** may exercise one or more of the following options, provided that at no time shall the **FDOT** be entitled to receive double recovery of damages:

- a. Pursue a claim for damages suffered by the **FDOT** or the public.
- b. Suspend the issuance of further permits to the **MAINTAINING AGENCY** for the placement of Facilities on **FDOT** property if the breach is material and has not been cured within 60 days from written notice thereof from **FDOT** until such time as the breach is cured.
- c. Pursue any other remedies legally available.
- d. Perform any work with its own forces or through contractors and seek repayment for the cost thereof from the **MAINTAINING AGENCY**.
- e. Require the **MAINTAINING AGENCY** to remove the Roadway Lighting System at the **MAINTAINING AGENCY's** sole cost and expense.

5. Indemnification

FOR GOVERNMENT MAINTAINING AGENCY:

To the extent provided by law, the **MAINTAINING AGENCY** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **MAINTAINING AGENCY**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **MAINTAINING AGENCY**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

When the **FDOT** receives a notice of claim for damages that may have been caused by the **MAINTAINING AGENCY** in the performance of services required under this Agreement, the **FDOT** will immediately forward the claim to the **MAINTAINING AGENCY**. The **MAINTAINING AGENCY** and the **FDOT** will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the **FDOT** will determine whether to require the participation of the **MAINTAINING AGENCY** in the defense of the claim or to require the **MAINTAINING AGENCY** to defend the **FDOT** in such claim as described in this section. The **FDOT's** failure to notify the **MAINTAINING AGENCY** of a claim shall not release the **MAINTAINING AGENCY** from any of the requirements of this section. The **FDOT** and the **MAINTAINING AGENCY** will pay their own costs for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs.

FOR NON-GOVERNMENT MAINTAINING AGENCY:

The **MAINTAINING AGENCY** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **MAINTAINING AGENCY**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT**

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ROADWAY LIGHTING SYSTEM MAINTENANCE AGREEMENT

Form No. 710-010-52
Utilities
10/04

or said parties may be subject, except that neither the **MAINTAINING AGENCY**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

The **MAINTAINING AGENCY's** obligation to indemnify, defend, and pay for the defense or at the **FDOT's** option, to participate and associate with the **FDOT** in the defense and trial of any damage claim or suit and any related settlement negotiations, shall arise within fourteen (14) days of receipt by the **MAINTAINING AGENCY** of the **FDOT's** notice of claim for indemnification to the **MAINTAINING AGENCY**. The notice of claim for indemnification shall be served by certified mail. The **MAINTAINING AGENCY's** obligation to defend and indemnify within fourteen (14) days of such notice shall not be excused because of the **MAINTAINING AGENCY's** inability to evaluate liability or because the **MAINTAINING AGENCY** evaluates liability and determines the **MAINTAINING AGENCY** is not liable or determines the **FDOT** is solely negligent. Only a final adjudication or judgment finding the **FDOT** solely negligent shall excuse performance of this provision by the **MAINTAINING AGENCY**. The **MAINTAINING AGENCY** shall pay all costs and fees related to this obligation and its enforcement by the **FDOT**. The **FDOT's** delay in notifying the **MAINTAINING AGENCY** of a claim shall not release the **MAINTAINING AGENCY** of the above duty to defend.

6. Force Majeure

Neither the **MAINTAINING AGENCY** nor the **FDOT** shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimate duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

7. Miscellaneous

- a. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto, except that the parties understand and agree that the **FDOT** has manuals and written policies and procedures which shall be applicable at the time of the Project and the relocation of the Facilities and except that the **MAINTAINING AGENCY** and the **FDOT** may have entered into joint agreements for Utility Work to be performed by **FDOT's** highway contractor. To the extent that such a joint agreement exists, this Agreement shall not apply to Facilities covered by the joint agreement. Copies of **FDOT** manuals, policies, and procedures will be provided to the **MAINTAINING AGENCY** upon request.
- b. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining provisions hereof.
- c. Time is of the essence in the performance of all obligations under this Agreement.
- d. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. The **MAINTAINING AGENCY** shall have a continuing obligation to notify each District of the **FDOT** of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ROADWAY LIGHTING SYSTEM MAINTENANCE AGREEMENT

Form No. 710-010-52
Utilities
10/04

If to the **MAINTAINING AGENCY**:

21500 Three Oaks Pkwy

Estero, FL 33928

If to the **FDOT**

801 N Broadway Ave

Bartow, FL 33830

- e. **PUBLIC ENTITY CRIME INFORMATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for **CATEGORY TWO** for a period of 36 months from the date of being placed on the convicted vendor list.
- f. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

8. Certification

This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by the **MAINTAINING AGENCY** in the form of additions, deletions, or substitutions are reflected only in an Appendix entitled Changes To Form Document and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the **MAINTAINING AGENCY** hereby represents that no change has been made to the text of this document except through the terms of the Appendix entitled Changes To Form Document."

You **MUST** signify by selecting or checking which of the following applies:

- No changes have been made to this Forms Document and no Appendix entitled "Changes to Form Document" is attached.
- No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Form Document."

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ROADWAY LIGHTING SYSTEM MAINTENANCE AGREEMENT

Form No. 710-010-52
Utilities
10/04

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first written.

MAINTAINING AGENCY

DATE: _____

BY: (Signature) _____

(Typed Name: Nicholas Batos, Mayor, Village of Estero)

Recommend Approval by the District Utility Office

DATE: _____

BY: (Signature) _____

(Typed Name: Shirley McCrary)

FDOT Legal Review

BY: (Signature) _____

DATE: _____

District Counsel

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: (Signature) _____

DATE: _____

(Typed Name: Sharon Harris)

(Typed Title: District Maintenance Administrator)

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: _____

DATE: _____

(Typed Name: Not Applicable -- No Federal Oversight)

(Typed Title: N/A)

Appendix – Changes to Form Document

- I. A State Highway Lighting, Maintenance, and Compensation Agreement (FDOT Form 375-020-52) shall be executed for the FDOT Fiscal Year that construction of this project is complete and/or accepted. The total Lump Sum Amount for each Fiscal Year is calculated by taking all of the actual number of qualifying lights multiplied by 90% of the FY Unit Rate. An example is provided in Exhibit B of FDOT Form 375-020-52, State Highway Lighting, Maintenance, and Compensation Agreement.
- II. Light poles in the vicinity of the Koreshan State Historic Site (South of Corkscrew to North of Broadway) will have banner bracket hardware installed as part of this project. The Maintaining Agency is responsible for the maintenance of the banner bracket hardware.

Exhibit A

Information on State Highway Lighting Project 432755-1-52-02

- Scope: To provide lighting for the six-lane highway and sidewalks within the project limits.
- Southern limit: South of Pelican Colony Blvd (Village of Estero/Bonita Springs City Limit)
- Northern limit: San Carlos Blvd (unincorporated Lee County)
- Total Length: 5.235 Miles
- Length within Village of Estero: Approximately 4.485 miles
- Total Quantity of Light Poles: 350
- Quantity of Light Poles within Village of Estero: 307
- Luminaire Type: LED
- Pole Type: 45' Aluminum
- Letting date: May 25, 2016
- Construction Start: TBD, Approx. August 2016
- Construction Finish: TBD

