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:

By: _____
Kathy Hall, MMC, Village Clerk

VILLAGE OF ESTERO, FLORIDA

By: _____
Nicholas Batos, Mayor

Reviewed for legal sufficiency:

By: _____
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

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**

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:

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."

ROADWAY LIGHTING SYSTEM MAINTENANCE AGREEMENT

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)

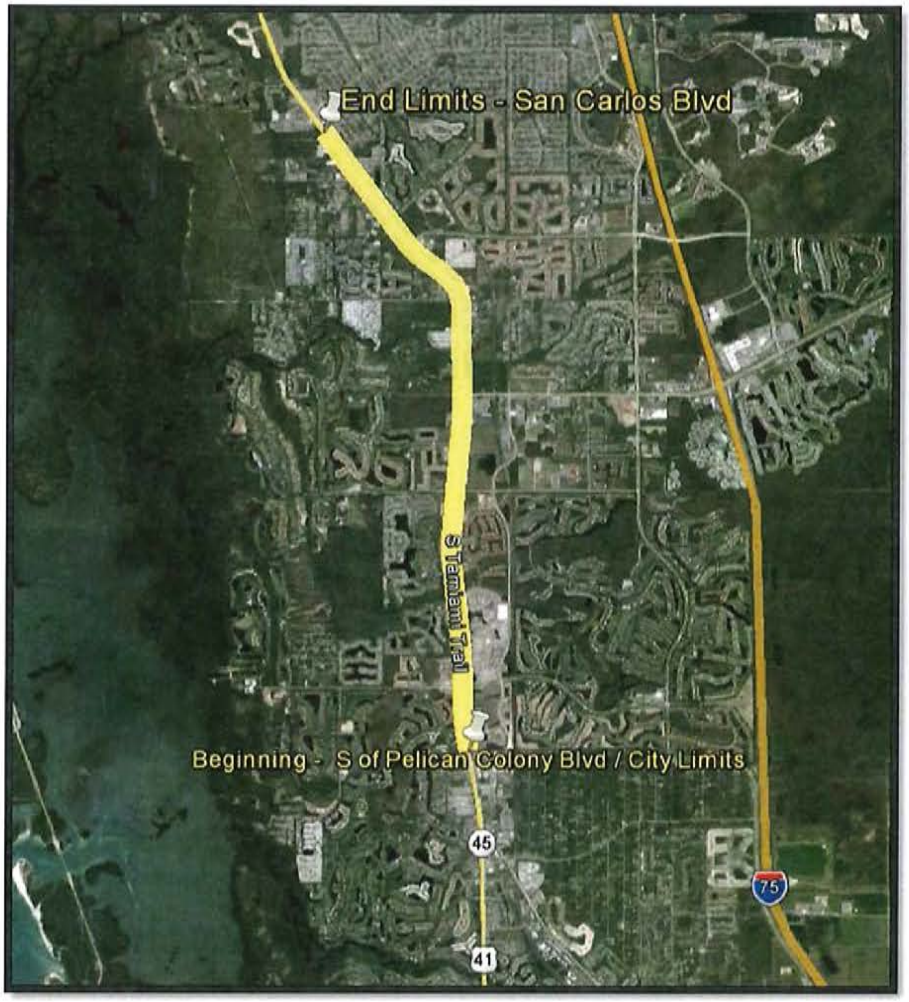
(Typed Title: N/A)

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