

CITY OF MARATHON, FLORIDA
RESOLUTION 2012-127

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A STATE HIGHWAY LIGHTING, MAINTENANCE AGREEMENT BETWEEN THE CITY OF MARATHON AND THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR MAINTENANCE AND REPAIRS OF THE LIGHTING SYSTEM ON OVERSEAS HIGHWAY BETWEEN MILE MARKER 47.5 AND MILE MARKER 55.5 IN THE CITY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Florida Department of Transportation (“FDOT”) desires to enter into a State Highway Lighting, Maintenance and Compensation Agreement (the “Agreement”) with the City of Marathon, Florida (the “City”) for the City to maintain and operate FDOT’s lighting system on Overseas Highway – including the cost of electricity - at a minimum operational level of 90% capacity at all times; and

WHEREAS, FDOT will compensate the City in the annual lump sum amount of \$19,109.78 for services rendered from November through June 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

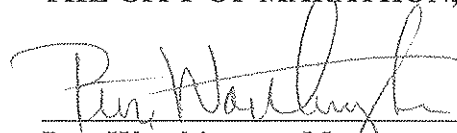
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Agreement between the City and FDOT, for the provision of maintenance and repairs of the lighting system on Overseas Highway, between Mile Marker 47.5 and Mile Marker 55.5, a copy of which is attached as Exhibit “A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved. The City Manager is authorized to execute the Agreement and expend budgeted funds on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 23rd DAY OF OCTOBER, 2012.


THE CITY OF MARATHON, FLORIDA



Pete Worthington, Mayor

AYES: Cinque, Keating, Ramsay, Snead, Worthington
NOES: None
ABSENT: None
ABSTAIN: None

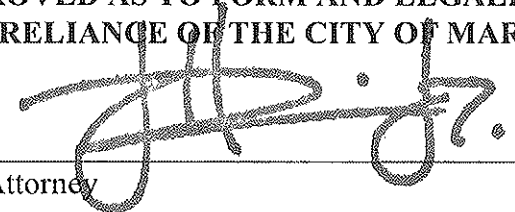
ATTEST:



Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**



City Attorney

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

CONTRACT NO. AQT 94
FINANCIAL PROJECT NO. 433051-1-78-01
F.E.I.D. NO. N/A

THIS AGREEMENT, entered into this 30th day of October, year of 2012, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as "**FDOT**", and City of Marathon, 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 \$ 19,109.78 for the fiscal year in which this Agreement is signed (fiscal year as referenced in this Agreement shall be **FDOT's**

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:

| |
|-------------------------------|
| City of Marathon |
| 9805 Overseas Hwy. |
| Marathon, Florida 33050 |
| Roger Hernstadt, City Manager |

FDOT:

| |
|---|
| Florida Department of Transportation |
| 1000 NW 111 th Avenue Room # 6205b |
| Miami, Florida 33172 |
| Rudy Garcia, P.E. District Maintenance Engineer |

- 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.

8. Certification

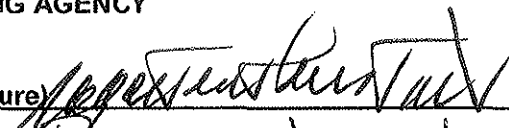
This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by the **MAINTAINING AGENCY** in the form of additions, deletions or substitutions are reflected only in an Appendix entitled "Changes To Form Document" and no change is made in the text of the 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."

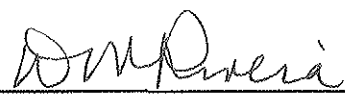
IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first written.

MAINTAINING AGENCY

BY: (Signature) 
 (Typed Name: Roger Hemstadt)
 (Typed Title: City manager)


DATE: 10/26/12

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

BY: (Signature) 
 (Typed Name: _____)
 (Typed Title: _____)

DATE: _____

FDOT Legal Review

BY: (Signature) 
 Counsel Alicia Trujillo, Esq.
 (Typed Name: _____)

DATE: OCT 30 2012

Exhibit A

Systems listed below are excluded from this Agreement:

1. _____
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: $330 \text{ lights} \times 0.90 \times \$179.11 = \$53,195.67$

| | | |
|----|-------|----------|
| FY | 10-11 | \$190.01 |
| | 11-12 | \$195.71 |
| | 12-13 | \$201.58 |

Beginning FY 12-13, 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.

APPENDIX A

CHANGES TO FORM DOCUMENT STATE HIGHWAY LIGHTING, MAINTENANCE AND COMPENSATION AGREEMENT

1.0 PURPOSE

This Appendix sets forth the changes made to this Form Document – State Highway Lighting, Maintenance and Compensation Agreement - between **FDOT** and the **MAINTAINING AGENCY**.

2.0 CHANGES

- a. This Agreement shall have an initial term of one (1) year term (commencing on November 1, 2012 and expiring on June 30, 2013) with the option for two (2) additional one (1) year extensions exercisable at the sole option of the **MAINTAINING AGENCY**. In order to exercise the option for the first one year extension prior to the end of the initial term, the **MAINTAINING AGENCY** must provide **FDOT** with written notice of the **MAINTAINING AGENCY'S** intent to extend the term for an additional one year. In order to exercise the option for the second one year extension prior to the end of the first one year extension the **MAINTAINING AGENCY** must provide **FDOT** with written notice of the **MAINTAINING AGENCY'S** intent to extend the term for an additional one year prior to the end of the first one year extension.
- b. Either party to this Agreement may terminate it for convenience upon thirty (30) calendar days' written notice to the other party. In the event of termination for convenience by **FDOT**, upon receipt of notification of the intent to terminate, the **MAINTAINING AGENCY** shall incur no further obligations in connection with the Agreement. Payment to the **MAINTAINING AGENCY** for work performed prior to termination shall be prorated accordingly.
- c. To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, **FDOT** and the **MAINTAINING AGENCY** does hereby agree to defend, indemnify and hold each other and their officers, agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the negligent acts or omissions of the other party in connection with this Agreement. This provision shall survive the expiration or earlier termination of this Agreement.
- d. There is no Exhibit "A" to this Agreement.
- e. Prior to **MAINTAINING AGENCY** assuming the responsibility to maintain the Facilities as provided in this Agreement, **FDOT** shall certify in writing that the

Facilities are 100% fully operating and properly functioning. The **MAINTAINING AGENCY** shall have the right to audit/inspect the Facilities to verify they are fully operation and properly functioning.