

# **TOWN OF DAVIE**

## **TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Council Members

**FROM/PHONE:** Ken Cohen, Assistant Town Administrator/797-1030

**SUBJECT:** FDOT Lighting Maintenance & Compensation Agreement

**AFFECTED DISTRICT:** All Districts

**TITLE OF AGENDA ITEM:** A Resolution of the Town of Davie, Florida, authorizing the Mayor to execute a state highway lighting maintenance and compensation agreement with the Florida Department of Transportation, and providing for an effective date.

**REPORT IN BRIEF:** The Florida Department of Transportation (FDOT) is proposing that local municipalities maintain all lighting now or hereafter located on the state highway system within each municipality's jurisdiction boundaries. Maintenance will include but not be limited to providing electrical power and paying all maintenance costs associated with routine inspection and testing, preventative maintenance, emergency maintenance, replacement of any component parts (including the pole), and locating the pole and components, as necessary. Compensation to the Town for assuming these functions is a lump sum payment of \$29,201.06. This payment is for FDOT's fiscal year from July 1, 2003 through June 30, 2004. The agreement will be effective when signed by duly authorized FDOT representatives. Under this agreement we will only be maintaining the lights to June 30, 2004 (two months), at which time a new agreement and compensation amount will be required. The Town currently maintains 182 street lights for FDOT at our expense. FDOT's proposal increases that number to 382.

Last year FDOT made the same proposal with a payment of \$7,421.40. Compensation offered did not cover the cost of the additional 200 street lights. We rejected the offer and made a counter offer, which FDOT rejected.

The average cost per year of the 182 street lights the Town currently maintains is approximately \$72.00 per year each. The agreement from FDOT provides \$76.45 per year for each of the 382 street lights or \$146.00 per year for each of the additional 200 street lights they are asking the Town to assume responsibility for.

**PREVIOUS ACTIONS:** Passed Resolution R-2003-137, a counter proposed agreement, which was rejected by FDOT.

**FISCAL IMPACT:**

Has request been budgeted? No

If no, amount needed: \$2,600.00

What account will funds be appropriated from: Contingencies 001-0205-513-0599

**RECOMMENDATION(S):** Motion to approve this resolution

**Attachment(s):** Resolution, Agreement

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A STATE HIGHWAY LIGHTING MAINTENANCE AND COMPENSATION AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Davie currently operates and maintains lighting on the State Highway System and;

WHEREAS, the Florida Department of Transportation (FDOT) is requesting the Town of Davie maintain all three hundred eighty two (382) street lights currently located within the Town's jurisdictional boundaries, as well as any added in the future; and

WHEREAS, the Florida Department of Transportation (FDOT) proposes to pay the Town of Davie a lump sum of \$29,201.06 for these services in the current fiscal year.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council does hereby authorize the Mayor to execute the "State Highway Lighting, Maintenance, and Compensation Agreement" with the "Changes to Form Document" and exhibits.

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004

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

710-010-30  
UTILITIES  
10/03  
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**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 **TOWN OF DAVIE**, hereinafter referred to as the "MAINTAINING AGENCY";

**WITNESSETH:**

**WHEREAS**, 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 the **FDOT** is authorized under Sections 334.044, Florida Statutes and 335.055, Florida Statutes to enter into this Agreement; 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, the **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 the **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 the **FDOT** that the **FDOT** has finally 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 the **FDOT**, the **MAINTAINING AGENCY** shall have the opportunity to inspect and request modifications/corrections to the installation(s) and the **FDOT** agrees to undertake those prior to acceptance so long as the modifications/corrections comply with the contract and specifications previously approved by both the **FDOT** and the **MAINTAINING AGENCY**.

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- 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. The **FDOT** agrees to pay to the **MAINTAINING AGENCY** a lump sum of \$ 29,201.06 for the fiscal year in which this Agreement is signed (fiscal year as referenced in this Agreement shall be **FDOT's** fiscal year).
- b. For each future fiscal year, the **FDOT** and the **MAINTAINING AGENCY** shall agree on the amount to be paid prior to the fiscal year beginning. The **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. Invoices may be submitted anytime after May 19<sup>th</sup> of the fiscal year in which the services were provided, but no later than 180 days after the end of said fiscal year. Payment shall be made in one lump sum as provided in paragraph 4 hereof.
- d. Payment shall be made in accordance with Section 215.422, Florida Statutes.
- e. Bills for fees or other compensation for services or expenses shall be submitted in a format acceptable to the **FDOT** and in detail sufficient for a proper pre-audit and post-audit thereof.

**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 the **FDOT**.

Records shall be maintained and made available upon request to the **FDOT** at all times 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 the **FDOT** upon request.

**4. Invoicing**

Upon receipt, the **FDOT** has five (5) working days to inspect and approve the goods and services. The **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 the **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:

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The 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. The FDOT shall require a statement from the Comptroller of the 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 the 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.

The FDOT will provide a copy of the statement referenced above to the **MAINTAINING AGENCY**.

**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, 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. 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 the 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 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. The 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 the 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. Time is of the essence in the performance of all obligations under this Agreement.

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- f. 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 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:

**MAINTAINING AGENCY:**

TOWN ADMINISTRATOR  
TOWN OF DAVIE  
6591 ORANGE DRIVE  
DAVIE, FL 33314

**FDOT:**

DISTRICT MAINTENANCE ENGINEER  
3400 WEST COMMERCIAL BOULEVARD  
FT. LAUDERDALE, FL 33309

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

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**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) \_\_\_\_\_

DATE: \_\_\_\_\_

(Typed Name: \_\_\_\_\_ )

(Typed Title: \_\_\_\_\_ )

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**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**

BY: (Signature) \_\_\_\_\_

DATE: \_\_\_\_\_

(Typed Name: \_\_\_\_\_ )

(Typed Title: \_\_\_\_\_ )

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**FDOT Legal Review**

BY: (Signature) \_\_\_\_\_

DATE: \_\_\_\_\_

District Counsel

(Typed Name: \_\_\_\_\_ )

# **TOWN OF DAVIE**

## **Changes To Form Document**

The Town of Davie approves the State Highway Lighting, Maintenance, and Compensation Agreement with the below noted changes:

### **1. Maintenance of Facilities**

- a. The Maintaining Agency shall maintain all the lighting ~~now~~ listed on "Exhibit B" or hereafter located on State Highway System within the jurisdictional boundaries of the maintaining agency hereinafter referred to as the "Facilities", throughout ~~its expected useful life~~ the length of this agreement.

For the purposes of this Agreement, the term "Facilities" shall be deemed To include, but not necessarily limited to, lighting for roadways, as well as Park and ride, pedestrian overpasses, and recreational areas owned by or Located on the property of the **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.

### **2. Length of this Agreement**

- a. This agreement shall cover the fiscal year from July 1, 2003 through June 30, 2004. This agreement can only be extended by mutual written consent of both parties, FDOT and the Town of Davie.

**EXHIBIT "A"**

**NO EXCLUSIONS**

