

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

Form No 710-010-30.
Utilities
10/04

THIS AGREEMENT, entered into this 16th day of June, year of 2007, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "FDOT", and **THE CITY OF MIAMI BEACH**, 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

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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

- 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 \$ 139,064 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 19th 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.

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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:

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.

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- 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.
- 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:

City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Fred Beckmann, Director Public Works

FDOT:

Florida Department of Transportation
1000 NW 111 th Avenue, Miami, Florida 33172
Ronald S. Steiner, P.E., District Maintenance Engineer

- 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) _____

(Typed Name: _____) David Dermer

(Typed Title: _____) Mayor

DATE: 4/11/07

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

BY: (Signature) _____

(Typed Name: _____)

(Typed Title: _____)

DATE: _____

[Handwritten Signature]
[Handwritten Name: Eric Pardo]
[Handwritten Title: DIRECTOR OF TRANSPORTATION OPERATIONS]

FDOT Legal Review

BY: (Signature) _____

[Handwritten Signature]
for: District Counsel
Alicia Trujillo, Esq.

(Typed Name: _____)

DATE: 6-6-07

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Handwritten Signature]
City Attorney
Date: 4/16/07
[Handwritten Initials]

APPENDIX A

STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION AGREEMENT

The following changes are incorporated by the City of Miami Beach

Page 1 – Paragraph 2 Line 2 - Insert “within the jurisdictional boundaries of the maintaining Agency,” after the word System.

Page 1 Item 1 a. line 5 - delete the words “as well as park and ride, pedestrian overpasses, and recreational areas”.

Page 1 Item 1 a. line 6 - inset the word “as” following FDOT and delete the words “but shall exclude those systems”.

Page 1 Item 1 a. lines 7 and 8 – delete the words “and shall exclude lighting located in weigh stations, rest areas, or on Interstate Highways.”

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ATTACHMENT "A"

State Roads within the limits of the City of Miami Beach:

<u>State Road</u>	<u>Limits</u>	<u>No. of Fixtures</u>
Abbot Avenue	72 nd Street to Indian Creek Drive	9
Alton Road	5 th Street to 63 rd Street	191
Collins Avenue	5 th Street to 61 st Street	269
Collins Avenue	72 nd Street to 87 th Terrace	24
5 th Street	Alton Road to Ocean Drive	19
41 st Street	Alton Road to Collins Avenue	31
63 rd Street	Alton Road to Collins Avenue	9
71 st Street	West of North Bay Causeway to Rue Notre Dame	19
Harding Avenue	72 nd Street to 87 th Terrace	38
Indian Creek Drive	26 th Street to 44 th Street	41
Indian Creek Drive	59 th Street to 71 st Street	50
Normandy Drive	Rue Notre Dame to West of North Bay Cswy.	20
Mac Arthur Cswy.	Alton Road to West City Limits	84
TOTAL LIGHT FIXTURES:		804

RESOLUTION NO. 2007-26517

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A PROPOSED STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) FOR STREET LIGHT MAINTENANCE SERVICES FOR FDOT OWNED LIGHTING SYSTEMS IN THE CITY OF MIAMI BEACH, FOR THE PERIOD FROM JULY 1, 2007, TO JUNE 30, 2008, IN THE AMOUNT OF \$139,164.

WHEREAS, during the City's contract negotiations for its WiFi project, it was determined that there were insufficient mounting assets throughout the City to deploy a Citywide WiFi system; and

WHEREAS, while the City owns many street lights, the majority of the City-owned lights in the Middle Beach area are of pedestrian height, decorative type, and are not suitable for mounting wireless radio equipment requiring electrical service; and

WHEREAS, most of the other street lights throughout the City are owned by entities such as the Florida Department of Transportation and Florida Power and Light; and

WHEREAS, utilizing FDOT street light poles (mounting assets) will be less costly to the City than acquiring and installing new poles; and

WHEREAS, the Administration recommends that the City take over the maintenance of FDOT-owned lighting systems within the City of Miami Beach to provide sufficient mounting assets for the deployment of the City's WiFi system; and

WHEREAS, control of the lighting systems will also allow the City to provide more rapid response to citizen reports of street light malfunctions; and

WHEREAS, currently these lighting systems are maintained by Miami-Dade County under an agreement with FDOT; and

WHEREAS, the most cost effective and timely solution for the City is to work with FDOT to take over the maintenance of its lighting systems within the City; and

WHEREAS, the City and FDOT have negotiated a State Highway Lighting Maintenance and Compensation Agreement, for an initial term of commencing on April 12, 2007, through June 20, 2007, whereby the City would assume all maintenance obligations for the lighting systems; and

WHEREAS, Miami-Dade County, through its Public Works Department, has agreed to compensate the City the full amount for this period (April 12, 2007, to June 30, 2007), previously paid to the County by FDOT for the maintenance of the lighting systems that will be transferred to the City; and

WHEREAS, thereafter, the period commencing on July 1, 2007, and ending on June 30, 2008, the City will execute a new State Highway Lighting, Maintenance and Compensation Agreement with FDOT, in the amount to \$139,064 (based on an estimated 800 FDOT poles in the City); and

WHEREAS, it is anticipated that the aforesated Agreement would be negotiated and reviewed annually, commencing with each FDOT fiscal year (July 1st – June 30th).

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA that the Mayor and City Commission hereby approve and authorize the Mayor and City Clerk to execute a State Highway Lighting, Maintenance and Compensation Agreement between the City and FDOT, for the period from July 1, 2007, through June 30, 2008, in the amount of \$139,064, to be paid by FDOT to the City, for maintenance of FDOT-owned lighting systems in the City.

PASSED and ADOPTED THIS 11 day of April, 2007.

ATTEST:




CITY CLERK



MAYOR

T:\AGENDA\2007\apr1107\Consent\FDOTAgreement July 2007 thru June 2008 Resolution.doc

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney

4/5/07
Date