

# Interoffice Memorandum

FROM THE OFFICE OF THE  
**City Engineer**

---

**TO:** Sandy Steele, City Clerk

**FROM:** Hector P. Arias, P.E., City Engineer

**SUBJECT:** SR 68 - Angle Road to 13<sup>th</sup> Street  
Executed Lighting Agreement

**DATE:** May 10, 2005

A handwritten signature in black ink, appearing to be "H. Arias", is written over the name of the sender.

Attached for you files is the executed Roadway Lighting System Maintenance Agreement.

TST/HPA/tst

Attachment



Florida Department of Transportation

HEROISE  
GOVERNOR

BOB AVILES  
SECRETARY

May 5, 2005

Mr. Hector Arias  
City Engineer  
City of Fort Pierce  
City Hall  
100 North US 1 – PO Box 1480  
Ft. Pierce, FL 34954-1480

RECEIVED  
MAY 10 2005

Dear Mr. Arias:

CITY OF FT. PIERCE  
ENGINEERING DEPARTMENT

Re: EXECUTED LIGHTING AGREEMENT

State Road No.: 68 (Orange Avenue)  
State Project No.: N/A  
Financial Project No.: 411441-1-52-01  
F.A.P. No.: N/A  
County: St. Lucie  
Description: SR 68 (Orange Avenue) Angle Road to 13<sup>th</sup> Street

Enclosed is an originally executed Roadway Lighting System Maintenance Agreement for your use and file.

As you know the City of Ft. Pierce is responsible for energy costs and maintenance once the system is accepted from the DOT Contractor.

Thank you for your cooperation in this matter.

Sincerely,

Anne V. Endsley  
Utility Coordinator

AVE:bss  
Enclosure

cc: Bernard Freeman, Design; Chris Jackson, Project Manager; Asem Al-Turk, Operations Engineer; Pete Nissen, District Maintenance Engineer; Bill Hester, FPL; Bonnie Swierski; Robert Gomez, Washington Group International; File

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**ROADWAY LIGHTING SYSTEM MAINTENANCE AGREEMENT**

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

Financial Project ID: 411441-1-52-01	Federal Project ID: N/A
County: St. Lucie	State Road No.: 68
District Document No:	
Utility Agency/Owner (UAO): City of Ft. Pierce	

THIS AGREEMENT, entered into this 5<sup>th</sup> day of May, year of 2015, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "FDOT@" and **City of Ft. Pierce**, 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**

**ROADWAY LIGHTING SYSTEM MAINTENANCE AGREEMENT**

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:**

**ROADWAY LIGHTING SYSTEM MAINTENANCE AGREEMENT**

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

# ROADWAY LIGHTING SYSTEM MAINTENANCE AGREEMENT

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:

**ROADWAY LIGHTING SYSTEM MAINTENANCE AGREEMENT**

If to the **MAINTAINING AGENCY**:

Mr. Hector P. Arias, PE, City Engineer, 772-460-2200, (fax: 772-460-6847)

100 North US 1, PO Box 1480

Fort Pierce, FL 34954

If to the **FDOT**

Mr. Asem Al-Turk, PE, Ft Pierce Operations Engineer, 772-465-7396 (fax: 772-498-7120)

3601 Oleander Avenue

Fort Pierce, FL 34982-1456

- 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: 4-18-05

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

(Typed Name: \_\_\_\_\_) Robert J. Benton, III, Mayor

FORM AND CORRECTNESS

City Attorney

Recommend Approval by the District Utility Office

DATE: 4/29/05

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

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

FDOT Legal Review

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

District Counsel

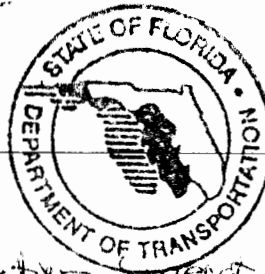
DATE: 5/2/2005

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

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

(Typed Name: \_\_\_\_\_) Rosilyn Lewis

(Typed Title: \_\_\_\_\_) Director of Transportation Support



DATE: 5/3/2005

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: \_\_\_\_\_

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

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

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

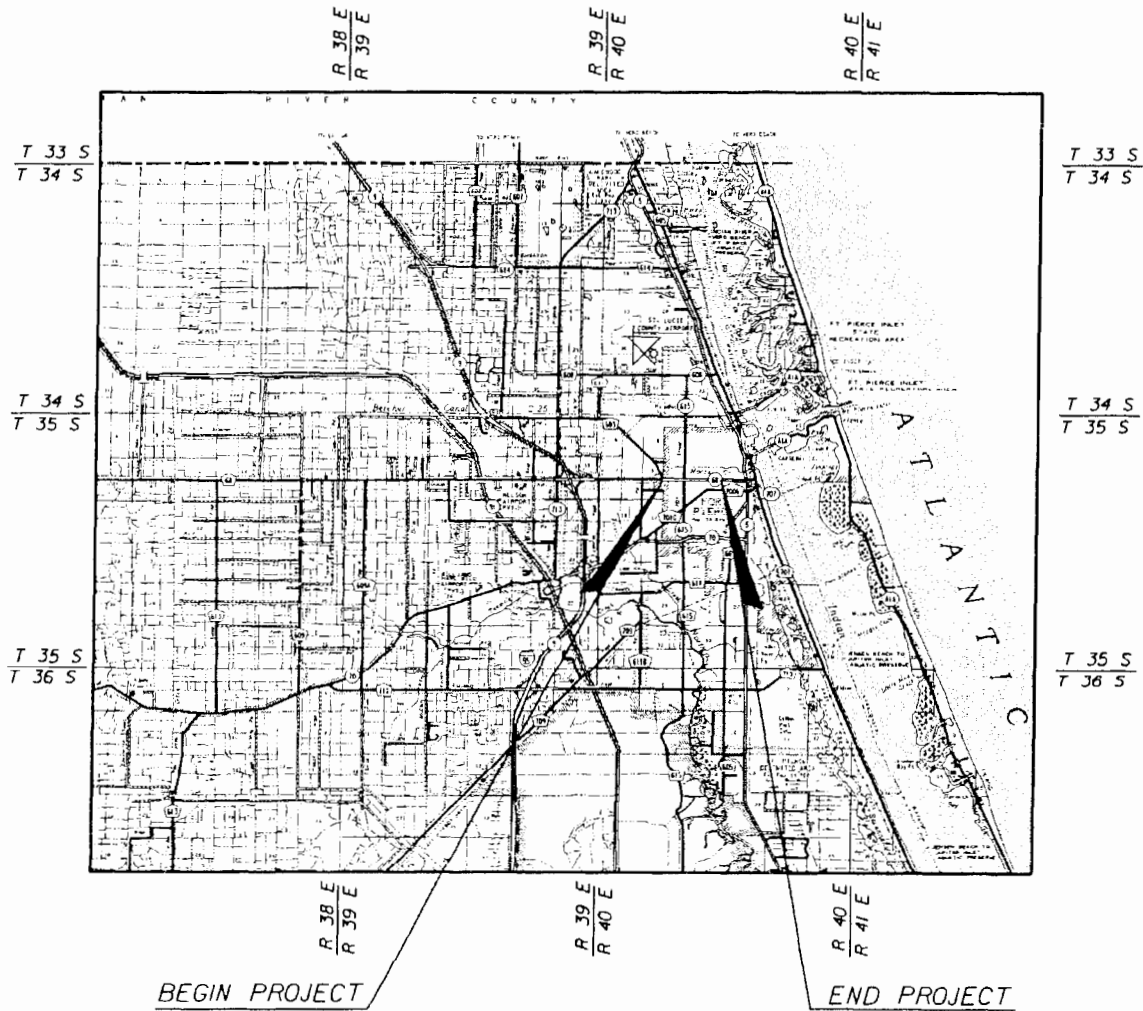
FM NO.(s): 411441-1-52-01  
COUNTY: St. Lucie  
S.R. NO.: 68

## EXHIBIT A

### I. PROJECT LOCATION:

State Road 68 from Angle Road Street (M.P. 19.614) to 13<sup>th</sup> Street (M.P. 20.816)  
Located in the City of Fort Pierce, St. Lucie County

### II. PROJECT LOCATION MAP:



LOCATION MAP  
SR 68



**FM NO.(s): 411441-1-52-01**  
**COUNTY: St. Lucie**  
**S.R. NO.: 68**

## **EXHIBIT B**

### **PROJECT PLANS**

The Department agrees to install the Project with a contractor in accordance with the plans and specifications attached hereto and incorporated herein.

The proposed lighting improvements include the replacement of the existing lighting system with a new system supplied by underground conduits. The 101 proposed new poles will be painted verde green and are located as shown in the plans.

Please see attached plans prepared by McMahon Associates, Inc. as a subconsultant to Washington Group International, Inc.

Dated: 3/21/05.

RESOLUTION NO. 05-23

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, AUTHORIZING EXECUTION OF A **HIGHWAY LIGHTING AGREEMENT** WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE ADJUSTMENT, RELOCATION AND/OR INSTALLATION OF A CERTAIN LIGHTING SYSTEM WITHIN THE RIGHT-OF-WAY LIMITS OF STATE ROAD 68/ORANGE AVENUE FROM ANGLE ROAD TO 13TH STREET, AND AUTHORIZING THE MAYOR, CITY CLERK AND CITY ATTORNEY TO EXECUTE SAID AGREEMENT ON THE PART OF THE CITY; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the State of Florida Department of Transportation has located and proposes to construct or reconstruct a part of a Highway Lighting System located on State Road 68 Orange Avenue; and

**WHEREAS**, the State of Florida Department of Transportation having requested the City of Fort Pierce, Florida to execute and deliver to the State of Florida Department of Transportation a Roadway Lighting System Maintenance Agreement, providing for joint responsibilities of the Department and the City, and said request having been duly considered.

**NOW, THEREFORE, BE IT RESOLVED** by the City Commission of the City of Fort Pierce, Florida, as follows:

1. That the City of Fort Pierce shall enter into said agreement with the Department of Transportation of the State of Florida.
2. That a copy of said agreement shall be attached to this resolution.
3. That the Mayor, City Clerk and City Attorney are hereby authorized to enter into said agreement and to execute said agreement on behalf of the City of Fort Pierce.
4. This Resolution be forwarded to the State of Florida Department of Transportation at Tallahassee, Florida.

**IN WITNESS WHEREOF**, this Resolution has been duly adopted this 18th day of April, 2005.

ATTEST:


  
CITY CLERK

(CITY SEAL)

  
MAYOR COMMISSIONER

STATE OF FLORIDA  
COUNTY OF SOUTHERN  
CITY OF FORT PIERCE

THIS IS TO CERTIFY THAT  
THESE ARE THE OFFICIAL  
COPIES OF THE RESOLUTIONS  
ON FILE IN THIS OFFICE.

  
CITY CLERK

BY \_\_\_\_\_  
CITY CLERK

DATE 4-19-05  
(CITY SEAL)