

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ROADWAY ILLUMINATION SERVICES AGREEMENT

710-010-53
UTILITIES
09/11

Financial Project ID: 238394-2-58-01	Federal Project ID: 3994 044 P
County: Lake	State Road No.: 500
District Document No: 1	
Utility Agency/Owner (UAO): City of Leesburg Electric	

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 **City of Leesburg Electric**, hereinafter referred to as the "UAO";

WITNESSETH:

WHEREAS, the **UAO** owns poles located within the road right of way, the road identified as State Road 500, from SR 500 (US 441) from Perkins to Griffin to SR 27 from Griffin to Shelfer St (the Road), which poles are available for the installation of lighting (said poles being hereinafter referred to as the "Poles"); and

WHEREAS, the **FDOT** desires to have the Road illuminated; and

WHEREAS, the **UAO** is an electric utility as defined in Section 366.02(2), Florida Statutes; and

WHEREAS, the **FDOT** has determined that it is in the best interest of the public to enter into an agreement with **UAO** pursuant to Section 337.11(15), Florida Statutes under which the **UAO** will illuminate the Road;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the **FDOT** and the **UAO** hereby agree as follows:

1. Provision of Illumination Services

- a. The **UAO** shall illuminate the Road in accordance with **FDOT** standards. Subject to the terms and conditions contained herein, illumination services shall continue until such time as **FDOT** notifies the **UAO** to discontinue the illumination services.
- b. The **UAO** shall be responsible for taking any and all actions as may be necessary to illuminate the Road, including, but not necessarily limited to, installation of such facilities and equipment as is necessary to properly illuminate the Road.
- c. Prior to installation of the equipment and facilities to illuminate the Road, the **UAO** shall provide such information (including a proposed work schedule) as is requested by the **FDOT** in order for the **FDOT** to verify that the illumination is acceptable and will be in accordance with **FDOT** standards, and that all work to be performed on **FDOT** right of way will be performed properly in accordance with **FDOT** standards for performance of such work. The **UAO** shall make such changes to the proposed illumination as the **FDOT** requests.
- d. The **UAO** shall notify the appropriate **FDOT** office in writing prior to beginning installation of the equipment and facilities to provide the illumination services and when the **UAO** stops, resumes, or completes the work. The work shall be completed within the time frame as specified in the schedule provided by the **UAO** to the **FDOT** pursuant to subparagraph 1.c. above.

2. Cost of Illumination Services

- a. The **FDOT** agrees to pay the **UAO**, after illumination services have begun, a one-time service charge equal to the incremental costs that the **UAO** incurred for installing the equipment and facilities for providing the illumination of the Road. The incremental costs are estimated to be \$ 225,000.00. The **UAO** shall obtain written approval from the **FDOT** prior to incurring any incremental costs which exceed the estimated amount stated above.

ROADWAY ILLUMINATION SERVICES AGREEMENT

- b. The method to be used in calculating the incremental costs shall be one of the following (check which option applies):
- Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.
 - Actual and related indirect costs accumulated in accordance with an established accounting procedure developed by the **UAO** and approved by the **FDOT's**. (If this option is selected, the **UAO** shall provide written evidence of such approval).
 - An agreed lump sum as supported by a detailed analysis of estimated costs prepared prior to the execution of this Agreement.

3. Invoice Procedures for Cost of Illumination Services

The following terms and conditions apply to the invoice submitted pursuant to this Agreement for payment of the cost of illumination services:

- a. The **UAO** shall submit a final invoice to the **FDOT** for payment of all costs within one hundred and eighty (180) days after illumination services have commenced. The **UAO** waives all right of payment for invoices submitted more than one hundred eighty (180) days after illumination services have commenced.
- c. The totals for labor, overhead, travel expenses, transportation, equipment, materials and supplies, handling costs and all other services shall be shown. Materials shall be itemized where they represent major components. Salvage credits from recovered and replaced permanent and recovered temporary materials shall be reported in relative position with the charge for the replacement or the original charge for temporary use.
- d. All invoices shall be submitted in triplicate and shall show the description and site of the project and the location where the records and accounts invoiced can be audited. Adequate reference shall be made in the invoicing to the **UAO's** records, accounts, and other relevant documents.
- e. All cost records and accounts shall be maintained in the auditable condition for a period of eight hundred twenty (820) days after final payment is received by the **UAO** and shall be subject to audit by a representative of the **FDOT** at any reasonable time during this eight hundred twenty (820) day period.
- f. Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Such detail shall include, but not be limited to, a separation of costs for work performed by **UAO's** employees and work performed by **UAO's** contractor.
- g. Invoices for any travel expenses shall be submitted in accordance with Section 112.061, Florida Statutes. A state agency may establish rates lower than the maximum provided in Section 112.061, Florida Statutes.
- h. Upon receipt of an invoice, the **FDOT** has thirty (30) days to inspect and approve the goods and services. The **FDOT** has twenty (20) days from the latter of the date the invoice is received or the goods or services are received, inspected and approved to deliver a request for payment (voucher) to the Department of Financial Services or to return the invoice to the **UAO**.
- i. If a warrant in payment of an invoice is not issued within forty (40) days from the latter of the date the invoice is received or the goods or services are received, inspected and approved, a separate interest penalty, as established pursuant to Section 215.422, Florida Statutes, will be due and payable in addition to the invoice amount, to the **UAO**. Interest penalties of less than one (1) dollar will not be

ROADWAY ILLUMINATION SERVICES AGREEMENT

enforced unless the **UAO** requests payment. Invoices which have to be returned to the **UAO** because of **UAO's** preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the **FDOT**. In the event of a bona fide dispute, the **FDOT's** voucher shall contain a statement of the dispute and authorize payment only of the undisputed amount.

- j. In accordance with Section 287.0582, Florida Statutes, the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the legislature.
- k. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for 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.
- l. In accordance with the Florida Statutes, 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 is 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 \$25,000.00 and which have a term for a period of more than one (1) year. For this purpose, the individual work orders shall be considered to be the binding commitment of funds.
- m. **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, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- n. 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.

4. Maintenance of Illumination Equipment and Facilities

The following terms and conditions shall apply to the equipment and facilities used to provide the illumination services after illumination services have begun:

- a. The equipment and facilities shall at all times remain the property of and be properly protected and maintained by the **UAO** in accordance with the then current Utility Accommodation Manual and the current utility permit for the equipment and facilities.
- b. The equipment and facilities shall be maintained pursuant to a separate agreement between a city or county and the **UAO**. In the event that the city or county fails to comply with that separate agreement, the **UAO** may terminate the illumination services, provided, however, that the **UAO** shall first notify the **FDOT** in writing and provide the **FDOT** with a reasonable opportunity to cure the noncompliance prior

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ROADWAY ILLUMINATION SERVICES AGREEMENT

710-010-53
UTILITIES
09/11

to terminating the illumination services.

- c. The **UAO** shall not engage in any act or omission which in any way interferes with the continued provision of illumination services, including, without limitation, granting rights to third parties with respect to the equipment and facilities which interferes with the continued provision of illumination services.

5. Default

- a. In the event that the **UAO** 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:
- (1) Terminate this Agreement if the breach is material and has not been cured within 60 days from written notice thereof from **FDOT**.
 - (2) Pursue a claim for damages suffered by the **FDOT**.
 - (3) Withhold invoice payments until the breach is cured.
 - (4) Offset any damages suffered by the **FDOT** or the public against payments due under this Agreement. The right to offset shall be limited to actual claim payments made by **FDOT** to third parties.
 - (5) Suspend the issuance of further permits to the **UAO** for the placement of utilities 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.
 - (6) Pursue any other remedies legally available.
- b. In the event that the **FDOT** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement, the **UAO** may exercise one or more of the following options:
- (1) Terminate this Agreement if the breach is material and has not been cured within 60 days from written notice thereof from the **UAO**.
 - (2) If the breach is a failure to pay an invoice for cost of the illumination services, pursue any statutory remedies that the **UAO** may have for failure to pay invoices.
 - (3) Pursue any other remedies legally available.
- c. Termination of this Agreement shall not relieve either party from any obligations it has pursuant to other agreements between the parties and from any statutory obligations that either party may have with regard to the subject matter hereof.

6. Indemnification

FOR GOVERNMENT-OWNED UTILITIES,

To the extent provided by law, the **UAO** 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 **UAO**, 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 **UAO**, its agents, employees, or contractors will

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ROADWAY ILLUMINATION SERVICES AGREEMENT

710-010-53
UTILITIES
09/11

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 **UAO** in the performance of services required under this Agreement, the **FDOT** will immediately forward the claim to the **UAO**. The **UAO** 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 **UAO** in the defense of the claim or to require the **UAO** to defend the **FDOT** in such claim as described in this section. The **FDOT's** failure to notify the **UAO** of a claim shall not release the **UAO** from any of the requirements of this section. The **FDOT** and the **UAO** 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-OWNED UTILITIES,

The **UAO** 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 **UAO**, 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 **UAO**, 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 **UAO'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 **UAO** of the **FDOT's** notice of claim for indemnification to the **UAO**. The notice of claim for indemnification shall be served by certified mail. The **UAO's** obligation to defend and indemnify within fourteen (14) days of such notice shall not be excused because of the **UAO's** inability to evaluate liability or because the **UAO** evaluates liability and determines the **UAO** 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 **UAO**. The **UAO** shall pay all costs and fees related to this obligation and its enforcement by the **FDOT**. The **FDOT's** delay in notifying the **UAO** of a claim shall not release **UAO** of the above duty to defend.

7. Force Majeure

Neither the **UAO** 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.

8. Miscellaneous

a. The **UAO** shall fully comply with the provisions of Title VI of the Civil Rights Act of 1964 and any subsequent revisions thereto in connection with the illumination services covered by this agreement, and such compliance will be governed by the method checked below:

- The **UAO** will provide all or part of such illumination services by a contractor paid under a contract let by the **UAO**, and the Appendix "A" of Assurances transmitted with the issued work order will be included in said contract let by the **UAO**.
- The **UAO** will perform all of the illumination services entirely with the **UAO's** forces and Appendix "A" of Assurances is not required.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ROADWAY ILLUMINATION SERVICES AGREEMENT

710-010-53
UTILITIES
09/11

- The illumination services involved are agreed to by way of just compensation for the taking of the **UAO's** facilities on right-of-way in which the **UAO** holds a compensable interest, and Appendix "A" of Assurances is not required.
- The **UAO** will provide all such illumination services entirely by continuing contract, which contract to provide all future illumination services was executed with the **UAO's** contractor prior to August 3, 1965, and Appendix "A" of Assurances is not required.
- b. Pursuant to Section 287.058, Florida Statutes, the **FDOT** may unilaterally cancel this Agreement for refusal by the **UAO** to 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 **UAO** in conjunction with this Agreement.
- 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 business days from the proper sending thereof unless proof of prior actual receipt is provided. The **UAO** 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 **UAO**:

City of Leesburg Electric

550 South 14th Street

Leesburg, FL 32748

If to the **FDOT**

Florida Department of Transportation

Attn: Ty Garner

719 South Woodland Boulevard

DeLand, FL 32720

- g. **UAO**:
 1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the **UAO** during the term of the contract; and
 2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

9. Certification

This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
ROADWAY ILLUMINATION SERVICES AGREEMENT

710-010-53
UTILITIES
09/11

the **UAO** 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 **UAO** 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 Form 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."

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

UTILITY: City of Leesburg Electric

BY: (Signature) _____

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

Recommend Approval by the District Utility Office

BY: (Signature) _____

DATE: _____

FDOT Legal review

BY: (Signature) _____

DATE: _____

District Counsel

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

BY: (Signature) _____

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: (Signature) _____

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

RESOLUTION

UTILITY AGREEMENT

238394-2-58-01	Lake	500	1	3994 044 P

WHEREAS, the **State of Florida Department of Transportation**, hereinafter referred to as the **FDOT**, proposes to construct or reconstruct a transportation facility identified above, hereinafter referred to as the **Project**; and

WHEREAS, in order for the **FDOT** to proceed with the Project, it is necessary for City of Leesburg - Electric, hereinafter referred to as the **UAO**, to execute and deliver to the **FDOT** the agreement identified as Roadway Illumination Services Agreement, hereinafter referred to as the **Agreement**;

NOW, THEREFORE, BE IT RESOLVED BY THE UAO:

That **(Name)** _____, **(Title)** _____ hereby authorized and directed to execute and deliver the Agreement to the FDOT.

A certified copy of this Resolution shall be forwarded to the **FDOT** along with the executed Agreement.

ON MOTION of _____, seconded by _____, the above resolution was introduced and passed by the UAO on the ____ day of _____, 2010.

NAME: _____

Title: _____

ATTEST: _____

Title: _____