

**EXHIBIT "A"**  
**FY 18/19 FDOT WORK ORDER**

**STATE HIGHWAY LIGHTING MAINTENANCE, AND COMPENSATION  
AGREEMENT**

**Contract Number:** AM854  
**Maintaining Agency:** Manatee County  
**Financial Project No:** 412581-1-78-01  
**Effective Date:** July 1, 2018 – June 30, 2019

**1.0 PURPOSE**

This exhibit defines the method and limits of compensation to be made to the Maintaining Agency for the services described in the original agreement executed on December 9, 2002.

**2.0 COMPENSATION**

The Department will compensate each Maintaining Agency for maintenance of lights being maintained on state highways for FY 18/19 is 90% of the total number of lights at \$282.87 per light.

The current inventory of lights to be maintained by your agency for FY 18/19 is One Thousand Five Hundred Eighty Five (1585) at a cost of \$282.87 per light which brings the amount of compensation to \$403,514.06.

**3.0 PAYMENT PROCESSING**

The Maintaining Agency shall invoice the Department yearly for services rendered in a format acceptable to the Department.

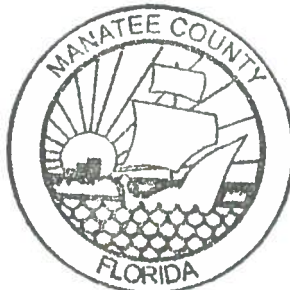
For Satisfactory completion of all services as detailed in the original agreement for this FY 18/19, the Department will pay the Maintaining Agency a Total Lump Sum of \$403,514.06.


By:   
Sharon Hedrick Harris  
m/ FDOT District Maintenance Administrator

By:   
Priscilla Trace, Chairman  
Manatee County, Board of Commissioners

Date: August 3, 2018

Date: 7/24/2018



ATTEST: MANATEE COUNTY  
CLERK OF CIRCUIT COURT AND  
COUNTY COMPTROLLER  
BY:   
DEPUTY CLERK

July 24, 2018 - Regular Meeting  
Agenda Item #52

Approved in Open Session 7/24/18,  
Manatee County  
Board of County Commissioners

Subject

Florida Department of Transportation Highway Lighting Maintenance and Compensation Agreement for FY 18/19

Briefings

None

Contact and/or Presenter Information

Aaron Burkett, Traffic Operations Division Manager, Ext. 7509

Action Requested

Authorize the Chair to execute the Annual Exhibit 'A' of the FDOT Highway Lighting Maintenance and Compensation Agreement with Florida Department of Transportation (FDOT) for FY 2018-2019.

Enabling/Regulating Authority

Florida Statute, Chapter 125 - County Government

Background Discussion

On September 17, 2002, the Board of County Commissioners adopted Resolution R-02-254 approving an agreement with the Florida Department of Transportation (FDOT) for the operation and maintenance of the street lights located on State Highways within the unincorporated portions of Manatee County. The Agreement requires the County to operate and maintain the street lights in compliance with the rules and standards of the FDOT in exchange for compensation to the County by a statewide formula developed by the FDOT. Each year the FDOT submits an Exhibit 'A' to the Agreement that sets forth the number of street lights and the amount of compensation due under the formula for the Board's review and approval. The Exhibit 'A' for the current FY 17/18 was approved by the Board during its regular meeting on June 20, 2017, in the amount of \$385,086.19. The FY 18/19 compensation is proposed at \$403,514.06.

County Attorney Review

Other (Requires explanation in field below)

Explanation of Other

Exhibit 'A' is the same form the County and the FDOT have been using since the original agreement was executed in 2002. The County Attorney's Office has noted several items in the Agreement Exhibit 'A' which they recommended the FDOT correct. Those items include the following:

- Correct numbered paragraph 1.a of the Agreement to state items included in the Exhibit 'A', not excluded.
- Update language in numbered paragraph 2.b on page 2 of the agreement to read the FDOT expressly authorized us to perform the maintenance within this document.
- Remove the language in Exhibit 'A' about 90% of the total number of lights being reimbursed, since that

is not specifically stated in the agreement.

- In the Exhibit 'A', replace "Department" with "FDOT".
- Revise the signature block to conform to the County's typical signature.

Staff shared the recommendations with the FDOT. While the FDOT is currently working on revising portions of the agreement to be presented at a later date, they have stated that these documents were approved by the FDOT's legal department and are applied state-wide. Moving forward with executing the current version of the agreement will ensure receiving compensation for FY 2018/2019. Public Works staff has reviewed the FY 18/19 Exhibit 'A' provided by FDOT and recommends authorization of the Chair to execute the Exhibit 'A' for the FY 18/19 Highway Lighting Maintenance and Compensation Agreement.

Reviewing Attorney  
D'Agostino

Instructions to Board Records

Please return 2 partially executed forms to Mary Moeller, Public Works Dept., for transmittal to the FDOT. A fully executed original will be returned to Board Records. **Distributed 7/27/18, RT**

Cost and Funds Source Account Number and Name

\$403,514.06 Payment to Manatee County/FDOT to 101-0020707 Traffic Operations

Amount and Frequency of Recurring Costs

N/A

Attachment: [Revised AM854 Manatee County FY 18-19 Exhibit A.pdf](#)

Attachment: [FY 17-18 FDOT Lighting Agreement Exhibit A full signature 06-23-17.pdf](#)

Attachment: [Response Memo to CAO Matter No. 2018-0248 dtd 5.31.18.pdf](#)

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**FY 18/19 FDOT WORK ORDER**

**STATE HIGHWAY LIGHTING MAINTENANCE, AND COMPENSATION  
AGREEMENT**

**Contract Number:** AM854  
**Maintaining Agency:** Manatee County  
**Financial Project No:** 412581-1-78-01  
**Effective Date:** July 1, 2018 – June 30, 2019

1.0 PURPOSE

This exhibit defines the method and limits of compensation to be made to the Maintaining Agency for the services described in the original agreement executed on December 9, 2002.

2.0 COMPENSATION

The Department will compensate each Maintaining Agency for maintenance of lights being maintained on state highways for FY 18/19 is 90% of the total number of lights at \$282.87 per light.

The current inventory of lights to be maintained by your agency for FY 18/19 is One Thousand Five Hundred Eighty Five (1585) at a cost of \$282.87 per light which brings the amount of compensation to \$403,514.06.

3.0 PAYMENT PROCESSING

The Maintaining Agency shall invoice the Department yearly for services rendered in a format acceptable to the Department.

For Satisfactory completion of all services as detailed in the original agreement for this FY 18/19, the Department will pay the Maintaining Agency a Total Lump Sum of \$403,514.06.

By: \_\_\_\_\_  
Sharon Hedrick Harris  
*mg* FDOT District Maintenance Administrator

By: \_\_\_\_\_  
Manatee County

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT "A"  
FY 17/18 FDOT WORK ORDER

STATE HIGHWAY LIGHTING MAINTENANCE, AND COMPENSATION  
AGREEMENT

Contract Number: AM854  
Maintaining Agency: Manatee County  
Financial Project No: 412581-1-78-01  
Effective Date: July 1, 2017 – June 30, 2018

1.0 PURPOSE

This exhibit defines the method and limits of compensation to be made to the Maintaining Agency for the services described in the original agreement executed on December 9, 2002.

2.0 COMPENSATION

The Department will compensate each Maintaining Agency for maintenance of lights being maintained on state highways for FY 17/18 is 90% of the total number of lights at \$274.63 per light.

The current inventory of lights to be maintained by your agency for FY 17/18 is One Thousand Five Hundred Fifty Eight (1558) at a cost of \$274.63 per light which brings the amount of compensation to \$385,086.19.

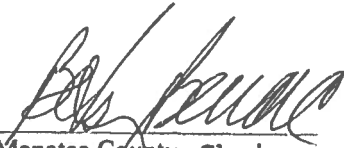
3.0 PAYMENT PROCESSING

The Maintaining Agency shall invoice the Department yearly for services rendered in a format acceptable to the Department.

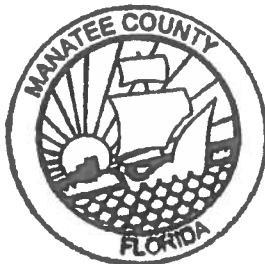
For Satisfactory completion of all services as detailed in the original agreement for this FY 17/18, the Department will pay the Maintaining Agency a Total Lump Sum of \$385,086.19.


By:   
Sharon Hedrick Harris  
FDOT District Maintenance Administrator

Date: 6/23/17

By:   
Manatee County Chairman  
Betsy Benac, Board of  
County Commissioners

Date: June 20, 2017



ATTEST: MANATEE COUNTY  
CLERK OF CIRCUIT COURT AND  
COUNTY COMPTROLLER  
BY:   
DEPUTY CLERK



## OFFICE OF THE COUNTY ATTORNEY

MITCHELL O. PALMER, COUNTY ATTORNEY\*  
William E. Clague, Assistant County Attorney  
Sarah A. Schenk, Assistant County Attorney\*\*  
Christopher M. De Carlo, Assistant County Attorney  
Geoffrey K. Nichols, Assistant County Attorney  
Pamela J. D'Agostino, Assistant County Attorney  
Anne M. Morris, Assistant County Attorney  
Katharine M. Zamboni, Assistant County Attorney  
Alexandria C. Nicodemi, Assistant County Attorney

### MEMORANDUM

DATE: May 31, 2018

TO: Sage Kamiya, P.E., PTOE, Deputy Director, Traffic Management, Public Works Department

THROUGH: Mitchell O. Palmer, County Attorney *MOP 5-31-18*

FROM: Pamela J. D'Agostino, Assistant County Attorney *PJD 5-31-2018*

RE: **State of Florida Department of Transportation Highway Lighting Maintenance and Compensation Agreement – FY18/19; CAO Matter No. 2018-0248**

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Issue Presented:

In this Request for Legal Services, you have asked the County Attorney's Office (CAO) to review an Exhibit A for fiscal year 2018-2019 for legal sufficiency. The function of this exhibit is to renew each fiscal year the terms of a Highway Lighting Maintenance and Compensation Agreement (Agreement) between Manatee County and the State of Florida Department of Transportation (FDOT).

Brief Answer:

I have reviewed the exhibit and find it deficient in various ways. This exhibit should be revised consistent with my advice previously provided by formal response memorandums found in CAO Matter Nos. 2016-0513 and 2017-0258 (attached).

\* Board Certified in Construction Law

\*\* Board Certified in City, County, & Local Government Law

Discussion:

For the past two (2) years, I have advised staff of the various deficiencies in the exhibit provided by FDOT and furnished staff with a revised exhibit. Unfortunately, the FDOT has refused to accept the revised exhibit and staff has, thus, presented the original exhibit prepared by the FDOT to the Board for consideration, which was ultimately accepted and approved. This exhibit remains deficient for all the reasons previously stated in the two (2) attached memorandums.

Conclusion:

The exhibit should be revised consistent with my prior advice, but the decision as to whether to accept the exhibit prepared by the FDOT is a business decision that the Board of County Commissioners of Manatee County, Florida, has the authority to make.

This completes my response to your Request for Legal Services. Please contact me if you have any questions or if I can be of further assistance.

Copies to:

Ed Hunzeker, County Administrator  
Dan Schlandt, Deputy County Administrator  
Cheri Coryea, Deputy County Administrator  
Chad Butzow, Interim Director, Public Works Department  
Francisca Backenstross, Senior Administrative Specialist, Public Works Department



## OFFICE OF THE COUNTY ATTORNEY

MITCHELL O. PALMER, COUNTY ATTORNEY\*  
William E. Clague, Assistant County Attorney  
Sarah A. Schenk, Assistant County Attorney\*\*  
Christopher M. De Carlo, Assistant County Attorney  
Geoffrey K. Nichols, Assistant County Attorney  
Pamela J. D'Agostino, Assistant County Attorney  
Anne M. Morris, Assistant County Attorney  
Katharine M. Zamboni, Assistant County Attorney  
Alexandria C. Nicodemi, Assistant County Attorney

### MEMORANDUM

DATE: June 8, 2017

TO: Sage Kamiya, P.E., PTOE, Deputy Director, Traffic Management, Public Works Department

THROUGH: Mitchell O. Palmer, County Attorney *MOP 6-9-17*

FROM: Pamela J. D'Agostino, Assistant County Attorney *PJD 6-8-2017*

RE: **State of Florida Department of Transportation Highway Lighting Maintenance and Compensation Agreement – FY17/18; CAO Matter No. 2017-0258**

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#### Issue Presented:

You have asked this office to review an Exhibit "A" for fiscal year 2017-2018 (hereinafter the Exhibit) for legal sufficiency. The function of this Exhibit is to renew each fiscal year the terms of a Highway Lighting Maintenance and Compensation Agreement (hereinafter the Agreement) between Manatee County and the State of Florida Department of Transportation (hereinafter the FDOT).

#### Brief Answer:

I have reviewed the Exhibit and have prepared, as I did last year, a revised Exhibit for staff. For the reasons explained below, which were the same reasons last year, the Exhibit is deficient in various ways. I recommend using the revised Exhibit instead.

\* Board Certified in Construction Law

\*\* Board Certified in City, County, & Local Government Law



Discussion:

According to numbered paragraph 1.a. of the Agreement, those systems listed in the Exhibit shall be excluded from the maintenance requirement. However, instead of listing what is excluded, the Exhibit lists what is included. The Exhibit, therefore, does not comply with the Agreement. I am confident, however, that since the Exhibit specifies that which the County will maintain, which is a better practice than listing what is excluded from the maintenance requirement, use of this language in the Exhibit has not increased the County's legal exposure in any way.

According to numbered paragraph 2.b. on page 2 of the Agreement, the FDOT is to issue a "work order confirming the amount and authorizing the performance of maintenance for each new fiscal year." This Exhibit is deficient in that it lacks any specific authorization from FDOT for the County to perform the maintenance. Fortunately, despite this deficiency, it could be argued that the Exhibit impliedly authorizes maintenance. Therefore, although the Exhibit is not legally sufficient, it will most likely still be interpreted as authorizing performance of maintenance. The FDOT should be willing to revise the Exhibit so that it expressly authorizes the County to perform the maintenance for this upcoming fiscal year.

The Compensation portion of the Exhibit is poorly written. Fortunately, the Exhibit states exactly the total lump sum to be paid by the FDOT to the County (\$385,086.19). However, the other language about 90% of the total number of lights at \$274.63 is confusing. There is an argument to be made that the total lump sum language trumps the other verbiage and eliminates any ambiguity with respect to payment. There is also an argument to be made that the other verbiage about percentages, number of lights, current inventory and cost per lights should not be overlooked to the extent that it conflicts, contradicts or cannot be reconciled with the total lump sum language. Any time that there is conflicting language within an agreement such as this which results in the ability to make more than one argument as to how to interpret the document, it is not legally sufficient. The FDOT should be willing to remove the superfluous language entirely or revise the language within this portion of the Exhibit to remove any confusion.

Throughout the Agreement the FDOT is referred to as the "FDOT." Yet in this Exhibit, the FDOT refers to itself as "the Department." The same term which was used in the Agreement should carry through to this Exhibit. The FDOT should be willing to revise the Exhibit so that it uses the same labels as were used in the Agreement to identify the parties.

The signature block within the Exhibit does not conform to the County's standards. The FDOT should be willing to revise this document to meet that which the County requests for this portion of the document.

Conclusion:

Last year, staff shared my revised Exhibit to this Agreement with the FDOT, who was unwilling to accept it despite acknowledging inconsistencies between the Agreement and the FDOT's version of the Exhibit. Despite that, I am again submitting to staff my revised Exhibit in the hopes that the FDOT will consider accepting this revised Exhibit. The decision as to whether to accept the Exhibit prepared by the FDOT is a business decision which the Board of County Commissioners has the authority to make.

This completes my response to your Request for Legal Services. Please contact me if you have any questions or if I can be of further assistance.

Copies to:

Ed Hunzeker, County Administrator  
Dan Schlandt, Deputy County Administrator  
Karen Windon, Deputy County Administrator  
Ron Schulhofer, Director, Public Works Department  
Michele Hummel, Senior Administrative Specialist, Public Works Department

**EXHIBIT "A"**  
**FY 17/18 FDOT WORK ORDER**

**STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION  
AGREEMENT**

**Contract Number:** AM854  
**Maintaining Agency:** Manatee County  
**Financial Project No.:** 412581-1-78-01  
**Effective Date:** July 1, 2017 to June 30, 2018 (hereinafter "FY 17/18")

1.0 PURPOSE

This exhibit defines the method and limits of compensation to be made to the Maintaining Agency for the services described in the original agreement executed on December 9, 2002.

2.0 AUTHORIZATION AND COMPENSATION

The FDOT authorizes the Maintaining Agency to perform maintenance for FY 17/18. The current inventory of lights to be maintained by the Maintaining Agency for FY 17/19 is ONE THOUSAND FIVE HUNDRED FIFTY-EIGHT (1,558). For satisfactory completion of all services as detailed in the original agreement for this FY 17/18, the FDOT agrees to pay to the Maintaining Agency a lump sum of THREE HUNDRED EIGHTY FIVE THOUSAND EIGHTY-SIX AND 19/100 DOLLARS (\$385,086.19). This lump sum represents NINETY percent (90%) of the total cost to maintain all ONE THOUSAND FIVE HUNDRED FIFTY-EIGHT (1,558) lights at a cost of TWO HUNDRED SEVENTY-FOUR AND 63/100 DOLLARS (\$274.63) per light.

3.0 PAYMENT PROCESSING

The Maintaining Agency shall invoice the FDOT yearly for services rendered in a format acceptable to the FDOT.

FDOT

Maintaining Agency  
**MANATEE COUNTY, a political  
subdivision of the State of Florida**

By: \_\_\_\_\_  
Sharon Hedrick Harris  
FDOT District Maintenance Administrator

By: **its Board of County Commissioners**

By: \_\_\_\_\_  
Chairperson

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST: ANGELINA COLONNESO  
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk



## OFFICE OF THE COUNTY ATTORNEY

MITCHELL O. PALMER, COUNTY ATTORNEY\*  
Robert M. Eschenfelder, Chief Assistant County Attorney  
William E. Clague, Assistant County Attorney  
Sarah A. Schenk, Assistant County Attorney\*\*  
Christopher M. De Carlo, Assistant County Attorney  
Geoffrey K. Nichols, Assistant County Attorney  
Pamela J. D'Agostino, Assistant County Attorney  
Anne M. Morris, Assistant County Attorney  
Katharine M. Zamboni, Assistant County Attorney

### MEMORANDUM

DATE: June 14, 2016

TO: Sage Kamiya, P.E., PTOE, Deputy Director, Traffic Management, Public Works Department

THROUGH: Mitchell O. Palmer, County Attorney *mop 6-16-16*

FROM: Pamela J. D'Agostino, Assistant County Attorney *PJD 6-14-2016*

RE: State of Florida Department of Transportation Highway Lighting Maintenance and Compensation Agreement – FY16-17; CAO Matter No. 2016-0513

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#### Issue Presented:

You have asked this office to review an Exhibit "A" for fiscal year 2016-2017 (hereinafter the Exhibit) for legal sufficiency. The function of this Exhibit is to renew each fiscal year the terms of a Highway Lighting Maintenance and Compensation Agreement (hereinafter the Agreement) between Manatee County and the State of Florida Department of Transportation (hereinafter the FDOT).

#### Brief Answer:

I have reviewed the Exhibit and have prepared a revised Exhibit for staff. For the reasons explained below the Exhibit is deficient in various ways. I recommend using the revised Exhibit instead.

#### Discussion:

According to numbered paragraph 1.a. of the Agreement, those systems listed in the Exhibit shall be excluded from the maintenance requirement. However, instead of listing what is

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excluded, the Exhibit lists what is included. The Exhibit, therefore, does not comply with the Agreement. I am confident, however, that since the Exhibit specifies that which the County will maintain, which is a better practice than listing what is excluded from the maintenance requirement, use of this language in the Exhibit has not increased the County's legal exposure in any way.

According to numbered paragraph 2.b. on page 2 of the Agreement, the FDOT is to issue a "work order confirming the amount and authorizing the performance of maintenance for each new fiscal year." This Exhibit is deficient in that it lacks any specific authorization from FDOT for the County to perform the maintenance. Fortunately, despite this deficiency, it could be argued that the Exhibit impliedly authorizes maintenance. Therefore, although the Exhibit is not legally sufficient, it will most likely still be interpreted as authorizing performance of maintenance. The FDOT should be willing to revise the Exhibit so that it expressly authorizes the County to perform the maintenance for this upcoming fiscal year.

The Compensation portion of the Exhibit is poorly written. Fortunately, the Exhibit states exactly the total lump sum to be paid by the FDOT to the County (\$344,832.58). However, the other language about 90% of the total number of lights at \$266.63 is confusing. There is an argument to be made that the total lump sum language trumps the other verbiage and eliminates any ambiguity with respect to payment. There is also an argument to be made that the other verbiage about percentages, number of lights, current inventory and cost per lights should not be overlooked to the extent that it conflicts, contradicts or cannot be reconciled with the total lump sum language. Any time that there is conflicting language within an agreement such as this which results in the ability to make more than one argument as to how to interpret the document, it is not legally sufficient. The FDOT should be willing to remove the superfluous language entirely or revise the language within this portion of the Exhibit to remove any confusion.

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The signature block within the Exhibit does not conform to the County's standards. The FDOT should be willing to revise this document to meet that which the County requests for this portion of the document.

Conclusion:

Staff has shared the revised Exhibit with FDOT. FDOT is unwilling to accept the revised Exhibit despite acknowledging inconsistencies between the Agreement and Exhibit proposed by

Sage Kamiya, P.E., PTOE, Deputy Director, Traffic Management, Public Works Department  
June 14, 2016  
Page 3 of 3

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FDOT. The decision as to whether to accept the Exhibit prepared by the FDOT is a business decision which the Board of County Commissioners has the authority to make.

This completes my response to your Request for Legal Services. Please contact me if you have any questions or if I can be of further assistance.

Copies to:

Ed Hunzeker, County Administrator  
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Karen Windon, Deputy County Administrator  
Ron Schulhofer, Director, Public Works Department  
Michele Hummel, Senior Administrative Specialist, Public Works Department