

**JOINT PROJECT AGREEMENT  
BETWEEN THE  
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
CITY OF NAPLES**

This is an Agreement by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, (hereinafter, "DEPARTMENT") and CITY OF NAPLES, FLORIDA, (hereinafter, "CITY ") for the DEPARTMENT to provide funds to refurbish color coating through an approved restoration process on existing signal poles and mast arms at various locations.

**W I T N E S S E T H**

1. WHEREAS, the DEPARTMENT plans in its work program to fund in FY 09/10 to refurbish color coating through an approved restoration process on existing signal poles and mast arms at various locations **FM# 195403 4 58 01** (hereinafter, "PROJECT"); and
2. WHEREAS, said PROJECT is on the State Highway System, is not revenue producing and is contained in the tentative Five Year Transportation Plan in FY 09/10; and
3. WHEREAS, the CITY is willing to undertake the PROJECT and the DEPARTMENT is willing to reimburse the CITY for costs directly related to completion of the PROJECT as described herein; and
4. WHEREAS, the CITY by Resolution No. \_\_\_\_\_ dated the \_\_\_ day of \_\_\_\_\_, 2009, a copy of which is attached hereto and made a part hereof, has authorized the City Manager or designee to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual benefits to be derived from joint participation in this Agreement, the parties agree as follows:

**I. SERVICES AND PERFORMANCE**

- 1) The CITY agrees to undertake the PROJECT and the DEPARTMENT agrees to reimburse the CITY for said services, as stated in Section II below, provided they are performed in accordance with the DEPARTMENT's specifications and the terms and conditions of this Agreement.
- 2) The CITY shall complete the PROJECT within 12 months from the execution of this Agreement.
- 3) The PROJECT consists of refurbishing color coating through an approved restoration process on 6 existing signal poles and 4 mast arms on US 41 from 7<sup>th</sup> & 4<sup>th</sup> Avenue North to 3<sup>rd</sup> & 5<sup>th</sup> Avenue South. Restoration to newly installed mast arms that were scratched and primed with gray spots. Technical problems to be addressed include: adjustments of signal heads, tightening of astro-brackets, and misplaced lightning shields.
- 4) The CITY agrees to undertake the PROJECT, with its own forces or through a contractor, in accordance with DEPARTMENT's standards, specifications, permit requirements, and all applicable federal, state and local statutes, rules and regulations.

- 5) All tracings, plans, specifications, maps and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the DEPARTMENT without restriction or limitation on their use. The DEPARTMENT will have the right to visit the PROJECT site for inspection of the work and the drawings at any time.
- 6) The CITY 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 CITY in conjunction with this Agreement. Failure by the CITY to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.
- 7) All notices under this Agreement and invoices from the CITY to the DEPARTMENT shall be directed to the following addresses:

**TO DEPARTMENT:**

Florida Department of Transportation  
Keith Slater, Project Manager  
801 North Broadway  
Bartow, FL 33830

**TO CITY :**

Gregg Strakaluse, Engineering Manager  
City of Naples  
295 Riverside Circle  
Naples, FL 34102

## II. PAYMENT TERMS

- 1) The DEPARTMENT agrees to a maximum participation in the PROJECT in the amount of **SIXTY THOUSAND SIX HUNDRED DOLLARS (\$60,600.00)**.
- 2) The DEPARTMENT agrees to reimburse the CITY for the herein described services at the compensation amount as detailed in this Agreement. The CITY agrees to complete the PROJECT for the amount set forth in this Agreement.
- 3) The DEPARTMENT agrees to make reimbursement payments to the CITY in accordance with Fla. Stat. §339.12; the DEPARTMENT'S obligation to pay shall be subject to legislative approval and appropriation. In the event the CITY proceeds with the PROJECT with its own forces, the CITY will only be reimbursed for direct costs (this excludes general and administrative overhead).
- 4) The CITY agrees to the following time frames: (1) upon receipt, the DEPARTMENT has five (5) working days to inspect and approve the goods and services, unless the Agreement specifies otherwise; (2) the DEPARTMENT has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance; (3) the 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
- 5) If a payment is not available within 40 days, a separate interest penalty at the rate established pursuant to Fla. Stat. §55.03(1), per day will be due and payable, in addition to the invoice amount, to the Vendor. Interest penalties of less than one (1) dollar will not be enforced unless the CITY requests payment. Invoices which have to be returned to the CITY because of the CITY '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 DEPARTMENT.

- 6) A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for the CITY if it experiences problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the Department of Financial Services Hotline, 1-800-848-3792.
- 7) Invoices or requests for payment from the CITY shall be submitted quarterly in detail sufficient for a proper pre-audit and post-audit thereof and in sufficient detail for the DEPARTMENT to confirm the extent of work completed and compliance of such work with the terms of this Agreement.
- 8) Bills or invoices for travel expenses, if applicable, specifically authorized in this Agreement shall be submitted and paid in accordance with Fla. Stat. §112.061.
- 9) Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for three years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include any consultant's or contractor's general accounting records and the project records, together with supporting documents and records, of any consultant or contractor and all sub-consultants or sub-contractors performing work on the PROJECT, and all other records of the PROJECT considered necessary by the DEPARTMENT for a proper audit of costs.
- 10) The DEPARTMENT, 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 DEPARTMENT shall require a statement from the Comptroller of the DEPARTMENT 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 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. Accordingly, the State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.
- 11) No funds received pursuant to this Agreement may be expended for lobbying the Legislature or a state agency.

### **III. GENERAL PROVISIONS**

- 1) This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall

be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

- 2) Unless otherwise specifically stated herein, this Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- 3) Except as otherwise provided herein, this Agreement shall continue in effect and be binding on the parties until the PROJECT is completed, final costs are known and legislatively appropriated reimbursements, if approved, are made by the DEPARTMENT.
- 4) If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect provided that the part of this Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.
- 5) The CITY shall not sublet, assign or transfer any work under this Agreement without the prior written consent of the DEPARTMENT.
- 6) 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 Fla. Stat. §287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- 7) 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.

#### **IV. TERMINATION**

- 1) The DEPARTMENT reserves the right to seek termination or cancellation of this Agreement in the event the CITY shall be placed in either voluntary or involuntary bankruptcy. The DEPARTMENT further reserves the right to terminate or cancel this Agreement in the event an assignment be made for the benefit of creditors.
- 2) If the DEPARTMENT determines that the performance of the CITY is not satisfactory, the DEPARTMENT shall have the option of (i) immediately terminating the Agreement, or (ii) notifying the CITY of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (iii) take whatever action is deemed appropriate by the DEPARTMENT.

- 3) In no event shall the making by the DEPARTMENT of any payment to the CITY constitute or be construed as a waiver by the DEPARTMENT of any breach of covenant or any default which may then exist, on the part of the CITY , and the making of such payment by the DEPARTMENT while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the DEPARTMENT with respect to such breach or default.
- 4) If the DEPARTMENT requires termination of the Agreement for reasons other than unsatisfactory performance of the CITY, the DEPARTMENT shall notify the CITY of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- 5) If the Agreement is terminated before performance is completed, the CITY shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress will become the property of the DEPARTMENT and will be turned over promptly by the CITY.

## **V. INDEMNITY**

- 1) When either party receives notice of claim for damages that may have been caused by the other party in the performance of services required under this Agreement, that party will immediately forward the claim to the other party. Each party will evaluate the claim, and report its findings to each other within fourteen (14) working days and jointly discuss options in defending the claim. A party's failure to promptly notify the other of a claim will not act as a waiver of any right herein.
- 2) The CITY agrees to include the following indemnification provision in all contracts with contractors/sub-contractors and consultants/sub-consultants who perform work in connection with this Agreement:

"The contractor shall indemnify, defend, save and hold harmless the DEPARTMENT and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor, its officers, agents or employees. Neither the contractor, nor any of its officers, agents or employees will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of the DEPARTMENT or any of its officers, agents or employees."
- 3) Nothing in this Agreement shall be construed as a waiver of the defense of sovereign immunity or any limit of liability pursuant thereto by either the DEPARTMENT or the CITY
- 4) The DEPARTMENT shall not be obligated or liable hereunder to any party other than the CITY.

## VI. AUDITS

- 1) Audits: The administration of resources awarded by the DEPARTMENT to the CITY may be subject to audits and/or monitoring by the Department, as described in this section.
- 2) MONITORING
  - A. By entering into this agreement, the CITY agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the DEPARTMENT. In the event the DEPARTMENT determines that a limited scope audit of the recipient is appropriate, the CITY agrees to comply with any additional instructions provided by the DEPARTMENT staff to the CITY regarding such audit. The CITY further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.
- 3) PART I: STATE FUNDED
  - A. The CITY as a recipients of state funds pursuant to Fla. Stat. §215.97(2)(m), i.e., a non-state entity as defined by Fla. Stat. §215.97(2)(m), is to have audits done annually using the following criteria:
  - B. Fla. Stat. §215.97 (2) (a): Each nonstate entity that expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such nonstate entity shall be required to have a state single audit, or a project-specific audit, for such fiscal year in accordance with the requirements of this section and applicable rules of the Executive Office of the Governor and the CFO; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements.
  - C. In connection with the audit requirements addressed in A above, the CITY shall ensure that the audit complies with the requirements of Fla. Stat. §215.97(7). This includes submission of a financial reporting package as defined by Fla. Stat. §215.97(2)(d), and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
  - D. If the CITY expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Fla. Stat. §215.97 is not required. In the event that the recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Fla. Stat. §215.97, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

- E. State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

4) PART II: OTHER AUDIT REQUIREMENTS

- A. The CITY shall follow up and take corrective action on audit findings. Preparation of a summary schedule of prior year audit findings, including corrective action and current status of the audit findings is required. Current year audit findings require corrective action and status of findings.
- B. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and audit work papers shall be given to the DEPARTMENT, the Comptroller, and the Auditor General. This section does not limit the authority of the DEPARTMENT to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

5) PART III: REPORT SUBMISSION

- A. Any reports, management letter, or other information required to be submitted to the DEPARTMENT pursuant to this Agreement shall be submitted timely in accordance, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- B. Recipients, when submitting financial reporting packages to the DEPARTMENT for audits done in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.
- C. The documents listed below in (a) and (b) shall be submitted to the DEPARTMENT:

Florida Department of Transportation  
Attn: Karen A. Miracola, District JPA/LFA Coordinator  
PO Box 1030  
Fort Myers, FL 33902-1030

- (a) Copies of financial reporting packages required herein by Florida Statutes.
- (b) Copies of reports or the management letter required herein by Florida Statutes.
- D. The documents listed above in (a) and (b) shall be submitted to the Auditor General's Office:

Auditor General's Office  
Room 401, Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

6) PART IV: RECORD RETENTION

- A. The CITY shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of at least five years from the date the audit report is issued, and shall allow the DEPARTMENT, or its designee, the state CFO or Auditor General access to such records upon request. The CITY shall ensure that the independent audit working papers are made available to the DEPARTMENT, or its designee, the state CFO, or Auditor General upon request for a period of at least five years from the date the audit report is issued, unless extended in writing by the DEPARTMENT.

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IN WITNESS WHEREOF, CITY OF NAPLES has caused this Agreement to be executed in its behalf, by the City Manager or its Designee, as authorized by resolution #.\_\_\_\_\_, and the FLORIDA DEPARTMENT OF TRANSPORTATION has caused this Agreement to be executed in its behalf through its District Secretary or authorized Designee: This Agreement shall become effective on:

\_\_\_\_\_  
Date to be entered by the DEPARTMENT

**CITY OF NAPLES , FLORIDA**

ATTEST

\_\_\_\_\_  
CLERK

(SEAL)

\_\_\_\_\_  
CITY MANAGER OR DESIGNEE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
DATE

CITY OF NAPLES : LEGAL REVIEW:

BY:

\_\_\_\_\_  
DATE

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**

ATTEST

\_\_\_\_\_  
EXECUTIVE SECRETARY

(SEAL)

BY:

\_\_\_\_\_  
DISTRICT SECRETARY OR DESIGNEE  
DISTRICT ONE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
DATE

FLA. DEPT. OF TRANS. LEGAL REVIEW:

BY:

\_\_\_\_\_  
DATE