

Agenda Item Summary

1. **ACTION REQUESTED/PURPOSE:** Approve the Interlocal Agreement for a Roadway Lighting System Maintenance Agreement with the City of Bonita Springs on Livingston - Imperial Road.

2. **WHAT ACTION ACCOMPLISHES:** Interlocal Agreement will outline the responsibilities for maintenance of the Roadway Lighting System on Livingston - Imperial Road.

3. **MANAGEMENT RECOMMENDATION:** Approve Interlocal Agreement

4. Departmental Category: C9A 5. Meeting Date: **October 3, 2006**

6. Agenda:		7. Requirement/Purpose: (specify)		8. Request Initiated:	
<input checked="" type="checkbox"/> Consent		<input type="checkbox"/> Statute		Commissioner	
<input type="checkbox"/> Administrative		<input type="checkbox"/> Ordinance		Department	<u>Department of</u>
<input type="checkbox"/> Appeals		<input type="checkbox"/> Admin. Code		Division	<u>Transportation</u>
<input type="checkbox"/> Public		<input type="checkbox"/> Other		By:	<u>Scott Gilbertson, P.E.</u>
<input type="checkbox"/> Walk-On					<u>Director</u>

9. **Background:**

The City of Bonita Springs requested to enter into an agreement with Lee County for the maintenance of decorative lighting along Livingston - Imperial Road. The City has agreed, at its sole cost and expense, to maintain this decorative lighting system. The City shall perform all activities necessary to keep this system fully and properly functioning at all times. Maintenance shall include, but not be limited to, routine inspection and testing, preventative maintenance, emergency maintenance, and replacement of any component part of the system. This agreement is consistent with similar agreements with Cities and with County policy regarding street lighting that exceeds the County's Core Service Level. The City of Bonita Springs is scheduled to approve this Interlocal Agreement on September 20, 2006.

10. **Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
<u>9/14/06</u>	<u>9/14/06</u>			<u>9/12/06</u>	Analyst	Risk	Grants	Mgr.	<u>9.14.06</u>
<u>[Signature]</u>	<u>N/A CL</u>			<u>[Signature]</u>	<u>RK 9/18</u>	<u>[Signature]</u>	<u>RK 9/18</u>	<u>[Signature]</u>	<u>[Signature]</u>

11. **Commission Action:**

Approved

Deferred

Denied

Other

RECEIVED BY COUNTY ADMIN: [Signature]  
 9/15/06 1:35 mp.  
 COUNTY ADMIN FORWARDED TO: [Signature]  
 9/19/06  
 spm

**INTERLOCAL AGREEMENT  
ROADWAY LIGHTING SYSTEM, MAINTENANCE AGREEMENT  
LIVINGSTON – IMPERIAL ROAD**

THIS INTERLOCAL AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as "County", and the City of Bonita Springs, a Florida municipal corporation, of the State of Florida, hereinafter referred to as "City".

WITNESSETH:

WHEREAS, there exists or is about to be installed on the Lee County highway system a lighting system more particularly described in Exhibit "A" attached hereto, and by this reference made a part hereof, hereafter referred to as the "Roadway Lighting System", and

WHEREAS, Lee County and the City of Bonita Springs desire to enter into an Agreement outlining the responsibilities for maintenance of the Roadway Lighting System; and

WHEREAS, the City and County are duly empowered pursuant to Florida Statutes §163.01, to enter into Interlocal Agreement for the sharing of certain governmental powers and obligations.

NOW THEREFORE, in consideration of the foregoing, and the mutual covenants hereinafter contained, the County and City hereby agree as follows:

1. Maintenance of the Roadway Lighting System
  - a. The City 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 City 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) Manual of Uniform Traffic Control Devices and Safe Procedures for Streets and Highway Construction; and
- (2) 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 City 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. The City 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 Lee County. 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 City breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, the County may exercise one or more of the following options, provided that at no time shall the County be entitled to receive double recovery of damages.

- a. Pursue a claim for damages suffered by the County or the public.
- b. Suspend the issuance of further permits to the City for the placement of facilities on County property if the breach is material and has not been cured within sixty (60) days from written notice thereof from County 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 City.
- e. Require the City to remove the Roadway Lighting System at the City's sole cost and expense.

5. Indemnification. The City agrees to indemnify, defend and hold the County harmless from any and all claims, suits, judgments, damages, losses and expenses, including court costs, expert witness and professional consultation services, and attorneys' fees arising out of any errors, omissions, and/or negligence of the City, its employees, agents or representatives during the term of this agreement. The City

shall not be liable to, nor be required to indemnify the County for any damages arising out of any error, omission, and/or negligence of the County, its employees, agents or representatives. This Section shall not be interpreted to be a waiver of sovereign immunity by the City or the County and this agreement is in accordance with the general laws of the State of Florida and subject to the limitations as set out in Florida Statutes §768.28, as it may be revised or amended from time to time.

6. Force Majeure. Neither the City nor the County 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 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.
- b. Time is of the essence in the performance of all obligations under this Agreement.
- c. 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. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to City of Bonita Springs:

City Manager  
City of Bonita Springs  
9101 Bonita Beach Road,  
Bonita Springs, Florida 34135

With a copy to City Attorney

If to Lee County:

County Manager

Lee County Board of County Commissioners  
Post Office Box 398  
Fort Myers, Florida 33902-0398

With a copy to County Attorney.

8. Term of Agreement. The term of this Agreement shall be from the date first written above, and shall continue for a period of "X" years or until the lights are discontinued, whichever later occurs.

9. Termination. Either party may terminate this Agreement by giving the other Party ninety (90) days written notice. In the event of termination by the City of Bonita Springs, Lee County may install different lights so as to provide only its core level of service, billing the City of Bonita Springs for removal of actual costs. In the event of termination by Lee County, the termination shall specify that the City of Bonita Springs may relocate the existing lights at its own expense, with Lee County to install different lights so as to provide its core level of service within thirty (30) days of the City's relocation of the existing lights.

10. Amendments. This Agreement may only be amended by written amendment signed by both the City and the County. Such amendments shall be incorporated into the body of this original Agreement and attached hereto. All other provisions of the original Agreement will remain in full force and effect.

11. Governing Laws. This Agreement shall be controlled and interpreted according to the laws, rules and regulations of the State of Florida.

12. Effective Date. This Agreement shall become effective on the date written above. This Agreement, and any subsequent amendments thereto, shall be filed with the Clerk of the Circuit Court for Lee County.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers and their official seals affixed hereto, on the day and year as first written above.

Attest:

CITY OF BONITA SPRINGS

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor Jay Arend

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
City Attorney

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

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

By: \_\_\_\_\_  
Chairwoman Tamara Hall

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_  
Lee County Attorneys Office

**EXHIBIT A  
INTERLOCAL AGREEMENT  
ROADWAY LIGHTING SYSTEM, MAINTENANCE AGREEMENT  
LIVINGSTON-IMPERIAL ROAD**

