

SECTION No: 86050000
PERMIT No: 2022-C-491-00010
COUNTY: BROWARD
S.R. No: A1A

**FLORIDA DEPARTMENT OF TRANSPORTATION - DISTRICT FOUR
MAINTENANCE MEMORANDUM OF AGREEMENT (MMA)**

THIS AGREEMENT made and entered into on _____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the "**DEPARTMENT**", and the **CITY OF POMPANO BEACH**, a municipal corporation existing under the Laws of Florida, hereinafter called the "**AGENCY**".

WITNESSETH:

WHEREAS, the **DEPARTMENT** has jurisdiction over State Road (SR) A1A and

WHEREAS, as part of the continual updating of the State of Florida Highway System, the **DEPARTMENT**, for the purpose of safety, protection of the investment and other reasons, has constructed and does maintain SR A1A; and

WHEREAS, the **AGENCY** seeks to install and have maintained by the **AGENCY** certain highway and pedestrian **IMPROVEMENTS**, specifically solar-powered in-road midblock crosswalk lighting assemblies, including but not limited to batteries, components, control cabinets, poles and panels, within the right-of-way of State Road A1A as described within **EXHIBIT A** (Project Location, Description and Location Map), within the corporate limits of the **AGENCY**; and

WHEREAS, it is the intent of the **AGENCY** and the **DEPARTMENT** that the **AGENCY** shall construct, and the **AGENCY** shall maintain all existing and new solar-powered in-road midblock crosswalk lighting assemblies, including but not limited to batteries, components, control cabinets, poles and panels **PERMIT NO. 2022-C-491-00010**, along SR A1A from M.P. 9.890 to M.P. 12.025, as detailed in **EXHIBIT A** ; and

WHEREAS, the Project involves the scope of work as described within **EXHIBIT A, EXHIBIT B** (Plans), which will benefit the **AGENCY**; and

WHEREAS the parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party; and

WHEREAS the **AGENCY** by Resolution Number _____ entered into this date _____, attached hereto and by this reference made a part hereof, desires to enter into this Agreement and authorizes its officers to do so.

NOW THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. RECITALS

The recitals set forth above are true and correct and are deemed incorporated herein.

2. INSTALLATION OF FACILITIES

A. The **AGENCY** shall construct, under **Permit No. 2022-C-491-00010**, the **IMPROVEMENTS** as detailed in **EXHIBIT A** and **EXHIBIT B** that will benefit the **AGENCY**. The **AGENCY** agrees to maintain the **IMPROVEMENTS** within the corporate limits of the **AGENCY**; and

- 1) All activities, including the **IMPROVEMENTS** installation and future maintenance operations performed on State highway right of way, must be in conformity with the most current edition of the *Manual on Uniform Traffic Control* (MUTCD) and *FDOT Traffic Control through Work Zones*.
- 2) The most current edition of *FDOT Standard Plans* (Sight Distance at Intersections) must be adhered to.
- 3) Lateral Offsets as specified in the *FDOT Plans Preparation Manual*, Volume 1, Chapters 2 and 4 must be adhered to.
- 4) **IMPROVEMENTS** shall not obstruct roadside signs or permitted outdoor advertising signs, (see Florida Administrative Code [F.A.C.] Rule Chapter 14-10.)
- 5) The **AGENCY** shall provide the local FDOT Operation Center, located at FDOT Operation Center located at Broward Operations, 5548 NW 9th Ave., Ft. Lauderdale, Florida 33309, (954) 776-4300, a twenty-four (24) hour telephone number and the name of a responsible person that the **DEPARTMENT** may contact. The **AGENCY** shall notify the local maintenance office forty-eight (48) hours prior to the start of the lighting **IMPROVEMENTS**.
- 6) If there is a need to restrict the normal flow of traffic, it shall be done on non-holiday, weekday off-peak hours (9 AM to 3 PM), and the party performing such work shall give notice to the local law enforcement agency within whose jurisdiction such road is located prior to commencing work on the **IMPROVEMENTS**. The **DEPARTMENT'S** Operation Center Public Information Officer (see telephone number in Paragraph 5 above) shall also be notified.
- 7) The **AGENCY** shall be responsible to clear all utilities within the improvement limits before construction commences.
- 8) The **AGENCY** shall be solely responsible for any damages to surrounding property, real estate, vehicles, pedestrians, or other assets occurring as a result of installation operations and shall repair such damage to the satisfaction of the **DEPARTMENT** at no expense to the **DEPARTMENT**.

3. MAINTENANCE OF FACILITIES

It is understood and agreed by the parties that upon completion of the project, the **AGENCY** shall be responsible for maintenance of the **IMPROVEMENTS** in accordance with **DEPARTMENT** Procedures, Standards and Specification. In event of a conflict between documents, standards and procedures the more stringent may apply; Maintenance by the **AGENCY** will include inspection, repair, restoration, replacement, and general maintenance of all **IMPROVEMENTS** as described in **EXHIBIT B** within the limits of construction as detailed in **EXHIBIT A**. Maintenance shall be as indicated below and in accordance with **EXHIBIT C** (Maintenance Plan Requirements). Maintenance shall also include the following:

- 1) The **AGENCY** agrees to maintain, at its sole cost and expense, the **IMPROVEMENTS** set forth in **Exhibit A** and **Exhibit B** in compliance with any and all applicable laws which shall include, but not be limited to, laws and regulations relating to the Americans with Disabilities Act ("ADA") of 1990, as currently enacted or as may be amended from time to time.
- 2) The **IMPROVEMENTS** shall be kept clean and free from trash and debris. The **IMPROVEMENTS** shall be kept free of graffiti. The **IMPROVEMENTS** shall be free of pests such as stinging insects, rodents, and vermin, including removal of nests as needed.
- 3) As part of the maintenance responsibility, the **AGENCY** shall keep in good repair and replace, defective or worn-out parts of the **IMPROVEMENTS**. The **AGENCY's** responsibility to keep the **IMPROVEMENTS** in good repair shall include all necessary inspection, maintenance, repair and replacement of any type or nature, including, but not limited to, inspection, maintenance, repair, and replacement due to normal wear and tear, named storm event, acts of God, vandalism, and accidents. The **AGENCY** shall take all necessary steps to maintain the **IMPROVEMENTS** in a manner to protect against injury to any person or property.
- 4) The **AGENCY** shall perform all activities necessary to keep the **IMPROVEMENTS** fully operating, properly functioning, with a minimum of 90% of the lights burning for any lighting type or roadway system at all times 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 **IMPROVEMENTS**, as may be necessary.
- 5) The above-named functions to be performed by the **AGENCY** may be subject to periodic inspections by the **DEPARTMENT** at the discretion of the **DEPARTMENT**. Such inspection findings will be shared with the **AGENCY** and shall be the basis of all decisions regarding, reworking relating to the maintenance obligation / function or **AGREEMENT** termination.
- 6) The **AGENCY** shall be solely responsible for any damages to surrounding property, real estate, vehicles, pedestrians, or other assets occurring as a result of maintenance and operation of the **IMPROVEMENTS** and shall repair such damage to the satisfaction of the **DEPARTMENT** at no expense to the **DEPARTMENT**, as per the requirements in **Exhibit C** (Maintenance Plan Requirements).

B. The **AGENCY** shall be responsible to maintain **IMPROVEMENTS** including but not limited to electrical components, solar panels and batteries. Batteries should be replaced every 10 years or when necessary. The **AGENCY** shall replace the structure if destroyed in an accident by third parties. The **AGENCY** shall comply with all ADA Laws existing and as may be amended. Adjacent sidewalk areas shall be always accessible. If sidewalk closures are needed, alternate routes shall be clearly identified, and missing sidewalk shall be restored either with permanent or temporary materials at the end of each workday.

C. All **IMPROVEMENTS** shall at all times have a notification sign posted with the name and phone number of the department within the **AGENCY** responsible for maintenance of the **IMPROVEMENTS** so that members of the public may contact **AGENCY** regarding problems with the **IMPROVEMENTS**. The **AGENCY** shall promptly respond and correct all complaints regarding maintenance. The **IMPROVEMENTS** to be constructed with this project shall not contain advertising. Nor shall advertising be placed upon them by any party in the future.

D. The **AGENCY** shall be responsible for maintenance of the Project in accordance with the following Federally and State accepted standards (current editions at the time of execution of this **AGREEMENT** and any amendments hereafter) and all costs related thereto: (a) FDOT Design Manual (FDM), (b) Florida Green Book, (c) Standard Specifications for Roadway and Bridge Construction, (d) FDOT Standard Plans, (e) Manual on Uniform Traffic Control Devices (MUTCD), and (f) all other applicable local, state, or federal laws, rules, resolutions, or ordinances, and FDOT procedures. In the event of a conflict between documents, standards, and procedures the more stringent shall apply.

E. If it becomes necessary to provide utilities (electricity) to these **IMPROVEMENTS**, all cost associated with the utilities, accent lighting and/or irrigation systems including but not limited to the impact and connection fees, and the on-going cost utility usage for electrical, are the maintaining **AGENCY's** responsibility.

- 1) The **AGENCY** shall be directly responsible for impact connection fees

AND

- 2) The **AGENCY** shall become responsible for the above-named **IMPROVEMENTS** and ongoing utility costs upon final acceptance of the construction project by the **DEPARTMENT** and thereafter.

F. Any work impacting traffic flow along SR A1A or adjacent roadways, must be coordinated with the **DEPARTMENT**. Lane closures must be submitted for approval in accordance with **DEPARTMENT** procedures and policies and will meet the goals established in the **DEPARTMENT's** Open Roads Policy.

4. NOTICE OF MAINTENANCE DEFICIENCIES

- A. If, at any time while the terms of this **AGREEMENT** are in effect, it shall come to the attention of the **DEPARTMENT** that the **AGENCY's** responsibility as established herein or a part thereof is not being properly accomplished pursuant to the terms of this **AGREEMENT**, the **DEPARTMENT** may issue a written notice, that a deficiency or deficiencies exist(s), by sending a certified letter to the **AGENCY**, in care of the **TOWN OF SOUTH PALM BEACH MANAGER**, to place the **AGENCY** on notice regarding its maintenance deficiencies. Thereafter, the **AGENCY** shall have a period of sixty (60) days within which to correct the cited deficiency or deficiencies. If said deficiencies are not corrected within the time period, the **DEPARTMENT** may, at its option, proceed under one or more or a combination of the following items:

- 1) The **DEPARTMENT** may repair any item or a number of items. Corrective actions will be performed with the **DEPARTMENT** and/or its independent contractor's materials, equipment, and personnel. The actual cost for such work will be charged to the **AGENCY**.
- 2) The **DEPARTMENT** may remove or replace any item or number of items with the standard **DEPARTMENT** item. Corrective actions will be performed with the **DEPARTMENT** and/or its independent contractor's materials, equipment, and personnel. The actual cost for such work will be charged to the **AGENCY**.
- 3) If there is no standard equivalent item or if in the **DEPARTMENT's** discretion the item is not necessary for the operations of the roadway, the **DEPARTMENT** may remove the item in its entirety and restore the area to a condition acceptable to the **DEPARTMENT**. Corrective actions will be performed with the **DEPARTMENT** and/or its independent contractor's materials, equipment, and personnel. The actual cost for such work will be charged to the **AGENCY**.
- 4) At the discretion of the **DEPARTMENT**, terminate the Agreement in accordance with Section 7 of this Agreement and remove, by the **DEPARTMENT** or its Contractor's personnel, all the **IMPROVEMENTS** installed under this Agreement and charge the **AGENCY** the reasonable cost of such removal.

5. FUTURE DEPARTMENT IMPROVEMENTS

It is understood between the parties hereto that the **IMPROVEMENTS** covered by this Agreement may be removed, relocated, or adjusted at any time in the future as determined to be necessary by the **DEPARTMENT** in order that the adjacent state road be widened, altered, or otherwise changed to meet with future criteria or planning of the **DEPARTMENT**.

6. FUTURE AGENCY IMPROVEMENTS

The **AGENCY** may construct additional **IMPROVEMENTS** within the limits of the rights of ways identified as a result of this document, subject to the following conditions:

- A. Plans for any new **IMPROVEMENTS** shall be subject to approval by the **DEPARTMENT**. The **AGENCY** shall not change or deviate from said plans without written approval by the **DEPARTMENT**.
- B. The **AGENCY** shall procure a permit and/or Construction Agreement from the **DEPARTMENT**, as appropriate.
- C. All **IMPROVEMENTS** shall be developed and implemented in accordance with appropriate state safety and roadway design standards.
- D. The **AGENCY** agrees to comply with the requirements of this Agreement with regard to any additional **IMPROVEMENTS** installed at no cost to the **DEPARTMENT**.

7. AGREEMENT TERMINATION

This Agreement may be terminated under any one (1) of the following conditions:

- A. By the **DEPARTMENT**, if the **AGENCY** fails to perform its duties under this Agreement, following ten (10) days written notice. The **AGENCY** shall reimburse the **DEPARTMENT** for any expenditures for the installation of said **IMPROVEMENTS** and the cost to remove and or replace said improvement with the standard improvement or remove in its entirety.
- B. By the **DEPARTMENT**, for refusal by the **AGENCY** 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 **AGENCY** in conjunction with this Agreement.
- C. By the **DEPARTMENT** with a six (6) month written notice.

8. AGREEMENT TERM

The term of this **AGREEMENT** commences upon execution by all parties. The term of this **AGREEMENT** shall remain in effect for as long as the **IMPROVEMENTS** shall exist.

9. LIABILITY AND INSURANCE REQUIREMENTS

- A. With respect to any of the **AGENCY'S** agents, consultants, sub-consultants, contractors, and/or sub-contractors, such party in any contract for the **IMPROVEMENTS** shall agree to indemnify, defend, save and hold harmless the **DEPARTMENT** from all claims, demands, liabilities, and suits of any nature arising out of, because of or due to any intentional and/or negligent act or occurrence, omission or commission of such agents, consultants, sub consultants, contractors and/or subcontractors. The **AGENCY** shall provide to the **DEPARTMENT** written evidence of the foregoing upon the request of the **DEPARTMENT**. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the **DEPARTMENT** for its own negligence.
- B. In the event that **AGENCY** contracts with a third party to provide the services set forth herein, any contract with such third party shall include the following provisions:
 - 1) **AGENCY'S** contractor shall at all times during the term of this Agreement keep and maintain in full force and effect, at contractor's sole cost and expense, Comprehensive General Liability with minimum limits of \$1,000,000.00 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and Worker's Compensation insurance with minimum limits of \$500,000.00 per Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General

Liability and Worker's Compensation policy without restrictive endorsements, as filed by the Insurance Services Office and shall name the **DEPARTMENT** as an additional insured.

- 2) **AGENCY'S** contractor shall furnish **AGENCY** with Certificates of Insurance of Endorsements evidencing the insurance coverages specified herein prior to the beginning performance of work under this Agreement.
- 3) Coverage is not to cease and is to remain in full force and effect (subject to cancellation notice) until all performance required of **AGENCY'S** contractor is completed. All policies must be endorsed to provide the **DEPARTMENT** with at least thirty (30) days' notice of cancellation and or/or restriction. If any of the insurance coverages will expire prior to the completion of work, copies of renewal policies shall be furnished at least (30) days prior to the date of expiration.

10. E-VERIFY REQUIREMENTS

The **AGENCY** shall:

- 1) Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the **AGENCY** for the work performed under this **AGREEMENT**; and
- 2) Expressly require any contractors 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.

11. ENTIRE AGREEMENT

This writing embodies the entire Agreement and understanding between the parties hereto and there are no other Agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby except the construction agreement **2022-C-491-00010** all other **IMPROVEMENTS** not specifically mentioned in this Agreement.

12. EXPENDITURE OF MONEY

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 (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

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in all contracts of the **DEPARTMENT** which are for an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than one year.

13. DISPUTES

The **DEPARTMENT** shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution or fulfillment of the service hereunder and the character, quality, amount and value thereof. Should the **AGENCY** disagree with the **DEPARTMENT** decision, the **AGENCY** may pursue any and all legal and equitable remedies available under this agreement.

14. ASSIGNMENT

This Agreement may not be assigned or transferred by the **AGENCY** in whole or part without the consent of the **DEPARTMENT**.

15. LAWS GOVERNING

This **AGREEMENT** shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The venue for any dispute arising from this **AGREEMENT** shall be in Broward County, Florida.

16. NOTICES

Any and all notices given or required under this **AGREEMENT** shall be in writing and either personally delivered with receipt acknowledgement or sent by certified mail, return receipt requested. All notices shall be sent to the following addresses.

If to the **DEPARTMENT**:

State of Florida Department of Transportation
Attention: District Maintenance Engineer
3400 West Commercial Blvd
Ft. Lauderdale, FL 33309-3421

If to the **AGENCY**:

City of Pompano Beach
Attention: Municipal Services Director
100 West Atlantic Blvd,
Pompano Beach, FL 33080

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17. LIST OF EXHIBITS

Exhibit A: Project Location, Description and Project Aerial
Exhibit B: Plans
Exhibit C: Maintenance Plan Requirements

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IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

AGENCY

City of Pompano Beach, a municipal
Corporation of the State of Florida

By: _____ **Date:** _____
City Mayor

Print name: _____

ATTEST:

_____ **Date:** _____
City Clerk

Print name: _____

Approved as to form

_____ **Date** _____
City Attorney

Print name: _____

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IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

DEPARTMENT:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Sign: _____
Paul A. Lampley, P. E., Director of Operations

Date: _____

Approval as to Form:

Sign: _____
Francine Steelman, Assistant General Counsel

Date: _____

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EXHIBIT A

PROJECT LOCATION, DESCRIPTION AND AERIAL

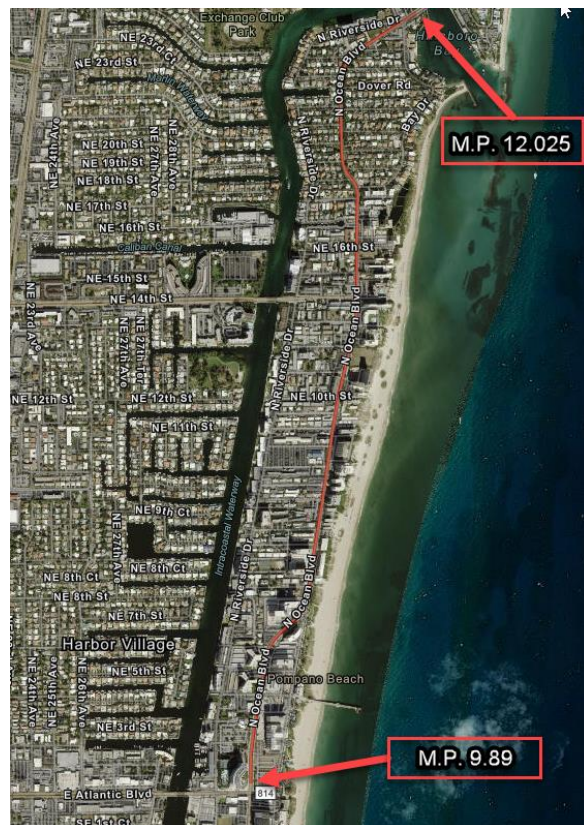
I. Project Location

The **IMPROVEMENTS** associated with this Agreement are within the **DEPARTMENT's** right-of-way, within limits of the City of Pompano Beach, Florida, along SR A1A from M.P. 9.890 to M.P. 12.025

II. Description

Permit Number **2022-C-491-00010** to include the **IMPROVEMENTS** specifically solar-powered in-road midblock crosswalk lighting assemblies, including but not limited to batteries, components, control cabinets, poles and panels associated within the limits of this project.

III. Ariel



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EXHIBIT B

PLANS

Plan prepared by Matthew B. Fursetzer P.E., dated June 8th, 2023, as approved by the Department.

PLANS 2022-C-491-00010 (attached)

Sheets Included:

PDF Page Number (#)	Plan Sheet (#)	Sheet(s) Description
14	S-1	COVER SHEET
15	S-2	TABULATION OF QUANTITIES
16	S-3	GENERAL NOTES
17-37	S4-S24	SIGNING AND PAVEMENT MARKING PLAN
38	S-25	
39	GS-1	GUIDE SIGN WORKSHEET

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EXHIBIT C

MAINTENANCE PLAN REQUIREMENTS

In reference to Maintenance to be performed under this Agreement, the **AGENCY** shall submit to the **DEPARTMENT** a maintenance plan detailing the means and methods for accomplishing any maintenance or repairs to the **IMPROVEMENTS** in accordance with all **DEPARTMENT** Standards, Procedures and Specifications. This plan shall be submitted and approved by the **DEPARTMENT** prior to commencing any maintenance or repair activities. The **AGENCY** shall comply with the **DEPARTMENT's** applicable Maintenance Rating Program Standards. The plan should at minimum detail how the **AGENCY** will address the following:

1. Providing for continuous traffic control and necessary traffic control devices as required for the safe movement of traffic of vehicular and pedestrian traffic past the location of the structure being repaired for the duration of the repair in accordance with **DEPARTMENT** Standards, Procedures and Specifications.
2. Protection of adjacent surrounding property, real estate, vehicles, pedestrians, attachments to the light poles, or other assets during the preparation and recoating of surfaces.
3. Containment of debris or materials used in or resulting from the repair

After the maintenance plan is approved, the **AGENCY** shall submit a work plan to the **DEPARTMENT** for approval prior to each repair to be performed detailing:

1. The proposed date of the repair
2. The location of the repair
3. The nature of the repair
4. The materials to be used for the repair