

SECTION NO.: 86028
FM NO.: 436219-3-72-01
FM NO: 436339-1-52-01
COUNTY: Broward
S.R. No.: 834/SAMPLE RD @ NW 5TH AVE
& SR-5(US1) @ NE 10th Street
Agreement #: 20190717-1

**FLORIDA DEPARTMENT OF TRANSPORTATION - DISTRICT FOUR
MAINTENANCE MEMORANDUM OF AGREEMENT**

This **AGREEMENT**, made and entered into this _____ day of _____, 20____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the **DEPARTMENT**, and **City of Pompano Beach**, a municipal corporation existing under the Laws of Florida, hereinafter called the **AGENCY**.

WITNESSETH:

WHEREAS, the **DEPARTMENT** has jurisdiction over all State Roads within the Agency's jurisdictional limits;

WHEREAS, the **DEPARTMENT** seeks to install and have maintained by the **AGENCY** certain highway improvements at State Road 834/Sample Road at NW 5th Avenue and SR-5(US1) @ NE 10th Street; 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 State Road 834/Sample Road at NW 5th Avenue and SR-5(US1) @ NE 10th Street (within the limits of the **AGENCY**); and

WHEREAS, it is the intent of the **AGENCY** and the **DEPARTMENT** that the **AGENCY** shall maintain the solar black color coated painted mast arm assemblies (includes upright pole and arm), within the project limits under Project Number 436219-3-72-01 and 436339-1-52-01 at the intersection of State Road 834/Sample Road at NW 5th Avenue and SR-5(US1) @ NE 10th Street; respectively hereinafter called **IMPROVEMENTS**; and

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

WHEREAS, Broward County (the maintaining signal agency), has no objection to this project as indicated in **Exhibit C** (Broward County Acknowledgement Letter); and

WHEREAS, the parties hereto mutually recognize the need for entering into an **AGREEMENT** designation and setting forth the responsibilities of each party; and

WHEREAS, the **AGENCY** by Resolution No. _____ dated _____, 20____, 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. The recitals set forth above are true and correct and are deemed incorporated herein.

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2. INSTALLATION OF FACILITIES

The **DEPARTMENT** shall construct under Project Number 436219-2-72-01 and 436339-1-52-01 the **IMPROVEMENTS** as detailed in **Exhibit A** and **Exhibit B**, which will benefit the **AGENCY**.

3. MAINTENANCE OF FACILITIES

A. The **AGENCY** agrees to maintain the **IMPROVEMENTS** as provided herein. Maintenance by the **AGENCY** will include repair, restoration, and general maintenance of the solar black color coated painted mast arm assemblies (includes upright pole and arm) within the project limits. Non-standard items are defined as items requested by the **AGENCY** that are not defined in the **DEPARTMENT'S** Design Standards. This includes the **IMPROVEMENTS** within the project limits as referenced in **Exhibit A**.

- 1) The **AGENCY** shall be solely responsible for the maintenance and preservation of the **IMPROVEMENTS** within the project limits. The **AGENCY** shall inspect the painted color coatings on a yearly basis. All Maintenance or restoration activities shall be performed in accordance with a Maintenance Plan, as approved by the **DEPARTMENT**, as per the requirements in **Exhibit D** (Maintenance Plan Requirements).
- 2) 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 or **AGREEMENT** termination. The **AGENCY** shall not change or deviate from the **AGENCY's** approved Maintenance Plan as referenced in **Exhibit D** without written approval from the **DEPARTMENT**.
- 3) The **AGENCY** shall be solely responsible for any damages to surrounding property, real estate, vehicles, pedestrians, attachments to the light poles, or other assets occurring as a result of maintaining the painted color coating operations and shall repair such damage to the satisfaction of the **DEPARTMENT** at no expense to the **DEPARTMENT**.

B. It is understood and agreed by the parties that upon "final acceptance" (as that term is described in the Standard Specifications for Roadway and Bridge Construction, as amended by contract documents section 5-11) by the **DEPARTMENT** of the Project and Notice thereof to the **AGENCY**, 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 and all amendments thereafter) of this **AGREEMENT** and any amendments hereafter) and all costs related thereto: (a) FDOT Design Manual (FDM), (b) FDOT Plans Preparation Manual (PPM), (c) Florida Green Book, (d) Standard Specifications for Roadway and Bridge Construction, (e) FDOT Design Standards, (f) Manual on Uniform Traffic Control Devices (MUTCD) and (g)

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Maintenance Rating Program (MRP).

- 1) The **AGENCY** shall be responsible for the **IMPROVEMENTS** as referenced in **Exhibit A** immediately after final acceptance of the construction project by the **DEPARTMENT**.
- C. Maintenance shall include but not be limited to graffiti removal (Graffiti is defined as painting, writing, and stickers on any part of the mast arm assembly), spot painting and/or repairing of any parts of the painted mast arm assembly.
 - D. 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.
 - E. 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, repayment, reworking or **AGREEMENT** termination.
 - F. Any work impacting traffic flow on State Road 834/Sample Road at NW 5th Avenue or SR-5(US1) @ NE 10th Street must be coordinated with the **DEPARTMENT**. Lane closures in that area 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 CITY OF POMPANO BEACH CITY 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**.

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- 2) If the **AGENCY** does not maintain the solar black color coated painted mast arm assemblies (includes upright pole and arm), the **DEPARTMENT** may remove all the solar black color coated painted mast arm assemblies (includes upright pole and arm) and repair or replace any damaged galvanizing with **DEPARTMENT** and/or its independent contractor's materials, equipment and personnel. The actual cost for such work will be charged to the **AGENCY**.
- 3) 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**.
- 4) At the discretion of the **DEPARTMENT**, terminate the **AGREEMENT** in accordance with Paragraph 7 of this **AGREEMENT** and remove, by the **DEPARTMENT** or its Contractor's personnel, all of 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 their jurisdictional limits and the limits of the State Road and 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. If the **AGENCY'S** desires to install or have installed additional mast arm **IMPROVEMENTS** include an additional installation of a mast arm or special coating, a new Agency resolution shall not be required. The **DEPARTMENT** and the **AGENCY** shall enter into an Amendment to this Agreement describing the additional mast arms and any other requirement which may be signed by the **AGENCY'S** City's Engineer.
- D. All improvements shall be developed and implemented in accordance with appropriate state safety and roadway design standards.

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E. 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

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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:

- A. 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
- B. 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 (painting of mast arms) hereof that are not merged herein and superseded hereby.

12. LIABILITY

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

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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 **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'S** District Secretary 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; and his decision upon all claims, questions and disputes shall be final and conclusive upon the parties hereto.

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 **AGENCY** agrees to waive forum and venue and the **DEPARTMENT** shall determine the forum and venue in which any dispute under this **AGREEMENT** is decided.

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: John Sfiropoulos, City Engineer
100 W Atlantic Boulevard
Pompano Beach, FL 33441

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17. LIST OF EXHIBITS

- Exhibit A: Project Location and Location Map
- Exhibit B: Signalization Plans
- Exhibit C: Broward County Acknowledgment Letter
- Exhibit D: Maintenance Plan Requirements

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"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND
CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this _____ day of _____, 2020, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

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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:

ATTEST:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Executive Secretary
(SEAL)

Sign: _____
Howard Webb, Director of Operations

Print Name: _____

Date: _____

Legal Review:

Sign: _____
Dawn Raduano, District General Counsel

Print Name: _____

Date: _____