

**This instrument prepared by and  
record and return to:**

Mark E. Berman, City Attorney  
City of Pompano Beach  
100 W. Atlantic Blvd., Suite No. 467  
Pompano Beach, Florida 33444

**SEA TURTLE LIGHTING  
MAINTENANCE AGREEMENT**

---

---

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019,  
by and between:

**CITY OF POMPANO BEACH**, a municipal corporation of the  
State of Florida, whose address is 100 West Atlantic Boulevard,  
Pompano Beach, Florida 33060, hereinafter referred to as "CITY,"

and

**FLORIDA DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**, whose address is 3900 Commonwealth Blvd,  
MS 35, Tallahassee, Florida 32399-3000, hereinafter referred to  
as "Department."

**WHEREAS**, pursuant to Section 161.163, Florida Statutes, the Department  
designated coastal areas contained within the incorporated city limits of Pompano Beach as  
an area which is, or likely will be, utilized by sea turtles for nesting; and

**WHEREAS**, pursuant to Section 161.163, Florida Statutes, the Department adopted  
guidelines for local government regulations to control beachfront lighting to protect  
hatching sea turtles in such designated areas; and

**WHEREAS** the City is in the process of constructing a new Fishing Pier at Pompano  
Beach, which will include the installation and operation of lighting fixtures other than the  
approved low level bollard lights; and

**WHEREAS** the lighting mechanisms will be installed in panels along the Pier to  
illuminate the series of marine life graphics displayed throughout the Pier; and

**WHEREAS**, pursuant to Section 161.053(4)(c), the Department can place conditions upon the nature, timing and sequence of construction of permitted activities to provide protection to nesting sea turtles and hatchlings and their habitat; and

**WHEREAS**, the Department, as a special condition to the construction, requires the City to enter into a contractual agreement with the Department requiring the City to maintain an operation schedule of the sea turtle lighting to minimize any disorientation of marine turtles and their nesting practices; and

**WHEREAS**, the City has agreed to modify the design plans as more particularly described in the Lighting Fixture Schedule attached hereto as Exhibit "A," to include an atomic clock which will automatically turn off the lights from April 1 to October 31 to preserve the sea turtle nesting.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration of which the parties hereto acknowledge, the parties agree:

1. The above recitals are true and correct and are incorporated herein by reference.
2. City shall, for the term of this Agreement, commencing the beginning of April through the end of October annually maintain an operational schedule so that the panel lights will be permanently off from May 1 to October 31.
3. This Agreement shall be recorded by the City in the public records of Broward County.
4. This Agreement shall become effective upon execution by all parties.
5. This Agreement shall run with the land and shall be in effect for the lifetime of the structure(s) built or modified. The Department shall release the City from the terms of this Agreement upon notification to the Department that the permitted structure(s) has been removed or upon a showing by the City that more effective methods have been adopted to prevent the entrapment of sea turtles or that long-term beach conditions have changed such that compliance with this Agreement is no longer necessary as determined by the Department. Upon the occurrence of any of the events listed in this paragraph, the Department shall issue to the City a letter effectuating release from this Agreement, which shall be recorded in the public records of Broward County.
6. In order to ensure the perpetual nature of this Agreement, City shall reference these restrictions in any subsequent lease or deed of conveyance, including the recording book and page of record of this Agreement. In the event of any sale or conveyance of the City's property, as more fully described in Exhibit "A," in whole or in part, prior to the

expiration of this Agreement, City shall, at least 30 days prior to the sale or conveyance: (1) notify the Department of the pendency of such sale or conveyance; (2) provide the Department with the name and address of the purchaser, operator, and person(s) to be in control of the property; and (3) provide a copy of this Agreement with all attachments and amendments to the new owner.

7. Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For City: City of Pompano Beach  
100 W. Atlantic Boulevard  
Pompano Beach, Florida 33060  
Attention: City Manager

With copy to: City of Pompano Beach  
100 W. Atlantic Boulevard  
Pompano Beach, Florida 33060  
Attention: City Attorney

For Department: Office of General Counsel  
Department of Environmental Protection  
3900 Commonwealth Blvd, MS 35  
Tallahassee, Florida 32399-3000

With copy to: Division of Water Resources Management  
Florida Department of Environmental Protection  
2600 Blairstone Road, MS 3522  
Tallahassee, Florida 32399-3000

Or via e-mail at: [Department.Clerk@dep.state.fl.us](mailto:Department.Clerk@dep.state.fl.us)

8. This Agreement is solely for the benefit of the parties hereto and their respective successors and assigns and shall not be deemed to confer upon third parties any remedy, claim, liability, or reimbursement, claim of action or other right.

9. It is the intention of City that this Agreement shall touch and concern the property described in Exhibit "A," run with the land and with the title to the property described in Exhibit "A," and shall apply to and be binding upon and inure to the benefit of City and Department, and to any and all parties hereafter having any right, title or interest in the property described in Exhibit "A" or any part thereof.

10. Either party may enforce the terms and conditions of this Agreement by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of either party to exercise its right in the event of failure by the other party to comply with the provisions of this Agreement shall not be deemed or construed to be a waiver of any rights hereunder. This Agreement shall be construed in accordance with the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Broward County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.

11. This Agreement may be modified in writing only. Any subsequent amendment must be executed by both City and Department and be recorded by City as an amendment hereto.

12. If any provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provisions of the Agreement. All such other provisions shall continue unimpaired in full force and effect.

13. City covenants and represents that on the date of execution of this Agreement it is seized of the Property in fee simple and has good right to create, establish, and impose this Agreement on the property described in Exhibit "A." City also covenants and warrants that the property described in Exhibit "A" is free and clear of any and all liens, mortgages, or encumbrances that could impair City's right to impose the terms described in this Agreement. Upon request the City shall provide written evidence documenting City's clear title to the property.

**IN WITNESS WHEREOF**, the parties have accepted, made and executed this Agreement upon the terms and conditions above stated on the day and year entered above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**"CITY":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
REX HARDIN, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY MANAGER

Attest:

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved by:

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 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 is personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**"DEPARTMENT":**

Witnesses:

**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

\_\_\_\_\_

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

\_\_\_\_\_  
Print Name

Print Name: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Address: \_\_\_\_\_

(SEAL)

Approved as to form by the Florida Department of Environmental Protection Office of General Counsel.

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

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as \_\_\_\_\_ of the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION. He/she is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

TAL:jrm  
7/29/19  
L:agr/cip/2019-1058