

RESOLUTION NO. 2021- 306

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, FOR LIGHTING IMPROVEMENTS ON VARIOUS STREETS WITHIN THE CITY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a Lighting, Maintenance, and Compensation Agreement between the City of Pompano Beach and the State of Florida, Department of Transportation, for lighting improvements on various streets within the city, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and the State of Florida, Department of Transportation.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 28th day of September, 2021.

DocuSigned by:

Rex Hardin

502CB780EB3F480...

REX HARDIN, MAYOR**ATTEST:**

DocuSigned by:

Asceleta Hammond

62AB0835850E4A1

ASCELETA HAMMOND, CITY CLERK

/jrm
9/2/21
l:reso/2021-284

DocuSigned by:



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**STATE HIGHWAY LIGHTING, MAINTENANCE, AND
COMPENSATION AGREEMENT**

375-020-52
MAINTENANCE
OGC – 02/21
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CONTRACT NO. ASM36
FINANCIAL PROJECT NO. 405118-2-78-22
F.E.I.D. NO. _____

THIS AGREEMENT, entered into this _____ day of _____, year of _____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as "**FDOT**", and City of Pompano Beach, hereinafter referred to as the "**MAINTAINING AGENCY**";

WITNESSETH:

WHEREAS, **FDOT** is authorized under Sections 334.044 and 335.055, Florida Statutes, to enter into this Agreement, and the **MAINTAINING AGENCY** has the authority to enter into this Agreement and to undertake the maintenance and operation of lighting on the State Highway System; and

WHEREAS, the **MAINTAINING AGENCY** has authorized its undersigned officers to enter into and execute this Agreement;

WHEREAS, **FDOT** has identified sites where lighting and/or lighting systems, hereinafter referred to as "Facilities", are located on the State Highway System within the jurisdictional boundaries of the **MAINTAINING AGENCY**. A list of the Facilities is included as Exhibit A, attached hereto and incorporated herein.

WHEREAS, the **MAINTAINING AGENCY** agrees to maintain the Facilities as further set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, **FDOT** and the **MAINTAINING AGENCY** hereby agree as follows:

1. Maintenance of Facilities

- a. The **MAINTAINING AGENCY** shall maintain the Facilities listed in Exhibit A. The Facilities may include lighting for roadways, as well as park and ride, pedestrian overpasses, and recreational areas owned by or located on the property of **FDOT**. The Facilities shall not include lighting located in weigh stations, rest areas, or on Interstate highways.

The location and type of lighting to be maintained pursuant to this Agreement is set forth in Exhibit A. Any changes or modifications to Exhibit A must be in writing and signed by both **FDOT** and the **MAINTAINING AGENCY**. Any Facilities added to Exhibit A during the **FDOT's** fiscal year shall be maintained and operated by the **MAINTAINING AGENCY** upon the **FDOT's** final acceptance of installation of any new lighting and/or lighting systems. Prior to the start of each new fiscal year, the **MAINTAINING AGENCY** and **FDOT** shall amend Exhibit A to reflect any changes to the Facilities, including addition, removal, or change in lighting type maintained pursuant to this Agreement.

The **MAINTAINING AGENCY** will be compensated for Facilities added to Exhibit A by amendment of this Agreement in the **FDOT's** fiscal year occurring after the lighting and/or lighting systems are installed and final acceptance of such installation is given by **FDOT**. In the event that no change is made to the previous year's Exhibit A, a certification from the **MAINTAINING AGENCY** shall be provided to **FDOT** certifying that no change has been made to Exhibit A during **FDOT's** previous fiscal year. Unless stated otherwise, all references to fiscal years within this agreement refer to **FDOT's** fiscal year, beginning July 1st and ending June 30th.

- b. In maintaining the Facilities, the **MAINTAINING AGENCY** shall perform all activities necessary to keep the Facilities fully operating, properly functioning, with a minimum of 90% of the lights burning for any lighting type (e.g., high mast, standard, underdeck, and sign) 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. Required maintenance includes, but is not limited to, providing electrical power and paying all charges associated therewith, routine inspection and testing, preventative maintenance, emergency maintenance, replacement of any component parts of the Facilities (including the poles and any and all other component parts installed as part of the Facilities), and locating (both vertically and horizontally) the Facilities. All repairs or replacement will be in kind unless a variance is approved in writing by **FDOT**.

- c. All maintenance must be in accordance with the provisions of the following:
- (1) Manual of Uniform Traffic Control Devices; and
 - (2) All other applicable local, state, or federal laws, rules, resolutions, or ordinances, and **FDOT** procedures.
- d. For lighting installed as part of a **FDOT** project, the **MAINTAINING AGENCY's** obligation to maintain the Facility commences upon the **MAINTAINING AGENCY's** receipt of notification from **FDOT** that **FDOT** has formally accepted the project, except for the obligation to provide for electrical power, which obligation to provide for electrical power commences at such time as the lighting system is ready to be energized; provided, however, that the **MAINTAINING AGENCY** is not required to perform any activities which are the responsibilities of **FDOT's** contractor.
- Prior to acceptance by **FDOT**, the **MAINTAINING AGENCY** shall have the opportunity to inspect and request modifications/corrections to the installation(s). **FDOT** agrees to make modifications/corrections prior to acceptance so long as the modifications/corrections comply with the installation contract documents and specifications.
- e. The term for this Agreement is seven (7) years. Either party may terminate this Agreement by a notice of termination. The notice of termination must be in writing. Should the **MAINTAINING AGENCY** choose to terminate the Agreement, the **MAINTAINING AGENCY** shall provide a minimum notice period of two (2) fiscal years prior to the effective date of termination and the notice shall be endorsed by the elected body (County Commission, City Council, or local agency governing body) under which the Agency operates. The effective date of the termination will coincide with the end of the **FDOT's** fiscal year of June 30th following the two-year notice.

The termination of this Agreement will not terminate maintenance responsibilities for lighting owned by the **MAINTAINING AGENCY**. Maintenance obligations for lights owned by the **MAINTAINING AGENCY** will remain the responsibility of the **MAINTAINING AGENCY**. Nor does termination of this Agreement operate to relieve the **MAINTAINING AGENCY** of any maintenance obligations contained in other agreements. Maintenance of lights governed by a separate maintenance agreement will continue per the terms of that separate maintenance agreement.

2. Compensation and Payment

FDOT shall pay to the **MAINTAINING AGENCY** a sum of \$ \$269,226.10 for the fiscal year in which this Agreement is signed. Payments will be calculated and made in accordance with Exhibit A.

Prior to the beginning of each fiscal year, the **MAINTAINING AGENCY** shall submit an amended Exhibit A or a certification of no change to Exhibit A and **FDOT** and the **MAINTAINING AGENCY** shall agree on the amount and percentage of lighting to be paid for the coming fiscal year. **FDOT** will issue a work order confirming the amount and authorizing the performance of maintenance for each new fiscal year. The work order must be an **FDOT**-signed letter of authorization to the **MAINTAINING AGENCY** with a subject line containing the terms "State Highway Lighting, Maintenance, and Compensation Agreement work order". The work order must reflect the contract number, financial project number, FEID No. of the **MAINTAINING AGENCY**, the fiscal year, the percentage of lighting funded and the lump sum amount to be paid for the fiscal year indicated. The work order must be signed by the **MAINTAINING AGENCY** and returned to **FDOT**. Failure by the **MAINTAINING AGENCY** to take any of the actions required by this paragraph may result in nonpayment by **FDOT**.

FDOT expressly assigns its rights, interests and privileges pertaining to damage to Facilities caused by third parties to the **MAINTAINING AGENCY**, so they may pursue all claims and causes of actions against the third parties responsible for the damage. **FDOT** will assist the **MAINTAINING AGENCY** and will confirm the **MAINTAINING AGENCY's** authorization to pursue recovery. The **MAINTAINING AGENCY** will be responsible for all attorneys' fees and litigation costs incurred in its recovery activities.

3. Record Keeping

The **MAINTAINING AGENCY** shall keep records of all activities and report all maintenance performed and replacement components and parts installed pursuant to this Agreement. The records shall be kept in an electronic format approved by **FDOT**.

Records shall be maintained and made available upon request to **FDOT** during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records will be furnished to **FDOT** upon request.

4. Invoicing

The **MAINTAINING AGENCY** shall invoice **FDOT** annually in a format acceptable to the **FDOT**. Invoices must be submitted no earlier than May 1 and no later than June 15 of the fiscal year in which the services were provided in order to be processed for payment by June 30.

Upon receipt, **FDOT** has five (5) working days to inspect and approve the goods and services. **FDOT** has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 215.422, Florida Statutes, will be due and payable, in addition to the invoice amount, to the **MAINTAINING AGENCY**. Interest penalties of less than one (1) dollar will not be enforced unless the **MAINTAINING AGENCY** requests payment. Invoices returned to a **MAINTAINING AGENCY** because of **MAINTAINING AGENCY** 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 **FDOT**.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the Chief Financial Officer's Hotline, 1-800-848-3792.

The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

FDOT, 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 shall be null and void, and no money may be paid on such contract. **FDOT** shall require a statement from the Comptroller of **FDOT** 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 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 in all contracts of **FDOT** which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year.

5. Default

In the event that the **MAINTAINING AGENCY** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, **FDOT** may exercise one or more of the following options, provided that at no time may **FDOT** be entitled to receive double recovery of damages:

- a. Pursue a claim for damages suffered by **FDOT** or the public.
- b. Pursue any other remedies legally available.
- c. As to any work not performed by the **MAINTAINING AGENCY**, perform such work with its own forces or through contractors and seek reimbursement for the cost thereof from the **MAINTAINING AGENCY** if the **MAINTAINING AGENCY** fails to cure the non-performance within fourteen (14) days after written notice from **FDOT** of the non-performance; provided, however, that advance notice and cure will not be preconditions in the event of an emergency.

6. Force Majeure

Neither the **MAINTAINING AGENCY** nor **FDOT** will 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 estimated 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. **FDOT** shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
- b. The **MAINTAINING AGENCY** 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 **MAINTAINING AGENCY** in conjunction with this Agreement. Failure by the **MAINTAINING AGENCY** to grant such public access will be grounds for immediate unilateral cancellation of this Agreement by **FDOT**.
- c. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto. Without limiting the generality of the foregoing, this Agreement shall replace and supersede all prior agreements between **FDOT** and the **MAINTAINING AGENCY** with respect to maintenance of the lighting and/or lighting systems for the Facilities identified in Exhibit A.
- d. This Agreement is governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable are severable and will not affect the validity of the remaining provisions hereof.
- e. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, electronic mail, or express mail and will be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided. The **MAINTAINING AGENCY** must notify the local District of **FDOT** of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices must be sent to the following addresses:

MAINTAINING AGENCY:

FDOT:

Florida Department of Transportation, District IV
District Maintenance Office
3400 West Commercial Boulevard
Fort Lauderdale, FL 33309

- f. **PUBLIC ENTITY CRIME INFORMATION STATEMENT:** 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 Section 287.017, Florida Statutes, for **CATEGORY TWO** for a period of thirty six (36) months from the date of being placed on the convicted vendor list.
- g. 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.

- h. By signing this agreement the Maintaining Agency certifies that it is not: (1) listed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S., (2) engaged in a boycott of Israel, (3) or listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes. For contracts involving \$1,000,000 or more, if the Department determines the Maintaining Agency submitted a false certification under Section 287.135(5) of the Florida Statutes regarding the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, or for contracts involving any amount, if the Maintaining Agency has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, the Department shall either terminate the Contract after it has given the Maintaining Agency notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met.
- i. Nothing herein shall be construed as a waiver of either party's sovereign immunity.
- j. **MAINTAINING AGENCY:**
1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the **MAINTAINING AGENCY** during the term of the contract; and
 2. shall expressly require any subcontractors 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.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the **Maintaining Agency** does not transfer the records to **FDOT**
 4. Upon completion of the Agreement, transfer, at no cost, to **FDOT**, all public records in possession of the Consultant or keep and maintain public records required by **FDOT** to perform the service. If the Consultant transfers all public records to **FDOT** upon completion of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Agreement, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to **FDOT**, upon request from **FDOT's** custodian of public records, in a format that is compatible with the information technology systems of **FDOT**
 5. Failure by the **Maintaining Agency** to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by **FDOT**

IF THE MAINTAINING AGENCY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE MAINTAINING AGENCY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

District 1

863-519-2623

D1prcustodian@dot.state.fl.us

**Florida Department of Transportation
District 1 – Office of General Counsel
801 N. Broadway
Bartow, FL 33830**

District 6

305-470-5453

D6prcustodian@dot.state.fl.us

**Florida Department of Transportation
District 6 – Office of General Counsel
1000 NW 111 Avenue
Miami, FL 33172-5800**

District 2

386-758-3727

D2prcustodian@dot.state.fl.us

**Florida Department of Transportation
District 2 - Office of General Counsel
1109 South Marion Avenue, MS 2009
Lake City, FL 32025**

District 7

813-975-6491

D7prcustodian@dot.state.fl.us

**Florida Department of Transportation
District 7 - Office of General Counsel
11201 N. McKinley Drive, MS 7-120
Tampa, FL 33612**

District 3

850-330-1391

D3prcustodian@dot.state.fl.us

**Florida Department of Transportation
District 3 - Office of General Counsel
1074 Highway 90 East
Chipley, FL 32428**

Florida's Turnpike Enterprise

407-264-3170

TPprcustodian@dot.state.fl.us

**Turnpike Enterprise Chief Counsel
Florida Turnpike – Office of General Counsel
Turnpike Mile Post 263, Bldg. 5315
Ocoee, FL 34761**

District 4

954-777-4529

D4prcustodian@dot.state.fl.us

**Florida Department of Transportation
District 4 – Office of General Counsel
3400 West Commercial Blvd.
Fort Lauderdale, FL 33309**

Central Office

850-414-5355

COprcustodian@dot.state.fl.us

**Office of the General Counsel
Florida Department of Transportation
605 Suwannee Street, MS 58
Tallahassee, Florida 32399-0458**

District 5

386-943-5000

D5prcustodian@dot.state.fl.us

**Florida Department of Transportation
District 5 – Office of General Counsel
719 South Woodland Boulevard
Deland, FL 32720**

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**STATE HIGHWAY LIGHTING, MAINTENANCE, AND
COMPENSATION AGREEMENT**

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8. Certification

This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by the **MAINTAINING AGENCY** in the form of additions, deletions, or substitutions are reflected only in an Appendix entitled "Changes to Form Document" and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the **MAINTAINING AGENCY** hereby represents that no change has been made to the text of this document except through the terms of the Appendix entitled "Changes to Form Document."

You MUST signify by selecting one of the applicable options:

- ☐ No changes have been made to this Forms Document and no Appendix entitled "Changes to Form Document" is attached.
- ☐ No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Form Document."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first written.

MAINTAINING AGENCY

BY: (Signature) See City Signature Page Attached

(Printed Name: _____)

Date: _____

(Printed Title: _____)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

BY: (Signature)

(Printed Name: Paul A. Lampley, P.E.)

Date: _____

(Printed Title: Director of Transportation Operations)

FDOT Legal Review

BY: (Signature)
Counsel

Date: _____

(Printed Name: Dawn Raduano)

“CITY”:

CITY OF POMPANO BEACH

DocuSigned by:
Rex Hardin
By: 502CB780EB3F480...

REX HARDIN, MAYOR

DocuSigned by:
Gregory P. Harrison
By: 7052A67F15A44C8...

GREGORY P. HARRISON, CITY MANAGER

Attest:
DocuSigned by:
Asceleta Hammond
62AB0835850F4A1...

ASCELETA HAMMOND
CITY CLERK

Approved As To Form:
DocuSigned by:
Mark E. Berman
B4DD5E1CDA804A1...

MARK E. BERMAN
CITY ATTORNEY

(SEAL)



Exhibit A
STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION AGREEMENT
For Fiscal Year

1.0 PURPOSE

This exhibit defines the method and limits of compensation to be made to the **MAINTAINING AGENCY** for the services described in this Agreement and method by which payments will be made.

2.0 FACILITIES

The lighting or lighting systems listed below, or in an attached spreadsheet, or other electronic form are included with this Agreement and represent the Facilities to be maintained by the **MAINTAINING AGENCY**:

1. attached Spreadsheet
2. _____
3. _____
4. _____
5. _____
6. _____

3.0 COMPENSATION

For the satisfactory completion of all services detailed in this Agreement, **FDOT** will pay the **MAINTAINING AGENCY** the Total Sum as provided in Section 2 of the Agreement. The **MAINTAINING AGENCY** will receive one single payment at the end of each fiscal year for satisfactory completion of service.

The per-light unit rate shall increase by 3% each fiscal year. E.g., the per-light unit rate of \$309.10 in fiscal year 2022 shall increase to \$318.37 in fiscal year 2023.

Total Payment Amount for each fiscal year is calculated by inputting the actual number of qualifying types of lights into the table below and multiplying by the unit rate and ____%. Example: 330 (lights) x \$____ (unit rate) x 0.90 (90% requirement) = \$ 0.00

Type of Light	# of lights	LED or HPS	Unit rate	1.00%	Total
High Mast		HPS	309.10	1.00	0.00
Standard	871	HPS	309.10	1.00	269226.10
Underdeck		HPS	309.10	1.00	0.00
Sign		HPS	309.10	1.00	0.00
High Mast		LED	309.10	1.00	0.00
Standard		LED	309.10	1.00	0.00
Underdeck		LED	309.10	1.00	0.00
Sign		LED	309.10	1.00	0.00