

MAST ARM STRUCTURE MAINTENANCE

MEMORANDUM OF AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2015, by and between the **STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION**, hereinafter called the DEPARTMENT and the **CITY OF ORLANDO**, hereinafter called the LOCAL GOVERNMENT.

W I T N E S S E T H

WHEREAS, the DEPARTMENT has jurisdiction over and maintains State Road 436 as part of the State Highway System; and

WHEREAS, the LOCAL GOVERNMENT seeks to install or cause to be installed certain Mast Arm Structures within the right of way of State Road 436 at the Intersection of Bent Pine Drive; and

WHEREAS, the LOCAL GOVERNMENT, by Resolution No.: _____ dated _____, 2015, and attached hereto as Exhibit "B" has agreed to enter into the Memorandum of Agreement to accept the permanent maintenance responsibility for the Painted Mast Arm Structures and it has also authorized its officers to execute this Agreement on its behalf.

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 LOCAL GOVERNMENT agrees to maintain the painted mast arm structures in the manner and to the degree described in Exhibit "A" hereto in addition to the terms of the Traffic Signal Maintenance and Compensation Agreement previously entered into between the parties. Maintenance shall include all aspects of maintenance including but not limited to inspection, maintain paint, repair, and replacement, if necessary, in perpetuity in accordance with the terms of the Traffic Signal Maintenance and Compensation Agreement previously signed by the parties hereto. The parties agree that, upon installation, the painted galvanized mast arm structures shall be owned by the DEPARTMENT and the DEPARTMENT shall be entitled to inspect the mast arm structures at all times.

2. During the performance of the maintenance activities undertaken by the LOCAL GOVERNMENT, **Maintenance of Traffic** shall be in accordance with the current FDOT Roadway and Traffic Design Standards Index No. 600 series and the Maintenance of Traffic Plan, as applicable.

3. The above described maintenance to be performed by the LOCAL GOVERNMENT shall be subject to periodic inspections by the DEPARTMENT. If at any time

it shall come to the attention of the DEPARTMENT that the painted mast arm structures are not being properly maintained pursuant to the terms of this Agreement, the District Secretary or his/her designee may issue a written notice to the LOCAL GOVERNMENT that a deficiency or deficiencies exist(s), by a certified letter. The LOCAL GOVERNMENT shall have a period of thirty (30) calendar days from receipt of the notice within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the DEPARTMENT may at its option, proceed as follows:

- (a) If maintenance is not performed in accordance with the terms of this Agreement, the DEPARTMENT may perform the maintenance, and deduct the reasonable cost thereof from the money otherwise due the LOCAL GOVERNMENT under any Agreement by and between the LOCAL GOVERNMENT and the DEPARTMENT. The DEPARTMENT shall also be entitled to recover the cost of said maintenance through any and all other legal means, including but not limited to litigation.

4. It is understood between the parties hereto that the painted mast arm structures covered by this Agreement may be removed, relocated or adjusted by the DEPARTMENT at any time in the future as determined to be necessary by the DEPARTMENT in order that the state road be widened, altered or otherwise changed to meet with future criteria or planning of the DEPARTMENT. If the structures are required to be moved, relocated or adjusted due to DEPARTMENT needs, the DEPARTMENT shall bear the cost of the move, relocation or adjustment. Upon completion of the move, relocation or adjustment, all maintenance of the mast arm structures shall remain the responsibility of the LOCAL GOVERNMENT.

5. All maintenance work required under the terms of this Agreement shall begin upon final acceptance of the Project by the DEPARTMENT and shall continue in perpetuity.

6. When the DEPARTMENT receives a notice of claim for damages that may have been caused by the LOCAL GOVERNMENT in the performance of maintenance activities required under this Agreement, the DEPARTMENT will immediately forward the claim to the LOCAL GOVERNMENT and the LOCAL GOVERNMENT and the DEPARTMENT will evaluate the claim and report their findings to each other within seven (7) working days and will jointly discuss options in defending the claim. After reviewing the claim, the DEPARTMENT will determine whether to require the participation of the LOCAL GOVERNMENT in the defense of the claim. The DEPARTMENT'S failure to notify the LOCAL GOVERNMENT of a claim shall not release the LOCAL GOVERNMENT from any of the requirements of this paragraph. The DEPARTMENT and the LOCAL GOVERNMENT will pay their own costs for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs, but if the verdict determines that there is joint responsibility, the costs and liability for damages will be shared in the same percentage as that judicially established.

7. Nothing in this Agreement operates as a waiver of the parties' sovereign immunity of the limits of liability established under Florida law.

8. This writing embodies the entire agreement and understanding between the parties hereto and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

9. This Agreement may not be assigned or transferred by the LOCAL GOVERNMENT in whole or part without the prior written consent of the DEPARTMENT.

10. 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 Agreement and Florida law, the laws of Florida shall prevail.

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement this _____ day of _____, 2015, and the DEPARTMENT has executed this Agreement this _____ day of _____, 2015.

STATE OF FLORIDA

CITY OF ORLANDO

DEPARTMENT OF TRANSPORTATION

By: _____

Name:

Title:

Attest:

By: _____

Name: Alan E. Hyman, P.E.

Title: Director of Transportation Operations

Attest:

(SEAL)

Executive Secretary

Approved as to Form, Legality
And Execution:

Legal Review:

Exhibit “A”

SCOPE OF SERVICES

Mast Arm Signal Upgrades

The LOCAL GOVERNMENT will be installing, or cause to be installed, a painted mast arm structure at the following intersections: State Road 436 at Bent Pine Drive (Section 75003000; mile post 1.647); under Permit #2011 A 594 0047 which will require the installation of the mast arm structure. The new galvanized mast arm structures will be painted black.

Subject to the terms of this Agreement and the Traffic Signal Maintenance and Compensation Agreement previously entered into between the parties, the LOCAL GOVERNMENT shall be responsible for preventive and periodic maintenance (as explained below), in perpetuity, of the painted galvanized mast arm signals, as stated in the Traffic Signal Maintenance and Compensation Agreement, and as explained below.

Preventative Maintenance includes but is not limited to:

Repainting or spot painting; tightening of nuts and replacing nuts and bolts (not including anchor bolts); replace missing cap covers and access hole cover plates; cleaning; removal of soil built up around foundations (lighting, signs and connections); repair and/or removal of grout pads; vermin guard installation; tree trimming; response to traffic impact; wiring issues, including improper grounding; reattaching anchor bolt covers and access hole covers.

Periodic Maintenance includes but is not limited to:

Repair of cracks in mast arm structure; resetting of anchor bolts; repair or replacement of deteriorated anchor bolts; repair of arm; and replacement of mast arm; and address improper standoff distance.

The LOCAL GOVERNMENT shall be responsible for the replacement of the entire mast arm assembly in case the need to replace the mast arm(s) is due to the LOCAL GOVERNMENT'S failure to properly maintain the mast arm structure. The DEPARTMENT and/or its consultant will perform routine inspections (every five years) and non-routine inspections (at any time) on the subject mast arms. As a result of these inspections, the DEPARTMENT, and/or its consultant, will provide recommendations for needed repairs as part of the inspection report provided to the LOCAL GOVERNMENT.

Exhibit “A”

RESOLUTION

Permit Number: # 2011 A 594 0047