

DRIVER FEEDBACK SIGN AGREEMENT

THIS AGREEMENT, made and entered into this 10th day of October, 2017, by and between the **East Park - Neighborhood 5 Homeowner's Association, Inc.**, organized and existing under the laws of the State of Florida, herein called the "East Park - Neighborhood 5 HOA", and the **City of Orlando, Florida**, a Florida municipal corporation organized and existing under the laws of the State of Florida, herein called the "City" and together referred to collectively as the "Parties."

WITNESSETH:

WHEREAS, the East Park - Neighborhood 5 HOA has requested the placement of two (2) electronic driver feedback equipment signs (hereinafter, "Driver Feedback Sign Equipment" or "Equipment") for the East Park Neighborhood; and

WHEREAS, the East Park - Neighborhood 5 HOA will purchase and install City approved Driver Feedback Sign Equipment; and

WHEREAS, if additional devices are requested by East Park - Neighborhood 5 HOA, it shall be agreed upon by mutual consent between the City and Park - Neighborhood 5 HOA; and

WHEREAS, the City will provide two breakaway type poles meeting the latest Florida Department of Transportation criteria to support the Equipment at locations mutually agreed upon by the City and East Park - Neighborhood 5 HOA; and

WHEREAS, if the locations require electrical power due to tree canopies preventing solar power usage, the East Park - Neighborhood 5 HOA will be required to pay for the cost of power installation and any associated permit fees; and

WHEREAS, if the Driver Feedback Sign Equipment signs are to be moved or re-located within the East Park Neighborhood, the East Park - Neighborhood 5 HOA will be required to assume any costs for electrical power, if needed, and cost for re-installation of the poles; and

WHEREAS, if the Driver Feedback Sign Equipment is damaged beyond operational use due to no fault of their own, the City will not be responsible to replace the Driver Feedback Sign Equipment; and

WHEREAS, the placement of said Equipment may require use of the City's Right-of-Way and East Park - Neighborhood 5 HOA has, therefore, requested that the City enter into this Agreement; and

WHEREAS, the East Park - Neighborhood 5 HOA wishes for the City to operate and maintain the Equipment at the aforesaid and approved locations, and the City is willing to perform such operation and maintenance.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein to be undertaken by the respective parties hereto, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties mutually agree and covenant as follows:

1. The foregoing Recitals are true and correct and incorporated into the substantive body of this Agreement.
2. City shall be responsible for the routine maintenance and operation of the Equipment. The East

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Transportation Engineering Division

Park - Neighborhood 5 HOA shall be responsible for the payment of electricity and electrical charges incurred in connection with operation of said Equipment upon completion of the installation and reasonable notice to the City to commence operations and maintenance. The installation by East Park - Neighborhood 5 HOA or third party other than the City shall comply with all applicable federal, state and local requirements, including but not limited to, the latest editions and supplements to the Manual of Uniform Traffic Control Devices, Florida Department of Transportation Design Standards and the Orlando City Code. Upon completion of installation of all equipment by East Park - Neighborhood 5 HOA or third party other than the City, including City provided breakaway type poles, the City reserves the right to inspect the equipment for compliance with aforementioned requirements.

3. The City shall maintain and operate the Equipment in a manner that will provide safe and efficient movement of roadway traffic and that is consistent with maintenance practices prescribed by the operational requirements of the Manual on Uniform Traffic Control Devices (MUTCD), as amended. The City's maintenance responsibilities shall include, but not be limited to, preventive maintenance (periodic inspection, service and routine repairs) and emergency maintenance (trouble shooting in the event of equipment malfunction, failure, or damage). The City's obligation to maintain and operate the Equipment does not extend to the cost of any equipment or work related to the relocation, replacement, reconstruction or upgrades of a Equipment systems as a result of improvements made to, in, or along a roadway whether by the East Park - Neighborhood 5 HOA or a third party other than the City, including but not limited to any future roadway widening which requires the relocation of a Equipment infrastructure. Further, the City's obligation to maintain and operate the Equipment does not extend to the cost of any equipment or work related to the capital replacement of the Equipment systems after the end of the useful life or when the Equipment become obsolete; and to major equipment failure, which may arise from existing defective equipment or from new equipment that does not have an adequate warranty provided. Additionally, the City's obligation to maintain and operate the Equipment systems does not extend to the cost of any major repairs or upgrades to the Equipment that have not been as otherwise set forth or described herein in this Agreement. On an annual basis, the parties agree to a joint inspection to determine whether the Equipment has become obsolete and the remaining useful life span of the Driver Feedback Sign Equipment. Additionally, the City shall have no liability hereunder due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, acts or omissions of other third parties, natural disaster, regulation or governmental acts, fire, civil disturbance, strike, weather, any unauthorized access to or destruction or modification of the services, in whole or in part. The City shall record its maintenance activities in an Equipment maintenance log and shall make same available for inspection by the East Park - Neighborhood 5 HOA upon request.

4. The City may remove or replace any component of the installed Equipment for repair; however, it shall not make any permanent modifications and/or equipment replacements unless the equipment provided is capable of performing at minimum the same functions. The East Park - Neighborhood 5 HOA shall not make any modifications and/or equipment replacements without prior written notice to, and the approval of, the City. The East Park - Neighborhood 5 HOA shall provide to the City the name and contact information for any person or persons who are authorized on behalf of the East Park - Neighborhood 5 HOA to initiate and authorize emergency contractor work.

5. The City hereby grants permission for the encroachment of the Equipment into the City's Right-of-Way, as approved in advance by the City. The East Park - Neighborhood 5 HOA hereby releases the CITY, its representatives, employees and elected officials from any and all damages, claims, or liability, with respect to the Project that may arise due to the City's operation and maintenance of the Equipment in the City's Right-of-Way.

6. The East Park - Neighborhood 5 HOA shall possess and maintain, at all times during

construction, operation and installation of the Equipment within the City's Right-of-Way, general liability insurance in an amount sufficient to protect the City from any covered liability, claims, damages, losses or expenses arising from or out of or in any way connected with construction, operation or installation of the Equipment within the City's Right of Way. The City shall be named as an additional insured on the liability policy and may request proof of such insurance at any time.

7. All notices required under this Agreement shall be in writing and shall be given by hand delivery, acknowledged electronic transmission or United States mail, first-class postage prepaid, addressed as follows (or to any such address or office as either party may designate in writing):

For East Park - Neighborhood 5 HOA:

Cheryl Zook
House of Management Enterprises, Inc.
5756 South Semoran Blvd.
Orlando, FL 32822

For City:

Christopher Cairns, PE, PTOE
Division Manager, Transportation Engineering
City of Orlando
City Hall
400 South Orange Avenue
Orlando, Florida 32801

8. The term of this Agreement shall be one (1) year. The Agreement shall automatically renew each year unless either party hereto gives the other party written notice of its intent not to renew at least ninety (90) days prior to the end of the annual period.

9. The East Park - Neighborhood 5 HOA shall have the right to inspect the Equipment at any reasonable time. The East Park - Neighborhood 5 HOA shall provide the City with a copy of any written findings generated by the inspection.

10. The City may enter into agreements with other parties pertaining to maintenance and operation of the Equipment, provided that such Agreements are consistent with the mutual covenants contained in this Agreement. The City shall furnish a copy of such agreements to the East Park - Neighborhood 5 HOA upon request.

11. The City may terminate this Agreement if the East Park - Neighborhood 5 HOA substantially fails to perform any obligation under this Agreement and does not remedy the failure within thirty (30) calendar days after receipt by the East Park - Neighborhood 5 HOA of written demand from the City to do so, unless, however, the nature of the failure is such that it cannot, in the exercise of reasonable diligence, be remedied within thirty (30) calendar days, in which case the East Park - Neighborhood 5 HOA shall have such time as is reasonably necessary to remedy the failure, provided the

East Park - Neighborhood 5 HOA promptly takes and diligently pursues such actions as are necessary therefore. The East Park - Neighborhood 5 HOA may terminate this Agreement if the City substantially fails to perform any obligation under this Agreement and does not remedy the failure within thirty (30) calendar days after receipt by the City of written demand from the East Park - Neighborhood 5 HOA to do so, unless, however, the nature of the failure is such that it cannot, in the exercise of reasonable diligence, be remedied within thirty (30) calendar days, in which case the City shall have such time as is reasonably necessary to remedy the failure, provided it promptly takes and diligently pursues such actions as are necessary therefore.

12. This Agreement may not be assigned or transferred by the City in whole or in part without the written consent of the East Park - Neighborhood 5 HOA.

13. To the extent allowed by law, the East Park - Neighborhood 5 HOA shall indemnify, save, and hold harmless, the City, and all of their officers, agents, and employees from all suits, actions, claims, demands, and liabilities of any nature whatsoever arising out of, because of, or due to any negligent act or omission of the East Park - Neighborhood 5 HOA, its subcontractors, agents, or employees.

14. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The invalidity or unenforceability of any portion of this Agreement shall not affect the remaining provisions and portions hereof.

15. This Agreement contains all the terms and conditions agreed upon by the parties.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

**East Park - Neighborhood 5 Homeowner's Association,
Inc**

By: _____

Print Name: _____

Title: _____

City of Orlando, Florida,

Mayor/Pro Tem

ATTEST:

By: BARRY SCIPIO
Title: Treasurer

ATTEST:

Denise M. Aldridge, City Clerk

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Orlando, Florida only.

_____, 2017

Assistant City Attorney
Orlando, Florida