

**TOWN OF POMONA PARK  
SPECIAL TOWN COUNCIL & PUBLIC MEETING AGENDA JUNE 29, 2020 – 5:30  
PM**

**VIA TELECONFERENCE. Call 1-888-204-5987 Access Code is 3674654#**

**PLEDGE TO FLAG –**

**CALL MEETING TO ORDER AND WELCOME VISITORS - Please speak at full volume so everyone on the call can hear.**

**PUBLIC HEARING ITEMS:**

Resolution 2020-3 A Resolution of the Town of Pomona Park, Florida, authorizing the Mayor to execute an agreement with Floridad DOT for the State Highway Maintenance on Highway 17 from POMONA PARK CITY LIMIT (MP. 11.32) TO POMONA PARK CITY LIMIT (MP. 13.557)

Second reading of Ordinance 2020-5, An Ordinance of the Town of Pomona Park Florida authorizing the Mayor to sign a deed and any other documents necessary transferring ownership of town owned property.

**Q & A / Comments / Announcements**

**ADJOURN**

NOTICE: If a person decides to appeal any decision made by the Town Council of Pomona Park with respect to ANY MATTER CONSIDERED AT THIS MEETING OR HEARING, they will need a record of the proceedings, and for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. FL 286.0105

**PLEDGE OF CIVILITY**

We will be respectful of one another even when we disagree.

We will direct all comments to the issues. We will avoid personal attacks.

**Town of Pomona Park – Special Town Council Meeting Minutes**

**Thursday, June 18, 2020 (5:30pm)**

**VIA TELECONFERENCE. Call 1-888-204-5987 Access Code is 3674654#**

Present: Mayor Joseph Svingala, Councilman Dr. Robert Warren, Councilwoman CarrieAnn Evans, Councilwoman Lynda Linkswiler, Councilman Victor Szatkowski, Councilman Jim Griffin, Councilwoman Pat Mead, Attorney Craig Sherar, Town Clerk Donna Fontana.

Absent: none

Meeting came to order at 5:30 p.m.

Purpose of this meeting: First reading of Ordinance 2020-5, An Ordinance of the Town of Pomona Park Florida authorizing the Mayor to sign a deed and any other documents necessary transferring ownership of town owned property.

Councilwoman Evans made a Motion to adopt Ordinance 2020-5 and it was 2<sup>nd</sup> by Councilman Griffin. Attorney Sherar explained that we are here today to see if the Town wants to deed away and swap out the properties on Perry Street which we've been talking about now for a couple of years. At the last meeting we had a proposed contract, we made 4 proposed suggestions for changes. I got a hold of Mr. Isaac, who is Cathy's attorney on this matter. He made the changes, so basically the liability of the town is \$175 contribution toward the surveyor. We will help with the curing of any title defects, but we do not have an obligation to expend any money or do anything affirmative. There are of course going to be title defects because the road is not where the right of way was deeded, but the exchanging of the 2 properties with the 2 Krupski's, the Town and Hardware and Business should take care of all of those defects. The legal descriptions for the swaps were prepared by Mr. Morris who was our surveyor back when we originally did this, I think in 17. The contract is contingent that all parties must agree to this which is the four of us. Otherwise, it will not go through and we are only doing this on a Quit Claim Deed, we are not making any warranties or representations concerning the quality or the marketability of the title. It is my understanding that Cathy will go to the title company, Warren Wilhite. He is good at dealing with these problem areas, based upon what we are doing in the surveys, I don't see any reason why there's going to be any impediment to this going through. Except for the one I just thought of, as I uttered those words. Which is hopefully nobody has a mortgage on their property. We don't but if any of those swap properties are included in a mortgage, there's going to be an issue. Nobody has brought that up so hopefully there aren't any. Other than that, that's pretty much it, we've got a site plan that Cathy has proposed. Have they made a formal application for a building permit. Clerk said, no, not yet. Cathy said she will have it for me tomorrow. Attorney said, the only thing I can say on this is the caveat, if we agree to do this. The reason ostensibly we are doing this is because they want to put in a building and there will be a setback problem on Perry Street without doing this and there should be in your packet their proposed site plan. Without making big changes, they could change the location of the building. They could make application for a variance. I would note that since they have not made application formally for a building permit, and up until the time that the building is actually started with construction, just because they make application for a building permit doesn't mean that they have to sit there and go through with it. I mention that because if anybody is inclined

that the only reason we are doing this is to accommodate the construction of the building, you may want to put a condition in there that the deeds not be signed until such time as they actually commence construction. Although, we've been talking about this back even before there was a plan to build a building, because we were trying to get Perry St. straightened out. We have 2 problems with Perry St. One is that where it attaches to HWY 17 is out of the right of way and when you go to where Perry St. makes the bend, the right of way was a 90° bend and the road that got constructed has a curve in it which is on Hardware & Business's property. You've all got a copy of the map with the swaps and you can see where those are. That's basically it. Councilwoman Evans asked, because I'm employed by Rebecca and Brian Krupski, am I allowed to vote on any of this stuff? Attorney said, in an abundance of caution, under different circumstances I would say absolutely that would be a conflict. Because this is such a mess up and there is an exchange of property that effects a bunch of issues between everybody, if you feel uncomfortable with voting on it, then its certainly within your discretion and nobody could fault you because it is a possibility of a conflict of interest. The safe thing to do would be to remove yourself because of the conflict of interest. That means that you also have to remove yourself from the discussion. You can stay at the meeting but you couldn't argue one way or the other because if you have a conflict, it's a conflict also as to trying to persuade anybody one way or the other. Councilwoman Evans said, Ok, I feel that I better not do anything. I will fill out the form. I just don't want it to ever come back. Attorney said, I commend you for bringing that to our attention. Councilman Griffin asked, Craig what would them owing a mortgage have to do with any action that we could take against them in the future, if we had to? Attorney said, it wouldn't have anything to do in the future. The problem it would have is this, if there was a mortgage, we would first have to look and see... and Isaac and I, that's Cathy's attorney, he and I have had extensive discussions. Is Cathy on the phone? Yes. Cathy, do you guys have a mortgage on the property. Cathy said, I do, we have a small mortgage on the property. Craig, I don't want to see that impending any of this because of where this 40' location is and the mortgage is very minimal. Clerk asked, so does she have to go back to the institution that she got the mortgage through and let them know that this is changing? Attorney said, the first thing that we have to do is figure out the property that she is dealing with is even encumbered by the mortgage. It may not be encumbered by the mortgage. One of the problems we've had in this whole process is I have not run out the legal description of the property, and there's some issues about whether or not the legal description does or doesn't cover some of our property. There was a question as to whether or not there was an overlap. Do you know what I'm saying? Clerk said, no. Attorney said, the legal description was not supposed to include the property that was deeded to the Town as Perry St. Rodney had a survey that showed that the property that was deeded to Perry St. was. We never did reach the issue as to whether or not it was included. I think the best thing to do is, let's wait and see because Warren, when he does the title work will determine... Well, that's also going to be a problem with the... hang on a second. Councilwoman Linkswiler said, while you are taking your second I just have to say, I can't believe that we were going to take property and swap that we haven't done title search on and didn't know if there were liens against it. Attorney said, well that would have been up to y'all to go through that. Mayor said, Craig we would only do that with your suggestion. We wouldn't come up with that. Councilwoman Linkswiler said, I agree. I would think it would be recommended by the attorney. Attorney said, well that could either be me or Mr. Isaac. Councilwoman Linkswiler said, Mr. Isaac is not advising the Town. Attorney said, under the circumstances that was probably something that all of us should have thought of. Clerk said, it wasn't done when you guys agreed to this in 2017 and so that's



probably why it slipped through this time as well. It's a good point that you brought it up and now the Council has to decide what they want to do about it. Clerk asked, do you have the title searches scheduled yet Cathy? Cathy said, no, not until this ordinance is approved. I think its minimal. I'll call Mr. Isaac and talk to him about it tomorrow. I don't think that's an issue. With what I'm giving and y'all are taking, I don't think that's an issue. Mayor said, here's my suggestion Craig, tell me where I'm wrong. Let us have our vote tonight, we've been waiting 3 years for this. It doesn't mean anything until we vote again in 10 days and between now and the 10 days, Cathy can supply whatever is needed to satisfy your questions and then we have the second vote. Attorney said, that is correct and we can go ahead and go forward and wait to see this on the second. Let's assume that there's a mortgage on there, what we don't know, because of the way the title is done, the deeds were done in the past and not having done a title search, your deed should not have included the deeded Perry St. There's always been an issue about that but it has never been addressed because nobody ever wanted to get that far into it. We never got that far but Becky...Kelly are you on the phone? I'll tell you what, first of all, I would not recommend the Town to take property if its got a mortgage on it. Your mortgage company may release it. Who do you have your mortgage with? CenterState. It may not be encumbered, it may not be in the legal description. If it is a small amount they may release it since its going to clear up and you're getting additional property. I suggest, if you are going to use Warren to do this title work, get him to jump on doing it and have him find out whether or not we even have a problem. If we don't have a problem, the first thing to do is go to CenterState and see if they'll release it. If they do then we don't have a problem but based upon the way Becky Krupski had done this thing, if she finds out there's a mortgage on that property, its likely to be a problem. It's a good thing I said it, we need to get ahead of it. I would suggest Cathy that a. you go ahead and get Warren to start looking at that, b. we go ahead and adopt this on the first reading. I will tell you this, if it turns out that there's going to be a mortgage on the property and we can't take care of it, my advice is going to be not to go through with it. Now that we all know what it is and we're a week ahead of it, let's see where we are a week from now. Mayor said, well Craig, I certainly wish this would have come up 3 years ago. We're down now at the bottom line and all of a sudden we've got these legal issues coming up and there's been 3 years for them to come up. Councilwoman Linkswiler asked have the Krupski's given any information as to whether or not they have a mortgage on their property? Attorney said, that's a very valid question. Clerk said, none of us have asked however I believe that I was told that they do not. Councilwoman Linkswiler said, that will certainly have to be cleared before we can take it on. Councilman Warren asked, what personal liability is there in our signing this over if it is true that some of this property ends up being valuable and much more valuable than what we're dealing with now. Essentially the Town feels that we acted in poor faith when we went through this contract? Attorney said, I've been opposed to thing from the very beginning and maybe that kind of twisted me off a little bit. 2. Its just such a weird thing that when you're in the middle of doing a weird thing you don't think of the conventional things which is, is there a mortgage. Is that my fault, is that somebody else's fault, I don't know, I can't think of everything. I do the best I can do. As far as Dr. Warren goes, what we are making a decision now based upon the facts of the circumstances as we know them now. If 20 years from now they decide to widen it and as a result of us doing that, the Town gave up \$50,60,70, 100, 200,000 dollars worth of property. Based upon the situation now which is according to DOT this is not in their 10 year plan. We can't worry about what's going to happen more than 10 years from now. Because a. they may never widen the road, b. they may widen the road but not take anything from there, c. who knows



what property is going to be worth 20 years from now. Councilwoman Linkswiler said, its not been worth a high dollar at this time, so we have to act on what the value is today. Clerk said, it is your duty as a Council member to think out 10, 20, 30 years, not just today. Attorney said, she's right about that, but I will also say it is a mess. Remember, I am against the swap but that's a policy decision. It should be fixed. My recommendation would be to keep everything that you've got and file law suits, but the commission may decide that the best way to fix the mess is to make the swaps. As far as the swaps, for or against, from a policy basis, I could make the decision either way. I do not think that you all have liability based upon the circumstances of voting for it. I do not think that you all liability based upon the circumstances voting against it. It's like Donna says, Donna's against it, as I, because the Town has property and should not be getting rid of it. It's too bad that 50 years ago they screwed things up and nobody cared about it until after it had been that way for 60 years. Councilman Warren asked if Craig would put his recommendation in writing? Attorney said, yes because I've had that decision every since the beginning. When I do that, I'm going to put this in there. This is a policy decision, legally you guys could keep the yellow and the current location of the property. The basis for that is you've got deeded on the yellow and the physical location by Florida Statute, you've maintained a road for more than 5 years, you have a right to keep it. Therefore, when you guys give a deed to the yellow, and something else. You are giving away an interest that you have in property. You are however fixing a problem which is a dispute between 3 property owners as to what the status of the property is. If you want me to write something up I will before the next meeting. Clerk said, it will be in the minutes. Councilwoman Linkswiler said, when you don't fix the problem involving land, it just gets bigger and worse as time goes by and people die and things change so I think we should fix the problem. Mayor said, I agree with you Lynda and I think I want to take a vote here. I've only heard during this whole conversation this evening, 2 negatives and both negatives I've heard were from people that don't vote. I'm 100% for this, the Council knows it, I was 100% for it 3 years ago. I argued my case 3 years ago. Under Mayor John C. Bergquist Jr., we had a unanimous vote of everybody on the council, that said yes. After that, some things fell apart that had nothing to do with the council or the attorney or anybody else but now we're here again today. There's an agreement between all of the parties. I would like to take the vote now unless somebody else wants to say something. Anybody who's not on the Council and listening in, anything to say? Role call vote. Councilman Warren said, one thing that has to a part of this too, under the same circumstances were the parties different and it wasn't Hill's hardware, that we all know and love so well, would we be taking the same vote and feeling the same way today? Mayor said, well I know I would be because I don't want to get a \$5 box of screws and have to do 40 miles round trip to get it. Councilman Warren said, so then it's a benefit to the Town. Mayor said, it's a huge benefit to everybody in this Town. Mayor did role call, Councilwoman Mead yay, Seat 5 Yay, Seat 6 Yes, Seat 2 Yes, Seat 1 Yes and myself I'm a yes. We have unanimous decision with one abstention and Donna if you would record that please.

Councilman Warren made a Motion to adjourn.

Mayor said, Craig are you still on the call. What do you suggest the process is at this point? It's not going to be anybody on this Council. It'll be Cathy, you, Cathy's attorney, I don't know what you're looking for to be satisfied. You're going to have to do that with them before the next meeting. Attorney said, Cathy is going to need to get a title search and she should go ahead

and order the title search now and let's find out if we have a problem. CenterState is a smaller bank, they are much more easier to work with. Given the size of the property and everything else, getting any kind of release that Warren is going to want for clear title probably will not be a problem. That is something that we need to start working on now and I can't do anything until we get a title search back. Mayor said, I am leaving in this the hands of you 3, the attorneys and Cathy. Attorney said, I will send a message to Isaac tonight, the issue is whether or not there's any of this property is encumbered by a mortgage. Councilwoman Linkswiler said we also need a title search for Krupski's property to see if it has a mortgage or any liens. Clerk asked Attorney what was the title search you ordered a while ago? Attorney said, I don't think we did it on mortgages, I only did it for ownership to determine whether or not there was an easement or anything going down for the drainage that does behind the Pizza place and down to that pond on Perry St. We were looking at what kind of rights DOT had with drainage on those properties. That was the meeting we all went over to with DOT. Councilwoman Linkswiler said, any title work even a month ago would have to be updated because a mortgage could be done this week and not last week. Another thing would be to look to see if there are any tax liens anywhere, Federal tax liens.

Clerk said, the next meeting is on the 29<sup>th</sup> at 5:30.

Meeting adjourned at 7:37 pm.

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# RESOLUTION 2020-3

**A RESOLUTION OF THE TOWN OF POMONA PARK, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH FLORIDA DOT FOR THE STATE HIGHWAY MAINTENANCE ON HIGHWAY 17 FROM POMONA PARK CITY LIMIT (MP. 11.32) TO POMONA PARK CITY LIMIT (MP. 13.557)**

**WHEREAS**, Florida Department of Transportation has determined that the Town of Pomona Park will increase the maintenance of the portion of Hwy. 17 between the north Town limit and the south Town limit - Maintenance and Compensation program; and

**WHEREAS**, the Town of Pomona Park desires to assume the maintenance responsibilities of the Property in order to improve the aesthetic appearance of the Town; and

**WHEREAS**, the Town of Pomona Park will receive compensation of \$6,477.76 per quarter, with a total annual sum of \$25,911.04.

**NOW THEREFORE, BE IT RESOLVED;** by the Town of Pomona Park, Putnam County, Florida, that:

**Section 1. Purpose**

Should this resolution be adopted, it shall serve to authorize the Mayor to execute Maintenance Agreement between the Town of Pomona Park and Florida Department of Transportation BE435 (attached hereto as Exhibit A).

**Section 2. Severability**

Each phrase, sentence, paragraph, section or other provision of this Resolution is severable from all other such phrases, sentences, paragraphs, sections and provisions. Should any phrase, sentence, paragraph, section or provision of this Resolution be declared by the courts to be unconstitutional or invalid, such declaration shall not affect any other portion or provision of this Resolution.

**Section 3. Conflicts**

All Resolutions, or parts of Resolutions, in conflict herewith including, are hereby repealed.

**Section 4. Effective Date**

This Resolution shall take effect August 1, 2020 – July 31, 2023

**IN WITNESS THEREOF**, this Resolution has been duly adopted at a Public Meeting on June 29, 2020

**By:** \_\_\_\_\_  
**Joseph Svingala, Mayor**

**Attest:** \_\_\_\_\_  
**Donna Fontana, Town Clerk**



# Exhibit B

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## MAINTENANCE AGREEMENT

**THIS MAINTENANCE AGREEMENT** ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and **Town of Pomona Park**, Florida ("Agency").

### -RECITALS-

1. The Department owns and currently maintains those portions of the state highway system identified in Exhibit "A" ("Property"); and
2. The Agency desires to assume the maintenance responsibilities of the Property in order to improve the aesthetic appearance of the Agency; and
3. The Property is within or adjacent to the corporate limits of the Agency; and
4. The Agency, by Resolution No. 2020-3 dated 6/29/20 attached as Exhibit "B", authorizes its officers to enter this Agreement.

**NOW THEREFORE**, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound, acknowledge and agree as follows:

### 1. RECITALS & EXHIBITS

The above recitals and attached exhibits, if any, are specifically incorporated by reference and made part of this Agreement.

### 2. EFFECTIVE DATE

The effective date of this Agreement shall be the date the last of the parties to be charged executes the Agreement ("Effective Date").

### 3. TERM

The term of this Agreement shall be for a period of three (3) consecutive years, unless otherwise terminated by the Department in writing. The operation, maintenance, and repair duties required by paragraph 6, below, will actually commence on Aug 1, 2020 and continue for one full calendar year from that same date, renewable for three consecutive years from the Effective Date.

### 4. E-VERIFY

The Agency (A) 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 Agency during the term of the contract; and (B) 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.

### 5. COMPLIANCE

The Agency shall perform this Agreement, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, St. Johns River Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard, Putnam County, Florida and other local governmental entities ("Governmental Law").

**6. OPERATION, MAINTENANCE & REPAIR**

A. The Agency shall operate, maintain & repair the Property in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement. For purposes of this Agreement, unless otherwise noted in Exhibit "A", the locations to be maintained by the Agency shall be maintained pursuant to the maintenance standards as defined in the Department's Maintenance Rating Program ("MRP") Handbook and in accordance with Department Procedure, *Roadway and Roadside Maintenance*, Topic No. 850-000-015-i, and all Governmental Law, as defined in Paragraph 5, above. Should the Department determine that any item of maintenance related to the Property has fallen below the desired maintenance standard, the Agency agrees to immediately bring the deficient item up to the maintenance standard, at its sole cost and expense. The Agency will not be held responsible for a failed MRP rating, so long as such rating is not based on any negligence, intentional or wrongful act, omission or breach of contract by the Agency.

B. The Agency shall maintain all turf and landscaped areas within the Department Property, including, without limitation, performing the following:

(1) Routinely mow, cut and trim all grass and turf (total greenscape), as well as remove grass and turf clippings from the roadway/curb/sidewalk, in accordance with the State of Florida "Guide for Roadside Vegetation Management" (2012), as the same may be constituted and amended from time to time, and the local National Pollutant Discharge Elimination System (NPDES) permit requirements; and

(2) Routinely prune and trim all plants and trees, for aesthetic purposes and for the benefit of the health, safety and welfare of those members of the public traversing or otherwise utilizing the Property; and

(3) Routinely remove dead, diseased, or otherwise deteriorated plants; and

(4) Routinely keep litter removed from the Property; and

(5) Routinely remove and dispose of all trimmings, roots, litter and other material resulting from the activities described herein; and

(6) Routinely edge and sweep any excess grass from sidewalks, curbs, and gutters; and

(7) Routinely sweep roadways, curbs, and gutters, valley gutters, intersections, and barrier wall gutters.

C. The Department and the Agency shall be responsible jointly for clean-up, removal and disposal of debris within the Property following and resulting from natural disasters, including, without limitation, hurricanes and tornadoes.

D. If the Department determines that the Agency is not maintaining the Property in accordance with the terms and provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have thirty (30) days from the date of the Department's written notice, or such other time as the Department and the Agency mutually agree in writing, to correct the deficiency and provide the Department with written notice of the same.

E. If the Department determines that the deficiency remains after receipt of the Agency's written notice indicating that the deficiency was corrected, the Department, within its discretion, may: (1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to correct the deficiency; or (2) correct the deficiency at the Agency's sole cost and expense. Should the Department elect to correct the deficiency, the Department shall provide the Agency with an invoice for the costs incurred by the Department to correct the deficiency and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

F. If at any time in the sole determination of the Department, the integrity or safety of the Property requires immediate maintenance for the benefit of public health, safety or welfare, the Department may perform such maintenance it deems appropriate under the circumstances. The Department shall attempt to notify the Agency prior to action under this section, but may take necessary steps to correct emergency situations prior to such notification in order to prevent eminent danger to public health, safety or welfare.

G. The Parties' representatives and points of contact for the administration of this Agreement shall be identified in the "Notice" section of this Agreement.

**7. MAINTENANCE OF TRAFFIC**

A. The Agency shall be responsible for the maintenance of traffic ("MOT") at all times during the performance of this Agreement. MOT shall be performed in accordance with applicable Governmental Law and the most current edition of each of the following, as the same may be constituted and amended from time to time, all of which are incorporated herein and made part of this Agreement by reference: (1) Section 102 of the Department's Standard Specifications for Road and Bridge Construction; (2) the Manual on Uniform Traffic Control Devices; (3) the Department's Roadway Design Standards Index 600 Series; and (4) other applicable Governmental Law.

B. If the Agency fails to perform MOT as required herein, the Department, within its discretion, may elect to perform MOT at the Agency's sole cost and expense. Should the Department perform MOT, the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

**8. IMPROVEMENTS & MODIFICATIONS**

A. The Department may require the Agency to improve or modify the Property if the Department determines: (1) improvements or modifications are required by applicable Governmental Law; or (2) improvements or modifications will benefit the Department in the conduct of its business.

B. Required improvements and modifications shall be subject to the terms and provisions of this Agreement, specifically including, without limitation, the "Maintenance" section of this Agreement.

C. Improvements and modifications shall be constructed and completed by the Agency within sixty (60) days of the date of the Department's written notice requiring improvements or modifications.

**9. ADDITIONAL LANDSCAPING**

The Agency shall not install additional landscaping within the Property without first seeking and obtaining required approvals and permits from the Department. Such additional landscaping shall be automatically included within, and subject to, the provisions of this Agreement.

**10. PERMISSIVE USE**

This Agreement creates a permissive use only. The Agency shall not acquire any right, title, interest or estate in the Property by virtue of the execution, operation, effect or performance of this Agreement.

**11. EMINENT DOMAIN AND DAMAGES**

Under no circumstances shall the Department's exercise of any right provided in this Agreement create any right, title, interest or estate entitling the Agency to full and just compensation from the Department either through inverse condemnation or eminent domain laws or any similar laws regarding the taking of property for public purposes. The Agency forever waives and relinquishes all legal rights and monetary claims which it has, or which may arise in the future, for compensation or damages, including, without limitation, special damages, severance damages, removal costs, and loss of business profits resulting in any manner from the Department's exercise of any right provided in this Agreement. This waiver and relinquishment specifically includes all damages flowing from adjacent properties owned, leased or otherwise controlled by the Agency, as a result of the Department's exercise of any right provided in this Agreement.

**12. REMOVAL**

The Department may require modification, relocation or removal of the landscaping, plants, trees and other



improvements located on or within the Property without liability to the Agency if: (1) any such improvements are not maintained in accordance with the terms and provisions of this Agreement; (2) modification, relocation or removal of any such improvements is required by applicable Governmental Law; or (3) the Department determines that modification, relocation or removal of any such improvements is necessary or will benefit the Department in the conduct of its business. The Agency shall modify, relocate or remove improvements designated by the Department for modification, relocation or removal and shall restore the Property to a condition that satisfies the requirements of applicable Governmental Law within thirty (30) days of the Department's written notice requiring modification, relocation or removal. The Agency shall bear all cost and expense of the modification, relocation, removal and restorative work, including, without limitation, the cost of required permits.

**13. PAYMENTS TO AGENCY**

The Department shall compensate the Agency for the performance of this Agreement in the amount of **\$6,477.76** per quarter for a total sum of **\$25,911.04** per year. Payments shall commence at the conclusion of the first three-month period following the Effective Date of this Agreement. The Department may suspend payment of any sums due hereunder without penalty or interest if the Agency is in breach of any term or provision of this Agreement at the time payment is due. In the event this Agreement is terminated, payment shall be prorated for the quarter in which termination occurs.

**14. PAYMENTS TO DEPARTMENT**

All Department invoices submitted to the Agency for payment pursuant to the terms and provisions of this Agreement are due and payable within thirty (30) days of the date of the invoice ("Due Date"). Any portion of an invoice not received by the Department by the Due Date shall immediately thereafter begin accruing interest at a rate of interest established pursuant to §55.03, Fla. Stat., until paid in full.

**15. INDEMNIFICATION**

A. The Agency shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the Agency's performance, or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The Agency's duty to defend, indemnify and hold the Department harmless specifically does not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract.

B. The Agency shall notify the Department in writing immediately upon becoming aware of any Liabilities. The Agency's obligation to defend, indemnify and hold the Department harmless from any Liabilities, or at the Department's option to participate and associate with the Department in the defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the Department's written notice of claim for indemnification to the Agency. The Agency's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

**16. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY**

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Florida Statutes, as the same may be amended from time to time. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department's limits of liability set forth in §376.305 and §337.27(4), Florida Statutes, as the same may be amended from time to time. The Department's liability for breach of this Agreement is specifically: (1) limited to actual damages incurred by the Agency as a direct result of the Department's breach; and (2) further limited in amount and shall not, under any circumstances, exceed the limitations of liability for tort actions set forth in §768.28(5), Florida Statutes, as the same may be amended from time to time.

## **17. NOTICE**

All notices, communications and determinations between the parties hereto and those required by this Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

Department: Florida Department of Transportation  
Attention: Contracts Manager  
3600 DOT Road  
St. Augustine, FL 32084

Agency: Town of Pomona Park  
Joseph Svingala, Mayor  
P.O. Box 518 (1775 S. Hwy 17)  
Pomona Park, Florida 32181

## **18. GOVERNING LAW**

This Agreement shall be governed in all respect by the laws of the State of Florida.

## **19. INITIAL DETERMINATION OF DISPUTES**

The Department's District Two Secretary ("District Secretary") shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance or breach of this Agreement.

## **20. VENUE AND JURISDICTION**

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. The Agency and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

## **21. JURY TRIAL**

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of this Agreement, including, without limitation, damages allegedly flowing there from.

## **22. ASSIGNMENT**

The Agency may not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the Department's District Secretary or his/her designee. The Department has the sole discretion and authority to grant or deny proposed assignments, with or without cause. Nothing herein shall prevent the Agency from delegating its duties hereunder, but such delegation shall not release the Agency from its obligation to perform this Agreement.

## **23. THIRD PARTY BENEFICIARIES**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

## **24. VOLUNTARY EXECUTION OF AGREEMENT**

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in this Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of this Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of this Agreement and executes this Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of this Agreement.

#### **25. ENTIRE AGREEMENT**

This instrument, together with the attached exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Agreement, and any part hereof, are waived, merged herein and superseded hereby.

#### **26. SUFFICIENCY OF CONSIDERATION**

By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in this Agreement and forever waive the right to object to or otherwise challenge the same.

#### **27. WAIVER**

The failure of either party to insist on the strict performance or compliance with any term or provision of this Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

#### **28. INTERPRETATION**

No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

#### **29. CAPTIONS**

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

#### **30. SEVERANCE**

If any section, paragraph, clause or provision of this Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of this Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of this Agreement remain enforceable.

#### **31. COMPUTATION OF TIME**

In computing any period of time prescribed in this Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

#### **32. MODIFICATION OF AGREEMENT**

A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

#### **33. CONTRACTUAL SERVICES**

In the event this Agreement is for a "contractual service" as defined by §287.012, Florida Statutes, as the same may be amended from time to time, then all applicable provisions of Chapter 287, Florida Statutes shall apply.

#### **34. VENDOR OMBUDSMAN**

A Vendor Ombudsman has been established with the Department of Banking and Finance. The duties of the Vendor Ombudsman 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 by calling the State Comptroller's Hotline at 1-800-848-3792.

**35. ANNUAL APPROPRIATION / FUNDING**

Pursuant to §339.135(6)(a), Florida Statutes, the Department's obligation to fund this Agreement is contingent upon annual appropriation by the Florida Legislature. This Agreement may be terminated by the Department without liability to the Agency if sufficient funds are not appropriated to the Department. The provisions of §339.135(6)(a), Florida Statutes, are set forth herein verbatim and made part of this Agreement, to wit:

"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 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 the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

**36. PUBLIC RECORDS**

Agency shall comply with Chapter 119, Florida Statutes. Specifically, the Agency shall:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the Department to perform this Agreement.
- B. Upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. 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 this Agreement and following completion of the Agreement if Agency does not transfer the records to the Department.
- D. Upon completion of this Agreement, transfer, at no cost, to the Department all public records in possession of Applicant or keep and maintain public records required by the Department to perform this Agreement. If Agency transfers all public records to the public Agency upon completion of this Agreement, Agency shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Agency keep and maintain public records upon completion of this Agreement, Agency shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the

Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

Failure by Agency to act in accordance with Chapter 119 and the foregoing shall be grounds for immediate unilateral cancellation of this Agreement by the Department. Agency shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of Agency and shall promptly provide the Department a copy of Applicant's response to each such request.

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

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

**IN WITNESS WHEREOF**, intending to be legally bound hereby, the parties execute this Agreement consisting of ten (10) pages.

**Florida Department of Transportation**

**Attest:**

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Legal Review:**

By: \_\_\_\_\_  
Office of the General Counsel  
Florida Department of Transportation

**Agency**

**Attest:**

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Legal Review:**

By: \_\_\_\_\_  
Legal Counsel for Agency

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**EXHIBIT "A"**  
**Town of Pomona Park**  
**MAINTENANCE LOCATIONS**

**STATE ROAD NUMBER**

SR 15

**LIMITS**

FROM: Pomona Park City Limit (MP. 11.324)

TO: Pomona Park City Limit (MP. 13.557)



**EXHIBIT "B"**  
**(RESOLUTION)**

**ORDINANCE 2020-5**

**AN ORDINANCE OF THE TOWN OF POMONA PARK, FLORIDA AUTHORIZING THE MAYOR TO SIGN A DEED AND ANY OTHER DOCUMENTS NECESSARY, TRANSFERRING OWNERSHIP OF TOWN-OWNED PROPERTY.**

**WHEREAS**, it has been discovered, and verified by a survey, that Perry Street is not physically located in the deeded right of way;

**WHEREAS**, the land owners have agreed that it is best to resolve the competing interest by the land owners agreeing to swap portions of their property for the purpose of resolving the conflict;

**WHEREAS**, the agreed swaps are set out in the map that is attached to this Ordinance as Exhibit A and the legal descriptions attached as Exhibit B. The Mayor is hereby authorized to execute those Quit Claim Deeds and any other documents necessary to effectuate the following:

- A) a portion of property located on Perry St., owned by Rebecca Krupski and Bryan K. Krupski (in GREEN), to be given to The Town of Pomona Park.
- B) a portion of property located on Perry St., owned by Hardware & Business Solutions, Inc. (in ORANGE), to be given to The Town of Pomona Park.
- C) a portion of property located on Perry St., owned by The Town of Pomona Park (in YELLOW), to be given to Hardware & Business Solutions, Inc..
- D) a portion of property located on Perry St., owned by Kelly L. Krupski (in BLUE), to be given to The Town of Pomona Park.
- E) a portion of property located on Perry St., owned by Hardware & Business Solutions, Inc. (in PINK), to be given to Rebecca Krupski and Bryan K. Krupski).

**NOW THEREFORE, BE IT ENACTED** by The Town of Pomona Park, Putnam County, Florida, that this Ordinance shall represent a land exchange in order for the Town of Pomona Park to receive the proper location for Perry Street Right of Way (ROW) and to accomplish land exchange to appease all parties involved:

**Section 1. Purpose**

- A) **THE PURPOSE IS TO GIVE THE TOWN OF POMONA PARK THE RIGHT-OF-WAY TO THE PHYSICAL LOCATION OF PERRY STREET AND GIVE ADJOINING LAND OWNERS PROPERTIES THAT ARE NOT BEING USED AS RIGHT-OF-WAY AND FRAGMENTS OF PROPERTIES THAT ARE SEPARATED BY PERRY STREET.**

**B) THE MAYOR IS HEREBY AUTHORIZED TO EXECUTE ANY DEEDS AND OTHER DOCUMENTS THAT ARE REASONABLY NECESSARY TO EXECUTE THE FOLLOWING TRANSFER OF PROPERTY:**

- a) a portion of property located on Perry St., owned by Rebecca Krupski and Bryan K. Krupski (in GREEN), to be given to The Town of Pomona Park.
- b) a portion of property located on Perry St., owned by Hardware & Business Solutions, Inc. (in ORANGE), to be given to The Town of Pomona Park.
- c) a portion of property located on Perry St., owned by The Town of Pomona Park (in YELLOW), to be given to Hardware & Business Solutions, Inc..
- d) a portion of property located on Perry St., owned by Kelly L. Krupski (in BLUE), to be given to The Town of Pomona Park.
- e) a portion of property located at 107 Perry St., owned by Hardware & Business Solutions, Inc. (in ORANGE), to be given to Rebecca Krupski and Bryan K. Krupski (in PINK).

**C) THE MAYOR IS HEREBY AUTHORIZED TO EXECUTE THE CONTRACT ATTACHED HERETO AS EXHIBIT C IN THE FURTHERANCE OF THE TRANSFER OF SAID PROPERTY.**

**THE MAYOR WILL NOT EXECUTE ANY DEEDS UNLESS ALL LAND OWNERS AGREE TO ALL SWAPS NECESSARY TO RESOLVE ALL ISSUES CONCERNING PERRY STREET.**

**Section 2. Severability**

Each phrase, sentence, paragraph, section or other provision of this Ordinance is severable from all other such phrases, sentences, paragraphs, sections and provisions. Should any phrase, sentence, paragraph, section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect any other portion or provision of this Ordinance.

**Section 3. Conflicts**

All Ordinances, or parts of Ordinances, in conflict herewith are hereby superseded or repealed to the extent of such conflict.

**Section 4. Effective Date**

This Ordinance will take effect immediately upon final passage as provided by law.

	YEAS	NAYS	ABSENT OR NOT VOTING
<b>PASSED ON FIRST READING:</b> <u>6/18/2020</u>	<u>6</u>	<u>0</u>	<u>1</u>
<b>PASSED ON SECOND READING:</b> <u>6/29/2020</u>	_____	_____	_____

**DULY ADOPTED AT A PUBLIC HEARING THE TWENTY NINTH DAY OF JUNE, 2020.**

**TOWN OF POMONA PARK**

\_\_\_\_\_  
Mayor Joseph Svingala

APPROVED AS TO FORM:

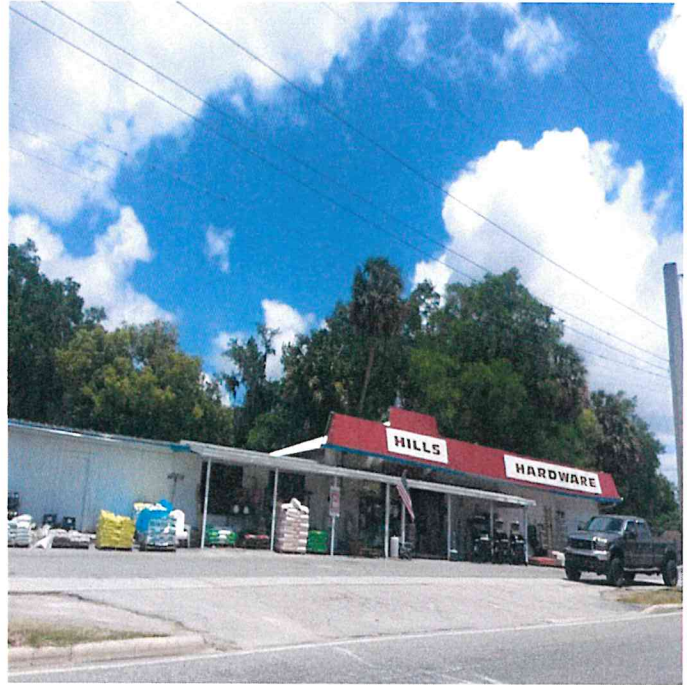
Attest: \_\_\_\_\_  
Donna Fontana, Town Clerk

\_\_\_\_\_  
Craig Sherar, Town Attorney









North and west sides of the building



South and west sides of the building

