

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration Workshop

SHORT TITLE A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A REVOCABLE LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE CITY OF LIGHTHOUSE POINT; PROVIDING AN EFFECTIVE DATE (NO COST)

Summary of Purpose and Why:

Attached please find the Revocable License Agreement between the City of Pompano Beach and the City of Lighthouse Point. The Agreement will allow the City to use certain right-of-way property for the purpose of cleaning and painting (5) different area mast arm columns, located in the intersections of Federal Highway and N.E. 29th Street, N.E. 33rd Street, and Sample Road. The Agreement will obtain and enforce the same warranty from the City's future Contractor for this proposed work in the City of Lighthouse Point pursuant to this Agreement.



Accomplishing this item supports achieving initiative 5.4.2. "Paint traffic signal arms "identified in the City's Strategy to Increase Community Accessibility and Mobility.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Engineering Department
- (2) Primary staff contact: Horacio Danovich / Anthony Alhashemi Ext 7834 / 4029
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: CIP 12-197, No fiscal impact at this time

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
Engineering	<u>6/2/16</u>	APPROVE	<u>[Signature]</u>
City Attorney	<u>6/2/16</u>	APPROVE	<u>[Signature]</u>
Finance	<u>6/2/16</u>	APPROVE	<u>[Signature]</u>
Budget	<u>6/2/16</u>	APPROVE	<u>[Signature]</u>

Advisory Board
 Development Services Director
 City Manager [Signature]

Dennis W. Beard

ACTION TAKEN BY COMMISSION:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>	<u>Workshop</u>
1st Reading	1st Reading	Results:	Results:
_____	_____	_____	_____
2nd Reading	_____	_____	_____
_____	_____	_____	_____

RESOLUTION NO. 2016-_____

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 REVOCABLE LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE CITY OF LIGHTHOUSE POINT; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That a Revocable License Agreement between the City of Pompano Beach and the City of Lighthouse Point, 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 Revocable License Agreement between the City of Pompano Beach and the City of Lighthouse Point.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

/jrm/ds
6/2/16
l:reso/2016-196

REVOCABLE LICENSE AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2016, by and between:

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, hereinafter referred to as "LICENSEE,"

and

CITY OF LIGHTHOUSE POINT, a municipal corporation of the State of Florida, hereinafter referred to as "CITY."

WITNESSETH:

WHEREAS, LICENSEE desires to obtain from CITY a license to use certain CITY right-of-way property for the purpose of cleaning and painting five (5) different area Mast Arms Columns, located in the intersections of Federal Highway and Sample Road, Federal Highway and N.E. 29th Street and Federal Highway and N.E. 33rd Street.

WHEREAS, inasmuch as the use of said CITY property by LICENSEE for this restricted purpose will not interfere with the rights enjoyed by the public and will be without cost to the public either directly or indirectly.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and conditions hereinafter contained, it is agreed by the parties hereto as follows:

1. CITY hereby grants to LICENSEE and LICENSEE hereby accepts from CITY a license to access by the LICENSEE and its Contractor, areas located immediately adjacent to the traffic control devices and related equipment in the portion of right-of-way/intersection located at Federal Highway and Sample Road (Northeast and Southeast sections), Federal Highway and N.E.

29th Street (North, East, and Southeast sections) and Federal Highway and N.E. 33rd Street (Northeast section) for the purpose of cleaning and painting the five (5) Mast Arm Columns within the Right-of-way of CITY as depicted in the attachment hereto, designated as Exhibit "A" and incorporated in this License Agreement. It is expressly agreed and understood between the parties that no above-ground rights are granted to LICENSEE except when cleaning and painting the five (5) identified Mast Arm Columns. All work of cleaning and painting shall be done to the satisfaction of the CITY.

2. This license shall continue from day to day commencing on the date of execution hereof by all parties for two (2) years or until terminated in accordance with provisions hereinafter stated, and said continuation after an initial one year, shall be for warranty repairs, by Licensee's Contractor. In that regard, Licensee shall obtain and enforce the same warranty from its Contractor that it obtains for the same work performed for itself by Contractor for the project, for all work performed in the City pursuant to this Agreement.

3. LICENSEE agrees to pay CITY as compensation for this License the sum of One (\$1.00) Dollar per annum. Receipt of the first payment of One (\$1.00) Dollar is hereby acknowledged.

4. This license may, at the option of LICENSEE with the advanced written consent of the CITY's Administrator, be renewed from year to year after the initial term upon payment by LICENSEE to CITY of the sum of One (\$1.00) Dollar per annum.

5. This license may be terminated by CITY at any time, for no express reason, upon giving thirty (30) days' written notice to LICENSEE by certified mail as further provided in paragraph 12 herein. Upon termination, LICENSEE agrees, if so requested by CITY, to remove at its sole expense all encroachments lying in, along and under the licensed portion of the right-of-way and to restore the area, excluding removal of any modification already made by LICENSEE, if any,

to the licensed premises, to its former condition as determined in the sole discretion of the LICENSEE's Public Works Administrator.

6. LICENSEE specifically agrees that it will use the CITY right-of-way pursuant to this license only for the purpose of cleaning and painting the five (5) Mast Arm Columns as described herein the attached diagram Exhibit "A". Further, that it will not suffer or permit the premises or any part thereof to be used for any other purpose without the express written consent of CITY.

7. It is expressly understood and agreed that no real or personal property is leased to LICENSEE; that it is a LICENSE, not Lease; that the LICENSEE'S right to occupy the right-of-way is subordinate to CITY'S (or any franchisee of CITY) use of said licensed premises, and should any relocation of any public utility be necessitated at any time in the future, then LICENSEE shall relocate, if practicable, or terminate its use of the licensed premises at its own expense.

8. During the term of this License and any subsequent renewal, LICENSEE and its Contractors assumes all risks in the cleaning and painting of the described five (5) Mast Arm Columns, the term of this License and any renewal located along and under the licensed premises and shall be solely responsible and answerable in damages for all accidents or injuries to person or property arising out of or caused in the performance of any of the work done pursuant to the Agreement, or arising out of the cleaning and painting. LICENSEE and its' Contractors further covenants and agrees to indemnify and keep harmless CITY and its officers and employees from any and all claims (which shall include, but not be limited to, the defense of any claim and any and all costs in any judicial or quasi-judicial proceedings and for any and all damages or penalties of any kind or nature), suits, losses, damage or injury to person or property of whatsoever kind and nature, whether direct or indirect, arising out of the cleaning and painting of the described five (5) Mast Arm Columns or the carelessness, negligence or improper conduct of LICENSEE or any servant, agent or employee of LICENSEE.

9. LICENSEE'S Contractor shall procure at its own cost and expense Comprehensive General Liability Insurance coverage in an amount not less than One Million (\$1,000,000.00) Dollars combined single limit in addition to any other insurance or bond CITY may require, which insurance will protect LICENSEE, CITY, and their officers and employees from any claims for damages to property and for personal injuries, including death, which may arise on said property during the term of this agreement and any renewals. The insurance policy shall contain a thirty (30) day cancellation clause period and a Certificate of Insurance shall be furnished the CITY, naming the City of Lighthouse Point as an additional insured pursuant to this Agreement. A copy of said certificate confirming the above insurance requirements shall be provided to CITY prior to commencement of any work under this Agreement.

10. Neither party may assign, transfer, convey or otherwise dispose of this license to any other person or corporation without the previous written consent of the other party. In the event of an attempt to assign, transfer, convey or otherwise dispose of this license to any person not specifically a party to this Agreement and license, then this license shall be null and void and terminated without notice to the party attempting such.

11. Any notice required under the terms of this License Agreement must be in writing and must be sent by certified mail to the address of the party to whom the notice is to be given.

Addresses of the parties are as follows:

FOR CITY: John D. Lavisky, City Administrator
City of Lighthouse Point
2200 NE 38th Street
Lighthouse Point, Florida 33064

FOR LICENSEE: Dennis W. Beach, City Manager
City of Pompano Beach
Post Office Box 1300
Pompano Beach, Florida 33061-1300

12. This License Agreement shall be construed in accordance with the laws of the State of Florida. If any provision hereof, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this License Agreement, or the application of the remainder of the provisions, shall not be affected. Rather, this License Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this License Agreement are solely for the convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of the Revocable License is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this License, unless otherwise expressly provided. All terms and words used in this License Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and other gender, as the context requires.

13. This License Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

14. Nothing contained in this License Agreement is intended to serve as a waiver of sovereign immunity by the CITY or LICENSEE as provided for in Fla. Stat. 768.28.

15. Each party shall maintain its own respective records and documents associated with this License Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees of non-compliance with the law.

16. The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligation herein and that the preparation of this License has been their joint effort.

IN WITNESS WHEREOF, the parties to this License Agreement have set their hands and seals on the day and year first above written.

“LICENSEE”:

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved by:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"CITY":

Witnesses:

CITY OF LIGHTHOUSE POINT

[Signature]

By: [Signature]
GLENN TROAST, MAYOR

[Signature]

By: [Signature]
JOHN D. LAVISKY CITY ADMINISTRATOR

Attest:

[Signature]
JENNIFER M. OH, CITY CLERK



Approved by:

[Signature]
CITY ATTORNEY

(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 20th day of APRIL, 2016 by GLENN TROAST, as Mayor, JOHN D. LAVISKY, as City Administrator, and JENNIFER M. OH, as City Clerk, of the City of Lighthouse Point, a municipal corporation on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

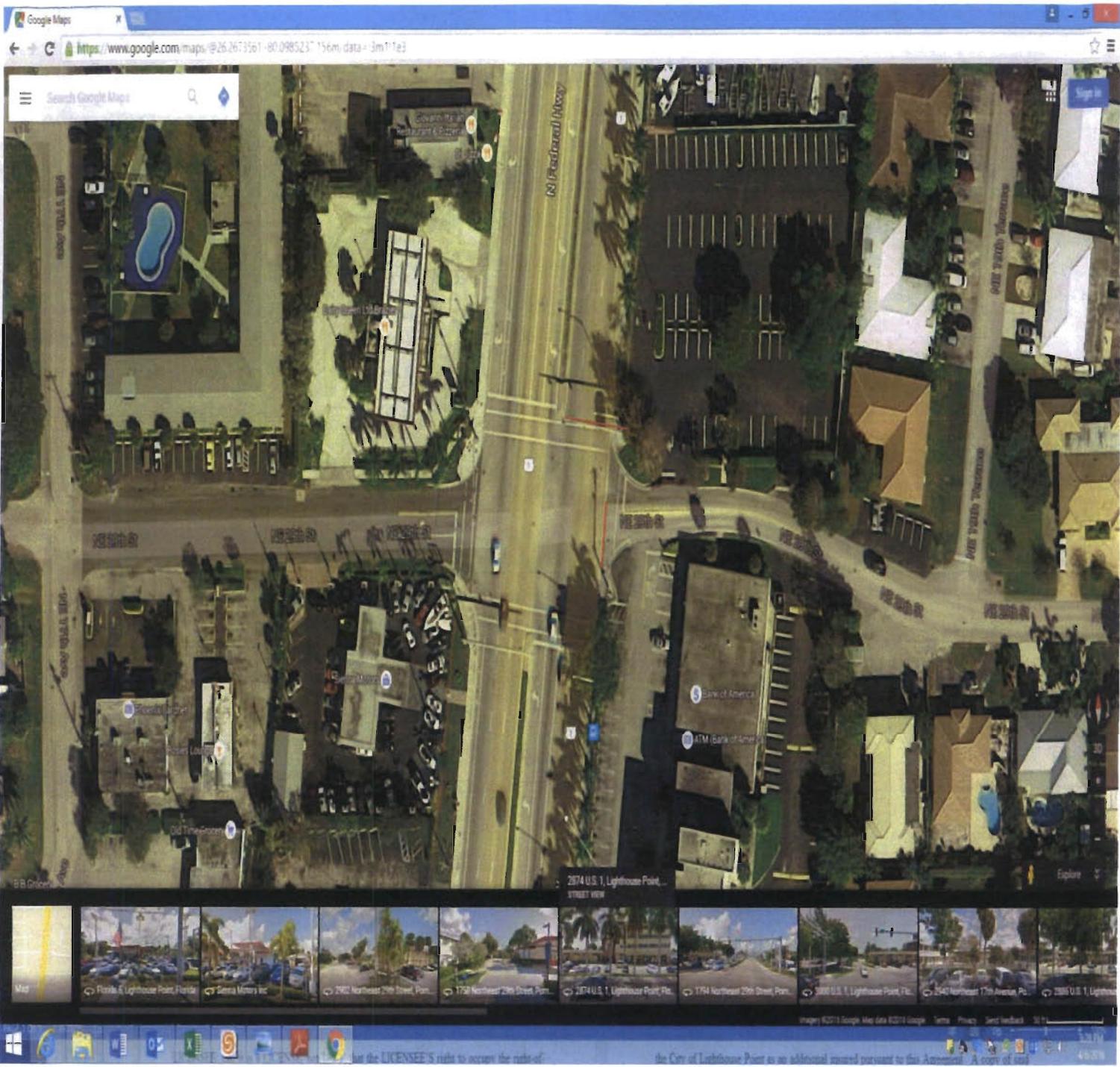
Elizabeth Barnette
(Name of Acknowledger Typed, Printed or Stamped)



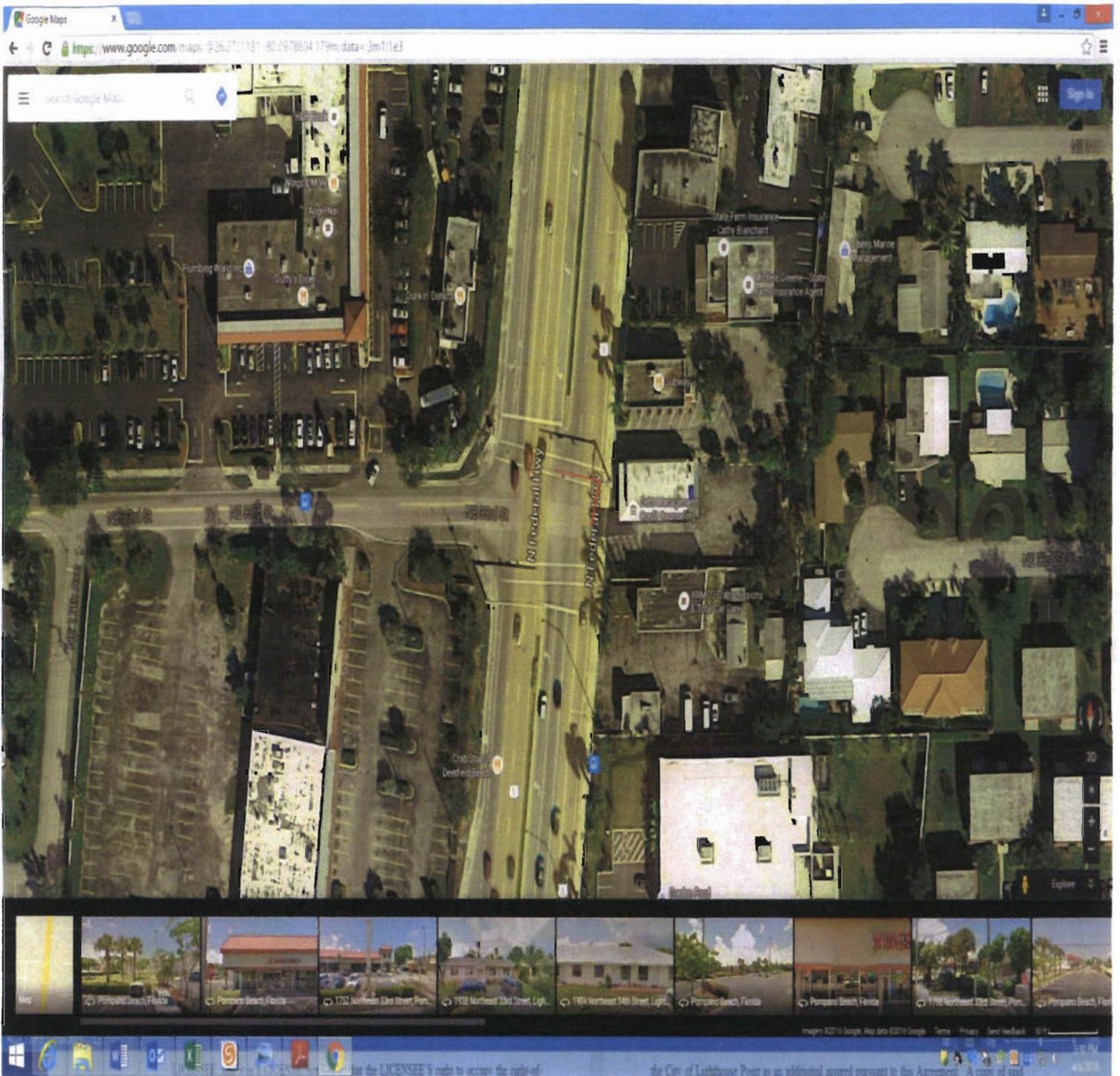
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Commission Number

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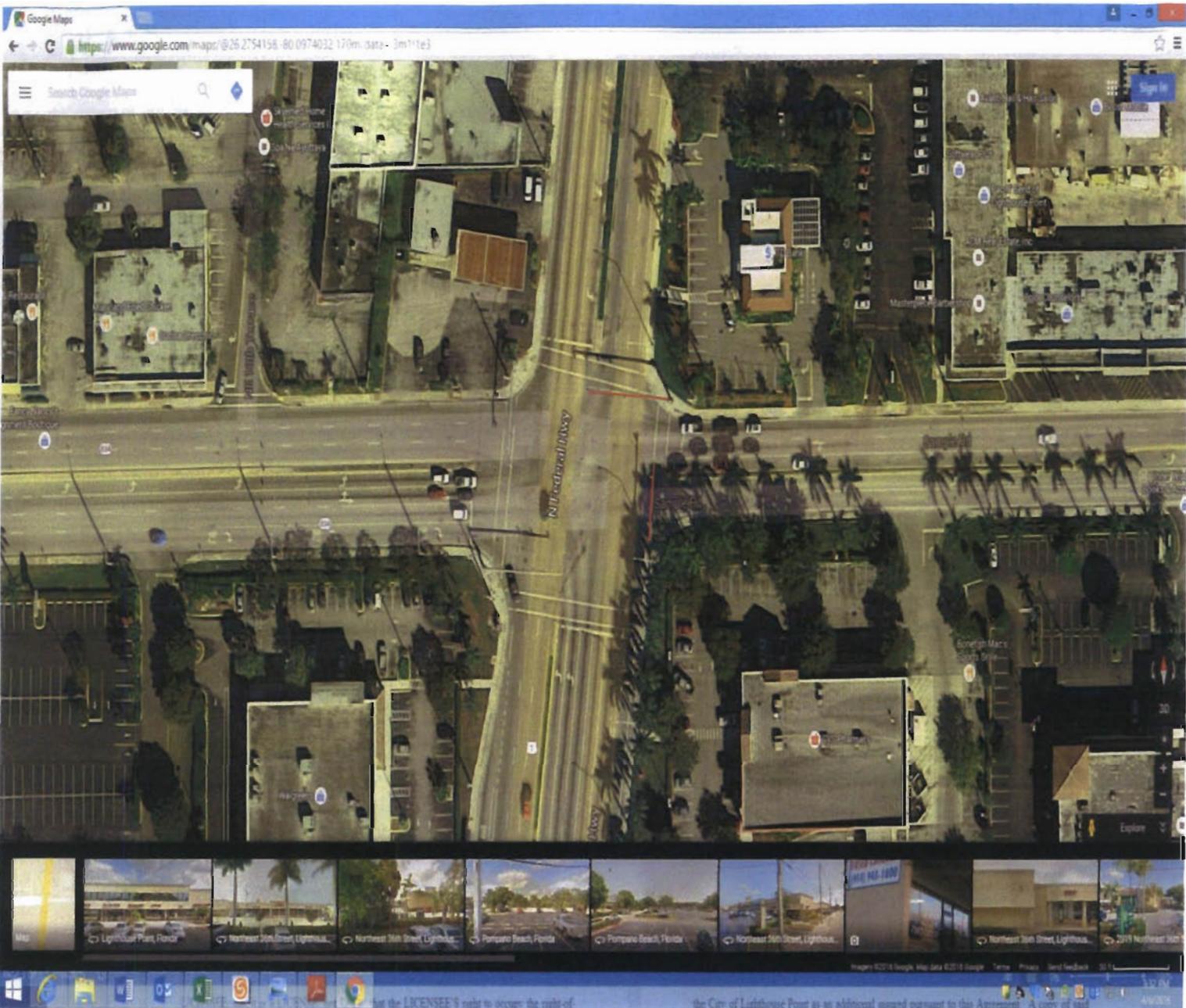
EXHIBIT A



NE 29th St & Federal Highway
Qty (2) Mast Arms on COLP Side



NE 33rd St & Federal Highway
Qty (1) Mast Arm Column with (2) Arms on COLP Side



Sample Road & Federal Highway
Qty (2) Mast Arms on COLP Side

