



City of Pembroke Pines



Frank C. Ortis, Mayor
Iris A. Siple, Vice-Mayor
Charles F. Dodge, City Manager

Angelo Castillo, Commissioner
Jay Schwartz, Commissioner
Carl Shechter, Commissioner

INTER-OFFICE CORRESPONDENCE

MEMORANDUM NO. 2016-075

TO: Mayor Frank C. Ortis
Members of the City Commission

CC: Charles F. Dodge, City Manager
Karl Kennedy, City Engineer
Marlene Graham, City Clerk

FROM Samuel S. Goren, City Attorney *SSG*
Jacob G. Horowitz, Assistant City Attorney *JGH*

DATE: April 4, 2016

RE: City of Pembroke Pines ("City") / Traffic Engineering Agreement

On July 20, 1983, the City and Broward County (the "County") entered into a Traffic Engineering Agreement whereby the City, in accordance with the provisions of Florida law, transferred certain traffic engineering functions, authority, powers, responsibilities and duties to the County. On February 6, 1985, the City and the County amended the original 1983 Agreement to clarify the responsibilities of the parties and further clarify the indemnification related to the services and functions provided pursuant to the Agreement. For purposes of this memorandum, the 1983 Original Agreement and the 1985 Amendment are collectively referred to as "the Agreement." A copy of the Agreement, as amended, is attached for your review.

At its meeting on March 16, 2016, the City Commission directed the City Attorney's Office to review the Agreement and to evaluate the City's options in the event that the City wanted to consider terminating the same.

I. Transfer of Functions and Duties

Pursuant to the Agreement, the following functions and duties were transitioned from the City to the County:

- 1) Install stop or yield signs necessary to govern traffic.
- 2) Install and maintain traffic signals where necessary.
- 3) Prohibit or restrict left, right, and U-turns.
- 4) Designate crosswalks, establish safety zones and mark traffic lines.
- 5) Designate one-way streets.
- 6) Establish no-parking, no-standing and no-stopping regulations.
- 7) Establish play streets.
- 8) Establish emergency and experimental regulations.
- 9) Establish on-street truck and passenger loading zones.
- 10) Establish speed limits.
- 11) Establish no passing zones.
- 12) Designate public carrier stands.
- 13) Establish traffic control guidelines for all roadway construction and maintenance operations.
- 14) Prohibit use of streets by trucks.
- 15) Prohibit use of streets by bicycles.

The County is **fully responsible** for **all repair, maintenance and associated costs/expenses** concerning the items set forth above, but the City has a **duty and obligation** to **notify** the County when it receives **actual notice** of any defect, malfunction, failing or imperfection in the installation or operation of traffic regulation equipment, signs and signals, or if any equipment, signs and signals are in need of repair.

II. County Funding

The Agreement **requires** the County to provide, in its annual budget, the full and complete financial support necessary to carry out its obligations set forth therein.

III. Requests of the City

The Agreement requires the County to accede to and implement **all reasonable written requests of the City** promulgated by either the City Manager or by resolution of the City Commission for the installation, retention, or removal of traffic control devices within the City, and to implement all reasonable requests of the City with regards to any of the duties and functions set forth above, **so long as such requests are consistent with Department of Transportation specifications and commonly accepted standards of traffic engineering.**

IV. Indemnification

A major key to the Agreement requires the County to indemnify the City for **all claims and damages** incurred as a result of work performed **by the County**. The City **is not** indemnified for negligent acts of the City or the City's failure to notify the County when the City receives **actual notice** of any defect or malfunction.

When the City Commission has examined this issue in the past, the Agreement's indemnification provision has been the primary basis for the City Attorney's Office and the City Administration advising against terminating the Agreement. This position is legally and fiscally significant from many liability perspectives.

V. Termination

The Agreement may be terminated by either the City or the County by providing formal written notice to the other party **at least ninety (90) days prior** to the next succeeding October 1, and said October 1 shall be the effective date of such termination. On or before the termination date, the County is required to provide the City with an inventory, as set forth in the Agreement, or, at the City's option, make a lump sum payment to the City in an amount equal to the value of such inventory.

In the event that the City desired to terminate the Agreement, the City is legally required to provide the County with formal written notice **no later than July 3, 2016**. The termination would be effective on **October 1, 2016**.

VI. Conclusion

The City Commission, from time to time, has asked the City Attorney's Office and/or the City Administration to evaluate the benefits of the City's continued participation in the Agreement. The City Attorney's Office respectfully defers to the City Manager in the context of evaluating the County's performance of its obligations under the Agreement.

As we have advised in the past, the City derives a **significant legal benefit** from the indemnification section of the Agreement. In the event that the City Commission sought to terminate the Agreement, the City Attorney's Office would recommend that the City further examine any and all potential liabilities associated with termination which might arise from the City's decision to resume control of its traffic engineering functions.

Please contact our office if there is any additional information that we can provide.

SSG:JGH

TRAFFIC ENGINEERING AGREEMENT

THIS AGREEMENT, made and entered into this 20 day of July, A.D. 19 83, by and between:

BROWARD COUNTY, Florida, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY;" and

The City of Pembroke Pines, a municipal corporation existing under the laws of the State of Florida, hereinafter referred to as "CITY;"

W I T N E S S E T H:

WHEREAS, Section 316.006(2), Florida Statutes, grants municipalities original jurisdiction over all streets and highways located within their boundaries, except state roads, and grants said cities authority to place and maintain traffic control devices which conform to the manual and specifications of the State Department of Transportation upon all streets and highways under their original jurisdiction, as they shall deem necessary, to indicate and to carry out the provisions of Chapter 316 or to regulate, warn, or guide traffic; and

WHEREAS, The City of Pembroke Pines presently has a traffic engineering function authorized and directed to carry out the matters authorized by Section 316.006(2), Florida Statutes; and

WHEREAS, the Broward County Charter, Section 1.050, provides that county government shall have the power and authority to assume and perform all functions and obligations now or hereinafter performed by any municipality whenever such municipality shall request the performance or transfer of the function to the COUNTY; and

WHEREAS, it has been determined that a centralized agency responsible for the installation, operation and maintenance of traffic control devices, throughout Broward County, Florida, is the most economical and efficient means of providing such needed service; and

WHEREAS, as part of this centralization of functions, CITY and COUNTY have agreed to transfer the functions, authority, powers, responsibilities and duties of the CITY'S Traffic Engineering function pertaining to the planning, installation, operation and maintenance of traffic control devices to the COUNTY pursuant to terms and conditions of this Agreement; and

WHEREAS, as a part of the consideration for the entering into of this Agreement, the COUNTY has agreed to assume the current funding obligation for the operation transferred hereunder, pursuant to the terms of this Agreement; and

WHEREAS, as part of the consideration for this Agreement, CITY has agreed to transfer to COUNTY certain equipment, materials and supplies enumerated hereunder; and

WHEREAS, Florida Statutes, Section 125.01(3), authorizes the COUNTY to enter into agreements with other governmental agencies within or outside the boundaries of the COUNTY for the performance of the COUNTY of certain of the CITY'S authorized functions.

NOW, THEREFORE, IN CONSIDERATION of the premises and mutual covenants hereinafter contained, the parties do agree as follows:

I. TRANSFER OF FUNCTIONS AND DUTIES.

CITY agrees to transfer to COUNTY, and the COUNTY agrees to accept and perform the following functions and duties in order to protect the welfare of the public, which functions and duties were formerly performed by CITY:

- (a) Install stop or yield signs necessary to govern traffic.
- (b) Install and maintain traffic signals where necessary.
- (c) Prohibit or restrict left, right and U-turns.
- (d) Designate crosswalks, establish safety zones and mark traffic lanes.
- (e) Designate one-way streets.
- (f) Establish no-parking, no-standing and no-stopping regulations.
- (g) Establish play streets.
- (h) Establish emergency and experimental regulations.
- (i) Establish on-street truck and passenger loading zones.
- (j) Establish speed limits.
- (k) Establish no passing zones.
- (l) Designate public carrier stands.
- (m) Establish traffic control guidelines for all roadway construction and maintenance operations.

(n) Prohibit use of streets by trucks.

(o) Prohibit use of streets by bicycles.

The COUNTY shall perform the above-described functions and duties through its Division of Traffic Engineering or any successor division which may be created. The COUNTY shall be fully responsible for all repair and maintenance concerning the items delineated in paragraphs (a) through (o) above, but it is understood and agreed that CITY shall have the duty and obligation to notify COUNTY promptly when CITY receives notice, or has either actual or constructive knowledge, of any and all defects, malfunctions, failings or imperfections in the installation or operation of traffic regulation equipment, signs, and signals as encompassed under this Agreement or if any said equipment, signs and signals are in need of repair, replacement, or maintenance.

All regulations established by the Traffic Engineering Department of COUNTY shall be made only after an engineering study has shown that the regulation is proper. All signs, signals and markings and the placement thereof shall be in conformance with the manual on Uniform Traffic Control Devices published by the State Department of Transportation. No regulation will be effective unless proper signs, signals and/or markings are in place.

2. ENCROACHMENTS.

It is understood and agreed that CITY shall retain the power to grant encroachments as provided by its Code of Ordinances subject, however, to the right of the COUNTY Traffic Engineering Division to review any proposed encroachments in order to ascertain whether the same will constitute a traffic hazard. If the COUNTY Traffic Engineering Division determines that said encroachment agreement will constitute a traffic hazard, then such encroachment agreement shall not be executed. With regard to existing encroachment agreements, the COUNTY Traffic Engineering Division shall review the same at the request of the CITY or may review the same at its own option in order to determine whether or not the same constitute traffic hazards. If the COUNTY Traffic Engineering Division does so determine that any of such encroachment agreements do in fact constitute a traffic hazard or hazards, the COUNTY Traffic Engineering Division shall notify the CITY and CITY shall take such steps as may be necessary to effect the removal of such encroachments at CITY expense.

3. RETENTION BY CITY OF FUNCTIONS AND DUTIES NOT TRANSFERRED.

It is specifically understood and agreed that all rights and powers as may be vested in the CITY pursuant to Chapter 316 of the Florida Statutes or any other law or ordinance or Charter provision of CITY and not specifically transferred to COUNTY hereunder shall be retained by CITY. It is further understood and agreed that CITY is not transferring any of its traffic enforcement functions, rights or duties by the execution of this Agreement, and CITY shall fully retain such traffic enforcement functions, rights and duties together with all rights of enforcement of CITY traffic ordinances or state traffic statutes.

4. TRANSFER OF MATERIALS, SUPPLIES AND EQUIPMENT.

The CITY transfers ownership to the COUNTY of those materials, supplies and equipment contained within and used exclusively by the CITY'S traffic engineering function, such materials, supplies, and equipment being those itemized and described in the list attached hereto as Exhibit "A" and made a part of this Agreement; and, the CITY shall execute a Bill of Sale Absolute for transfer of title to the COUNTY, and shall transfer possession of these materials, supplies and equipment.

5. TRANSFER OF OWNERSHIP OF TRAFFIC CONTROL DEVICES.

The CITY transfers ownership to the COUNTY of all traffic control devices presently installed within and owned by the CITY; and, the CITY shall execute a Bill of Sale Absolute for the transfer of title to the COUNTY of these devices.

6. PAYMENT OF UTILITIES FOR TRAFFIC CONTROL DEVICES.

As part of the assumption of the CITY'S traffic engineering functions, duties and responsibilities, COUNTY agrees to be responsible for and to pay utility bills for traffic control devices located within the CITY limits, but said responsibility shall not include responsibility for utility bills for street lights.

7. ASSIGNMENT OF CITY'S OUTSTANDING AGREEMENTS.

The CITY hereby assigns to the COUNTY all the rights and duties of existing outstanding agreements of the CITY Traffic Engineering function, and the COUNTY hereby assumes all performance required by the CITY in said contracts, a list of which is attached to this Agreement as Exhibit "B", and made a part hereof. No Agreement shall be assumed which is not enumerated in Exhibit "B".

8. COUNTY TO PROVIDE NECESSARY FINANCIAL SUPPORT UNDER AGREEMENT.

The COUNTY agrees to provide in its annual budget the financial support necessary for the purposes set forth in this Agreement.

9. APPLICATION FOR STATE AND FEDERAL GRANTS BY COUNTY.

The CITY agrees to allow the COUNTY to apply for and accept any State or Federal grants, loans, or other programs, which may become available to the COUNTY by virtue of the transfer of this function from the CITY to the COUNTY.

10. CITY ORDINANCES TO CONFORM TO AGREEMENT.

The CITY agrees to make whatever changes to its code of ordinances that are necessary to fully implement the provisions of this Agreement.

11. REASONABLE REQUESTS OF CITY.

The COUNTY and the Traffic Engineering Division of COUNTY agree to accede to and to implement all reasonable written requests of CITY promulgated by either the CITY Manager of CITY or by Resolution of the CITY Commission of CITY for the installation, retention, or removal of traffic control devices within the CITY, and further agree to accede to and to implement all reasonable requests of the CITY with regard to any of the duties and functions specified in paragraph 1 above, so long as such requests accord with the manual and specifications of the State Department of Transportation and commonly accepted standards of traffic engineering. No request of CITY as set forth herein shall alter or affect the provisions of paragraph 13 below.

12. INDEMNIFICATION.

COUNTY shall indemnify, hold harmless and defend CITY for all claims and damages incurred as a result of work performed by COUNTY, its agents or employees pursuant to the terms of this Agreement to the extent allowed by law. It is specifically understood and agreed that COUNTY does not indemnify CITY for the negligent acts or omissions of CITY'S agents or employees or the neglect or omission of CITY to notify COUNTY promptly when CITY receives notice, or has either actual or constructive knowledge, of any and all defects, imperfections, malfunctions, or failings of the traffic regulation equipment, signs or signals or any required repairs, replacement or maintenance of the traffic regulation equipment, signs or signals provided under the terms of this Agreement.


13. CANCELLATION.

This Agreement may be cancelled by CITY or COUNTY upon formal written notice given at least ninety (90) days prior to the next succeeding October 1st and said October 1st shall be the effective date of such cancellation. On or before the effective date of such cancellation, the COUNTY shall transfer to the CITY an inventory comparable to that described in paragraphs 5 and 6 hereinabove and the exhibits related thereto, or at the option of the CITY will make a lump sum payment to the CITY in an amount equal to the value of the above-referenced inventory as of the date the lump sum payment is to be made.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chairman, authorized to execute same by Board action on the 25 day of October, 1983, and City of Pembroke Pines, signing by and through its Mayor duly authorized to execute same.

COUNTY

ATTEST:

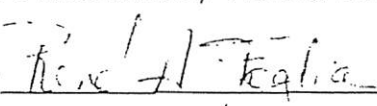

County Administrator and Ex-
Officio Clerk of the Board of
County Commissioners of
Broward County, Florida

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

By 
Its Chairman

27 day of Oct., 1983.

Approved as to form and legality by
Office of General Counsel
for Broward County, Florida
HARRY A. STEWART, General Counsel
Room 248, Courthouse
Fort Lauderdale, Florida 33301

By 
Assistant General Counsel

TRAFFIC ENGINEERING AGREEMENT

WITNESS:

Raymond Sturges
Clayton D. Miller

CITY

City of Pembroke Pines

By Carl W. Sturges
Mayor

20 day of July, 1983.

Approved as to Form and
Legality:

By: [Signature]
20 day of July, 1983.

RAF:lab
A140-E
2/28/83
#83-171

AMENDMENT TO
TRAFFIC ENGINEERING AGREEMENT

Between

BROWARD COUNTY

And

CITY OF PEMBROKE PINES

(Standard Form)

AMENDMENT TO
TRAFFIC ENGINEERING AGREEMENT

Between

BROWARD COUNTY

And

CITY OF PEMBROKE PINES

(Standard Form)

THIS IS AN AMENDMENT to the Traffic Engineering Agreement between: BROWARD COUNTY, Florida, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY;" and

CITY OF PEMBROKE PINES, a municipal corporation existing under the laws of the State of Florida, hereinafter referred to as "CITY;"

W I T N E S S E T H:

WHEREAS, the COUNTY performs certain traffic engineering functions for CITY, pursuant to a written Traffic Engineering Agreement;

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants and premises set forth in said Traffic Engineering Agreement and this Amendment, the COUNTY and the CITY agree as follows:

Section 1. The second paragraph of Section 1 of said Traffic Engineering Agreement is amended to read as follows:

1. TRANSFER OF FUNCTIONS AND DUTIES.

. . . .

The COUNTY shall perform the above-described functions and duties through its Division of Traffic Engineering or any successor division which may be created. The COUNTY shall be fully responsible for all repair and maintenance concerning the items delineated in paragraphs (a) through (o) above, but it is understood and agreed that CITY shall have the duty and obligation to notify COUNTY promptly when CITY receives actual notice of any and all defects, malfunctions, failings or imperfections in the installation or operation of traffic regula-

tion equipment, signs, and signals as encompassed under this Agreement or if any said equipment, signs and signals are in need of repair, replacement, or maintenance.

The remainder of Section 1 of said Traffic Engineering Agreement is unchanged.

Section 2. Section 12, INDEMNIFICATION, of said Traffic Engineering Agreement is amended to read as follows:

12. INDEMNIFICATION.

COUNTY shall indemnify, hold harmless and defend CITY for all claims and damages incurred as a result of work performed by COUNTY, its agents or employees, pursuant to the terms of this Agreement to the extent allowed by law. It is specifically understood and agreed that COUNTY does not indemnify CITY for the negligent acts or omissions of CITY'S agents or employees or the neglect or omission of CITY to notify COUNTY promptly when CITY receives (actual) notice of any and all defects, imperfections, malfunctions, or failings of the traffic regulation equipment, signs or signals or any required repairs, replacement or maintenance of the traffic regulation equipment, signs or signals provided under the terms of this Agreement.

Section 3. All provisions of said Traffic Engineering Agreement in conflict with this Amendment shall be and are hereby changed to conform with this Amendment.

Section 4. All provisions not in conflict with this Amendment shall remain in full force and effect.

Section 5. This Amendment is made a part of said Traffic Engineering Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment to Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chairman, authorized to execute same by Board action on the ____ day of _____, 19____, and CITY OF PEMBROKE

PINES, signing by and through _____
duly authorized to execute same.

COUNTY

ATTEST:

Chere Bruce
County Administrator and Ex-
Officio Clerk of the Board of
County Commissioners of
Broward County, Florida

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

By Scott F. Cowan
SCOTT F. COWAN, Chairman

17 day of March, 1984.

Approved as to form and legality by
Office of General Counsel
for Broward County, Florida
SUSAN F. DELEGAL, General Counsel
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

By _____
RENE' A. FOGLIA
Assistant General Counsel

CITY

ATTEST:

Charles F. Dodge
City Clerk/CHARLES F. DODGE

CITY OF PEMBROKE PINES

By Charles W. Flanagan
Mayor /CHARLES W. FLANAGAN

6TH day of FEBRUARY, 19 85.

(CORPORATE SEAL)

APPROVED AS TO FORM:

[Signature]
City Attorney

February 16, 1985
By [Signature]
City Manager

CITY COMMISSION APPROVED 2/6/85

RAF:lbl
A179-K
11/30/84
#83-171
Amended Standard



General Counsel's Office

Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
(305) 357-7600

December 11, 1984

Our File: 83-171

Steven L. Josias, Esquire
City Attorney
City of Pembroke Pines
City Hall
10211 Taft Street
Pembroke Pines, Florida 33026

RE: Amendment to Traffic Engineering Agreement
between Broward County and City of Pembroke Pines

Dear Mr. Josias:

Some time ago the Broward County Board of County Commissioners discussed the notification language in both Section 1, Transfer of Functions and Duties, and Section 12, Indemnification, of the proposed Traffic Engineering Agreement with those six (6) cities which had not yet entered into new agreements with the County. At that time, it was determined that the constructive knowledge language should be deleted from the forms.

On November 27, 1984, the County Commission approved revised agreements with the foregoing six (6) cities and amendments to the Traffic Engineering Agreements between Broward County and the nineteen (19) municipalities which had previously executed new agreements. This was done in accordance with the policy of the County Commission to treat all municipalities equally.

Enclosed herein please find three (3) copies of the foregoing amendment which have been approved and executed by the Broward County Commission. Please review said amendment and have the mayor of your City execute same in the manner provided on the form. Kindly return two (2) executed copies to our office for our Records Division.

If you have any questions concerning the foregoing, please contact our office.

Very truly yours,

Rene A. Foglia
Assistant General Counsel

RAF:ed
Enclosures

BROWARD COUNTY BOARD OF COUNTY COMMISSIONERS

Marcia Beach Scott I Cowan Howard Craft Howard Forman Jack Fried Nicki Englander Grossman Gerald Thompson

An Equal Opportunity Employer

Rec'd. 12/13/84

Chris Hoff



Pembroke Pines

1985 JAN 18 AM 11:24

10211 TAFT STREET PEMBROKE PINES, FLA. 33026

January 14, 1985

Woodward M. Hampton, City Manager
City of Pembroke Pines
10211 Taft Street
Pembroke Pines, Florida 33026

Re: Pembroke Pines/Broward County (Traffic
Engineering Agreement)

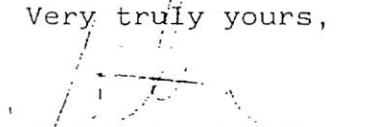
Dear Woody:

We have been furnished with the enclosed copies of an Amendment To Traffic Engineering Agreement with Broward County. I enclose a copy of René Foglia's letter which should be self explanatory relative to this situation. If you approve of the Amendment, it should be placed on the next immediate Commission agenda for approval and thereafter execution.

I have provided you with all of the original contracts with this correspondence and retained a copy for our file.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


STEVEN L. JOSIAS
City Attorney

SLJ/sgg

Enclosures


cc: Mayor Flanagan

January 21, 1985

MEMORANDUM TO: STEVE JOSIAS
CITY ATTORNEY

I have no problem with the Traffic Engineering Agreement since the change was made to require that a City would have to have actual knowledge of a malfunction or a traffic sign problem that needed to be corrected, so these can be on the next agenda.

In regard to the Human Resource Center Interlocal Agreement, I find that they did use our suggestion for the President of the Fort Lauderdale Chamber of Commerce to be the odd member of the Board of Directors, however, they have gone back to utilizing the Commissioner of Education as the Arbitrator for any disputes between the City and the Board. It seems to me, the answer to this would be that any dispute be referred back to the Board of Directors and that they act as the Board of Arbitrators or in the alternative, have the Chief Executive of the Board and the City select a third person to act as Arbitrator. Other than that, the Agreement seems to be satisfactory.


WOODWARD M. HAMPTON
CITY MANAGER

WMH:sn