

**REVOCABLE LICENSE AGREEMENT BETWEEN BROWARD COUNTY AND
CITY OF TAMARAC FOR NON-EXCLUSIVE ACCESS AND USE OF
BROWARD COUNTY RIGHT-OF-WAY**

This Revocable License Agreement ("Agreement") between Broward County ("County"), a political subdivision of the State of Florida, and City of Tamarac ("Municipality"), a municipal corporation organized and existing under the laws of the State of Florida (collectively, the "Parties"), is entered into and effective as of the date this Agreement is fully executed by the Parties (the "Effective Date").

RECITALS

A. The right-of-way on Prospect Road from Commercial Boulevard to approximately 100 feet west of NW 15th Avenue (the "Revocable License Area"), and described in the attached **Exhibit A**, is functionally classified as a County road and under County's control.

B. Municipality seeks and County is amenable to Municipality's nonexclusive access and use of the Revocable License Area.

C. Municipality desires to install improvements, described in **Exhibit A**, in the Revocable License Area.

D. Municipality, through formal action of its governing body taken on the _____ day of _____, 2020, has accepted responsibility for the ongoing maintenance and repair (as described in Sections 4, 7, 10, and Exhibit B-1 of this Agreement) of the Improvements (as defined below) made by the Municipality within the Revocable License Area under the terms of this Agreement.

E. Municipality has authorized the appropriate municipal officers to execute this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. TERM. The term of this Agreement will commence upon the Effective Date and will continue until this Agreement is terminated as provided for in paragraph 9 below.

2. USE OF REVOCABLE LICENSE AREA. County hereby grants to Municipality a revocable license for nonexclusive access and use of the Revocable License Area only for the purpose designated below (the "Improvements"), and for the use described in the attached **Exhibit A** (the "Licensed Use"), including ongoing maintenance and repair of the Improvements. The Improvements must meet County's Minimum Standards Applicable to Public Rights-of-Ways Under Broward County Jurisdiction, the Special Technical Provisions attached as **Exhibit B-1**, and the Manufacturer's Specification attached as **Exhibit B-2**. The Improvements must be installed in accordance with

Exhibit A and are subject to the conditions of the Interim Approval Memorandum IA-14 in the attached **Exhibit D**. Other than the purposes identified in this Agreement, Municipality must not use the Revocable License Area for any other purpose whatsoever without written amendment of this Agreement executed with the same formalities as this Agreement. Municipality must also not permit the Revocable License Area to be used in any manner that will violate the terms of this Agreement or any laws, administrative rules, or regulations of any applicable governmental entity or agency.

PLEASE CHECK THE APPROPRIATE BOX BELOW

- Overflow parking in excess of the minimum of off-street parking required by Chapter 39, Broward County Code of Ordinances, or the applicable municipal minimum of off-street parking requirements.
- A sign that is permitted under applicable municipal/unincorporated sign ordinances and laws.
- Additional landscaping and irrigation in excess of that required by Chapter 39, Broward County Code of Ordinances, or applicable municipal minimum landscaping requirements or as a condition of any special exception or variance.
- Other (explain): Installation, maintenance, repair, and replacement of green colored pavement in bicycle lanes and within other specified and agreed upon traffic conflict areas as the term is used in Exhibit D.

2.1 Municipality shall submit plans for the installation together with specifications that comply with **Exhibit D** and a schedule for the ongoing maintenance of the Improvements to the Director of Broward County Traffic Engineering Division (the "TED") at least thirty (30) days before installation, and must not install the Improvements until a permit is issued by the Broward County Highway Construction and Engineering Division ("HCED"). Municipality shall ensure that the plans provide for the ongoing maintenance of the Improvements in accordance with the schedule provided, and in compliance with the guidance contained in **Exhibits B-1** and **B-2**.

2.2 Within five (5) days after installation of the Improvements, Municipality shall notify the Director of TED ("Director") that the Improvements are installed. The Director may, in his or her sole discretion, require Municipality to reinstall or remove any or all of the Improvements if the Improvements fail to comply with this Agreement or the approved plans and specifications.

2.3 Director may also terminate the Licensed Use and require Municipality to remove the Improvements if the interim approval, described in **Exhibit D**, is revoked or if in Director's sole discretion the Improvements pose significant safety concerns. If at any time Municipality is required by Director to reinstall any or all of the Improvements, Municipality shall reinstall the Improvements in

accordance with the Standard Detail Sheets attached as **Exhibit C**.

2.4 County, its agents, or authorized employees, will continue to have unimpeded and unrestricted access to the Revocable License Area at all times for all purposes including to examine and determine if Municipality is properly using and maintaining the Revocable License Area under the terms and conditions of this Agreement.

2.5 Any alteration of the Improvements by Municipality requires the prior submittal of plans and specifications, a permit issued by HCED consistent with the requirements under paragraphs 2.1, 2.2, and 2.3, above, and the subsequent acceptance of the alteration(s) by the Director.

2.6 Municipality shall keep the Revocable License Area clean, sanitary, and free from trash and debris. Municipality specifically agrees to install, maintain, and repair the Improvements in strict accordance with the approved plans and specifications and in a manner that will not pose a hazard to persons or vehicles on any adjacent property.

2.7 If Municipality fails to perform or comply with any terms or conditions of this Agreement, and upon written notice from the Director of the failure, this Agreement may be terminated in accordance with the provisions in paragraph 9.

2.8 The obligations of Municipality as set forth in this Agreement may be performed by Municipality through its employees, or Municipality may enter into a contract with a third party to perform the services. If Municipality contracts with a third party, Municipality will remain fully responsible hereunder and shall ensure that the third party complies at all times with each and every term, condition, duty, and obligation set forth in this Agreement.

3. COMPENSATION. No payment to County shall be made by Municipality for the Licensed Use granted in this Agreement.

4. DAMAGE TO REVOCABLE LICENSE AREA. Municipality must not by its access or use cause damage to the Revocable License Area. The Parties agree that all Improvements and personal property placed by Municipality upon the Revocable License Area will remain the property of Municipality, and will be placed upon the Revocable License Area at the sole risk of Municipality. Municipality shall give County prompt written notice of any occurrence, incident, or accident occurring on the Revocable License Area.

5. INDEMNIFICATION OF COUNTY. County and Municipality are entities subject to Section 768.28, Florida Statutes, as may be amended from time to time, and agree to be fully responsible for the negligent or wrongful acts and omissions of their respective agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by either party to be sued by third parties in any matter arising out of this Agreement or any other contract.

5.1 If Municipality contracts with a third party to perform any of Municipality's obligations under this Agreement, any contract with such third party must include the following provisions:

5.1.1 Indemnification. Third party shall indemnify and hold harmless Broward County, and all of Broward County's current and former officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses (collectively, a "Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused in whole or in part, by any intentional, reckless, or negligent act or omission of Municipality's third party, its current or former officers, employees, agents, servants or assigns, arising from relating to, or in connection with this Agreement. If any claim is brought against Indemnified Party, Municipality's third party shall upon written notice from County, at its own expense, defend each Indemnified Party against each such Claim by counsel satisfactory to Broward County, or, at Broward County Attorney's option, pay for an attorney selected by Broward County Attorney to defend Indemnified Party.

5.2 The provisions of paragraph 5 shall survive the expiration or earlier termination of this Agreement.

6. INSURANCE. Municipality must provide County with written verification of liability protection that meets or exceeds any requirements of Florida law. Additionally, if Municipality holds any excess liability coverage, Municipality must ensure that "Broward County" is named as an additional insured and certificate holder under such excess liability policy limited to Municipality's performance and obligations pursuant to this Agreement and provide evidence of same to County.

6.1 If Municipality maintains broader coverage or higher limits than the minimum coverage required under Florida law, County will be entitled to such broader coverage and higher limits. County's insurance requirements apply to Municipality's self-insurance.

6.2 If Municipality contracts with a third party to provide any of the services set forth herein, Municipality shall require that each contractor procure and maintain insurance coverage, at contractor's sole cost and expense, of the types and minimum amounts set forth in **Exhibit E**. Municipality must ensure that all such contractors name "Broward County" as an additional insured and certificate holder under the applicable insurance policies limited to their performance and obligations pursuant to their agreement with Municipality. Municipality must not permit any contractor to provide services until the insurance requirements under this section are met. Municipality shall furnish evidence of insurance for all such contractors.

6.3 County reserves the right, but not the responsibility, to periodically review any and all insurance policies and to reasonably adjust the limits and/or types of coverage required, from time to time throughout the term of this Agreement.

6.4 Coverage is not to cease and is to remain in full force and effect until all performance required of Municipality's contractor is completed.

7. MAINTENANCE, REPAIRS, AND OTHER OBLIGATIONS. Municipality is solely responsible for all costs associated with the Licensed Use, including maintenance and repair as described in Sections 4, 10, and Exhibit B-1 of this Agreement, and costs for repairing any damage to the Revocable License Area as described in Section 10, below, and illustrated by the green, cross-hatched area shown in Exhibit A to this Agreement.

8. SECURITY. There is no obligation for security as part of this Revocable License Agreement.

9. TERMINATION. This Agreement is merely a right to access and use, and grants no estate in the Revocable License Area. This Agreement may be terminated by County, through the Broward County Board of County Commissioners (the "Board"), with or without cause and at any time during the term hereof, upon thirty (30) days' written notice to Municipality.

10. SURRENDER UPON TERMINATION. Municipality must peaceably surrender its use of and deliver the Revocable License Area to County, or its agents, immediately upon termination of this Agreement.

Upon surrender, Municipality must remove from the Revocable License Area, at Municipality's own expense, the Improvements unless County, in writing, authorizes Municipality to leave the Improvements on the Revocable License Area. County will have no obligation to move, reinstall, replace, or in any way compensate Municipality for any loss resulting from or arising out of the termination of this Agreement, the requirement to remove the Improvements, or the removal of the same by County upon failure of Municipality to restore the Revocable License Area. Following removal of the Improvements, Municipality agrees to restore the Revocable License Area to its original condition, or a condition that complies with the Manual on Uniform Traffic Control Devices (MUTCD), and that is acceptable to the County as determined in the sole discretion of the Director. Municipality shall repair or pay for any damage to County property resulting from the removal of the Improvements.

11. WAIVER. Failure of County to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right contained in this Agreement, will not be construed as a waiver or relinquishment for the future of any such covenant, condition, or right; but the same will remain in full force and effect. None of the conditions, covenants, or provisions of this Agreement will be waived or modified by the Parties unless done so in writing as provided for in paragraph 18 below.

12. NOTICES. Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, together with a contemporaneous email, addressed to the party for whom it is intended at the place last specified. The manner in which and persons to whom notice may be provided will remain the same unless and until changed in writing in accordance with this article. The Parties respectively designate the following persons for receipt and issuance of notice:

For County:
 Director, Broward County Highway Construction & Engineering Division
 1 North University Drive, Suite 300B
 Plantation, FL 33324-2038
 Email: rtornese@broward.org

With a copy to:
 Director, Traffic Engineering Division
 2300 W. Commercial Boulevard
 Fort Lauderdale, Florida 33309
 Email: asebo@broward.org

For Municipality:
 Michael Cernech, City Manager
 City of Tamarac
 7525 NW 88th Avenue
 Tamarac, FL 33321
 Email: Michael.Cernech@tamarac.org

With a copy to:
 Jack Strain, Director of Public Services
 City of Tamarac
 Public Services South Building
 10101 State Street
 Tamarac, FL 33321
 Email: Jack.Strain@tamarac.org

13. ENTIRE AGREEMENT. This Agreement embodies the entire agreement between the Parties. It may not be modified or terminated except as provided in this Agreement. If any provision is invalid, it will be considered deleted from this Agreement, and such deletion will not invalidate the remaining provisions.

14. COMPLIANCE WITH LAWS. Municipality shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations related to the use of the Revocable License Area.

15. LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL. This Agreement must be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement will be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

16. FURTHER ASSURANCES. The Parties hereby agree to execute, acknowledge, and deliver and cause to be done, executed, acknowledged, and delivered all further assurances and to perform such acts as shall reasonably be requested of them in order to carry out this Agreement.

17. INCORPORATION BY REFERENCE. Any and all Recital clauses stated above are true and correct and are incorporated by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

18. AMENDMENTS. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and the Parties or others delegated authority or otherwise authorized to execute same on their behalf.

19. COUNTERPARTS AND MULTIPLE ORIGINALS. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same Agreement.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Parties have made and executed this Revocable License Agreement: Broward County, through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day of _____, 20__, and City of Tamarac, signing by and through its Mayor, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor
____ day of _____, 20__

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____
Signature (Date)

By _____
Matthew Haber (Date)
Assistant County Attorney

Print Name and Title above

Michael J. Kerr (Date)
Deputy County Attorney

