

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT is made and entered into this _____ day of _____, 20____, by and between:

The CITY OF TAMARAC, a municipal corporation of the State of Florida, with a business address of 7525 N. W. 88th Avenue, Tamarac, Florida 33321, hereinafter referred to as "TAMARAC;"

AND

The CITY OF SUNRISE, a municipal corporation of the State of Florida, with a business address of 10770 West Oakland Park Boulevard, Sunrise, Florida 33351, hereinafter referred to as "SUNRISE."

TAMARAC and SUNRISE shall hereinafter be referred to collectively as "the Parties."

RECITALS

WHEREAS, the Parties desire to improve the public right-of-way located on Commercial Boulevard from the Sawgrass Expressway off ramp to Pine Island Road (hereinafter referred to as the "Property"), described more particularly in the Joint Participation Agreement (hereinafter referred to as the "JPA"), attached hereto as Exhibit "A" and incorporated herein, which was executed on _____; and

WHEREAS, the Parties have entered into the JPA, which resulted in the improvement and beautification of the Property as set forth in the JPA, (hereinafter referred to as the "Improvements"); and

WHEREAS, the parties agree to enter into this Maintenance Agreement (hereinafter referred to as the "MA") assigning responsibility for maintenance of the Project to TAMARAC; and

WHEREAS, the Parties agree to split the costs incurred in the MA with SUNRISE agreeing to pay TAMARAC for fifty percent (50%) of all costs incurred by TAMARAC under the MA; and

NOW, THEREFORE, in consideration of the mutual covenants and other good and valuable consideration as set forth herein the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. RECITALS. The parties hereby acknowledge and agree that the above recitals are true and correct to the best of their knowledge and belief and are incorporated herein by this reference.

SECTION 2. PURPOSE, TERM, AND TERMINATION.

- 2.1 The purpose of this MA is to facilitate the perpetual maintenance of the public right-of-way located on the Property, which is on Commercial Boulevard, from the Sawgrass Expressway off ramp to Pine Island Road, described more particularly in the JPA.
- 2.2 This MA is effective immediately upon execution. The MA shall remain effective until September 30th of the year following the Effective Date. This MA shall automatically renew for an additional one (1) year term each October 1, unless and until terminated by either Party under the terms of this MA.
- 2.3 Either Party may terminate this MA for convenience upon one-hundred and twenty (120) days' written notice to the other party. Upon termination, SUNRISE shall pay TAMARAC for all costs incurred through and including the last day of this MA.

SECTION 3. SUNRISE'S DUTIES AND OBLIGATIONS.

- 3.1 SUNRISE shall reimburse TAMARAC for fifty percent (50%) of all costs incurred by TAMARAC under this MA related to the maintenance, repair, or replacement of the Improvements to the Property, including replacement costs of any trees, shrubs, landscaping, irrigation, and pumps which are agreed upon as common benefit to both TAMARAC and SUNRISE, as set forth in the Cost Sharing Obligations, which are set forth in Exhibit "B." If any items/features are for the sole benefit/request of one city, then that city shall be responsible for 100% of the maintenance cost for these items/features. These items/ features will be determined during the design review period, as early on as possible, and be so designated in the conceptual design approved by both parties so isolation of cost can be accomplished.
- 3.2 Upon receipt of each invoice, SUNRISE shall reimburse TAMARAC for 50% of the total costs of maintenance, repairs, or replacements of the Improvements to the Property pursuant to the Florida Prompt Payment Act, as set forth in §§218.70-218.80, Florida Statutes.

- 3.3 Certain improvements that are not to the common benefit of both cities, such as entrance signs, shall be maintained solely by the Party which installs such improvement.

SECTION 4. TAMARAC'S DUTIES AND OBLIGATIONS.

- 4.1 TAMARAC, in its sole discretion, shall ensure that the Improvements to the Property are properly maintained. The Property shall be maintained in substantially the same condition as when the Improvements are completed.
- 4.2 In furtherance of this obligation, TAMARAC, in its sole discretion, may engage vendors or contractors to maintain the Improvements to the Property.
- 4.3 TAMARAC shall invoice SUNRISE quarterly, in arrears, for 50% of the actual costs of maintenance and repairs made to the Improvements to the Property.
- 4.4. Certain improvements that are not to the common benefit of both cities, such as entrance signs, shall be maintained solely by the Party which installs such improvement.

SECTION 5. RESERVED.

SECTION 6. INDEMNIFICATION; LIABILITY INSURANCE.

- 6.1 Neither SUNRISE NOR TAMARAC waives any defense of sovereign immunity, or increases the limits of its liability, upon entering into this MA.
- 6.2 To the extent permitted by §768.28, Florida Statutes, TAMARAC agrees to indemnify, hold harmless and defend SUNRISE from any action to recover damages in tort for money damages, including reasonable attorneys' fees and costs, for bodily injury or loss of property of a third party, personal injury, or death, caused, in whole or in part, by a negligent or wrongful act or omission of TAMARAC, its officers, agents or employees while acting within the scope of his or her employment or function arising out of or in the performance of this MA.
- 6.3 To the extent permitted by §768.28, Florida Statutes, SUNRISE agrees to indemnify, hold harmless and defend TAMARAC from any action to recover damages in tort for money damages, including reasonable attorneys' fees and costs, for bodily injury or loss of property of a third party, personal injury, or death,

caused in whole or in part by a negligent or wrongful act or omission of SUNRISE, its officers, agents or employees while acting within the scope of his or her employment or function arising out of or in the performance of this MA.

- 6.4 TAMARAC agrees to require their contract(s) with their design professional(s) to include a provision to indemnify and hold harmless both TAMARAC and SUNRISE in accordance with both §725.08 and §558.0035, Florida Statutes, in the performance of this MA.
- 6.5 TAMARAC agrees to require their construction contract(s) with their contractor(s) to include a provision to indemnify and hold harmless both TAMARAC and SUNRISE in accordance with §725.06, Florida Statutes, in the performance of this MA.
- 6.6 TAMARAC agrees that any contractor hired by TAMARAC to construct or maintain the Property shall maintain insurance coverage in accordance with the attached **Exhibit "C,"** entitled "Minimum Insurance Coverage" at all times that said contractor performs the work. SUNRISE shall be named as an Additional Named Insured on any insurance policies maintained by TAMARAC's contractors, and a current Certificate of Insurance reflecting such coverage shall be provided to SUNRISE prior to the commencement of construction or maintenance activities.
- 6.7 Each party agrees to maintain sufficient professional, general liability and worker's compensation coverage, unless self-insured, regarding its respective liability throughout the term of this MA.
- 6.8 The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this MA. None of the parties intend to directly or substantially benefit a third party by this MA. The parties agree that there are no third-party beneficiaries to this MA and that no third party shall be entitled to assert a claim against any of the parties based upon this MA. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this MA or any contract.
- 6.9 TAMARAC and SUNRISE agree that this section and its indemnifications shall survive the termination of this MA.

SECTION 7. NOTICES. Any and all written notices required or permitted to be given hereunder shall be deemed received upon hand delivery or facsimile transmission or three (3) days if same are deposited in U.S. Mail and sent via overnight mail or via certified mail, return receipt requested.

All notices shall be sent to:

For TAMARAC: Michael C. Cernech, City Manager
City of Tamarac
7525 NW 88th Avenue
Tamarac, FL 33321
Phone: (954) 597-3510
Fax: (954) 597-3520
Email: michael.cernech@tamarac.org

With Copy to: Samuel S. Goren, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Blvd, Suite 200
Fort Lauderdale, FL 33308
Phone: (954) 771-4500
Fax: (954) 771-4923
Email: SGoren@cityatty.com

For SUNRISE: City Manager
City of Sunrise
10770 West Oakland Park Boulevard, Fifth Floor
Sunrise, FL 33351
Phone: (954) 746-3430
Email: citymanager@sunrisefl.gov

With copy to: City Attorney
City of Sunrise
City Attorney's Office
10770 West Oakland Park Boulevard, Third Floor
Sunrise, FL 33351
Phone: (954) 746-3300
Email: cityattorney@sunrisefl.gov

SECTION 8. AMENDMENTS. Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality as this MA by both parties.

SECTION 9. VENUE AND ELECTION OF REMEDIES. This MA shall be construed and governed by the laws of the State of Florida. Any and all legal action arising out of or necessary to enforce this MA shall be held in the 17th Judicial Circuit in and for Broward County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereinafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

SECTION 10. WAIVER OF JURY TRIAL. The Parties hereby waive any rights any of them may have to a jury trial in any litigation arising out of or related to this MA and agree that they shall not elect a trial by jury. The parties hereto have separately, knowingly and voluntarily given this waiver of right to trial by jury with the benefit of competent legal counsel.

SECTION 11. NONDISCRIMINATION. SUNRISE and TAMARAC shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this MA. SUNRISE and TAMARAC shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by SUNRISE and TAMARAC, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, TAMARAC and SUNRISE shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms, and conditions of employment, training (including apprenticeship), and accessibility. Decisions by SUNRISE and TAMARAC regarding this MA shall be made without regard to or consideration of race, age, religion, color, familial status, gender identity, and expression, sex including pregnancy, sexual orientation, national origin, marital status, political affiliation, disability if qualified or any other factor which cannot be lawfully used as a basis for service delivery.

SECTION 12. CONSTRUCTION. The Parties acknowledge that each has shared equally in the drafting and preparation of this MA and, accordingly, no Court or Administrative Hearing Officer construing this MA shall construe it more strictly against one party than the other and every covenant, term and provision of this MA shall be construed simply according to its fair meaning.

SECTION 13. SEVERABILITY. In the event any section, paragraph, sentence, clause or provision hereof is held invalid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this MA and the same shall remain in full force and effect unless the invalid finding is as to payment or construction obligations of a party in which event the MA shall be thereupon terminated.

SECTION 14. ENTIRE UNDERSTANDING. This MA represents the entire understanding between the parties and supersedes all other negotiations, representations or agreements, written or oral, relating to the matters which are the subject of this MA.

SECTION 15. HEADINGS. The headings contained in this MA are for convenience of reference only and shall not limit or otherwise effect in any way the meaning or interpretation of this MA.

SECTION 16. COUNTERPARTS. This MA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 17. AUDIT RIGHT AND RETENTION OF RECORDS AND PUBLIC RECORDS.

17.1 SUNRISE and TAMARAC shall have the right to audit the books, records, and accounts of either party that are related to the Improvements to the Property. SUNRISE and TAMARAC shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Property. SUNRISE and TAMARAC shall preserve and make available, at reasonable times for examination and audit by the other party, all financial records, supporting documents, statistical records, and any other documents pertinent to this MA for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this MA. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer,

the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by one party to be applicable to the other party's records, the other party shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated.

17.2 The Parties are public agencies subject to Chapter 119, Florida Statutes.

IF SUNRISE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUNRISE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS MA, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**JENNIFER JOHNSON
CITY CLERK
7525 NW 88TH AVENUE
ROOM 101
TAMARAC, FL 33321
(954) 597-3505
CITY.CLERK@TAMARAC.ORG**

IF TAMARAC HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO TAMARAC'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS MA, TAMARAC SHOULD CONTACT SUNRISE'S CUSTODIAN OF PUBLIC RECORDS: THE CITY CLERK, FELICIA M. BRAVO, BY TELEPHONE (954/746-3333), E-MAIL (CITYCLERK@SUNRISEFL.GOV), OR MAIL (CITY OF SUNRISE, OFFICE OF THE CITY CLERK, 10770 WEST OAKLAND PARK BOULEVARD, SUNRISE, FLORIDA 33351).

SECTION 18. INDEPENDENT CONTRACTOR. Neither party nor its agents shall act as officers, employees, or agents of the other party. This MA shall not constitute or make the parties a partnership or joint venture.

SECTION 19. EFFECTIVE DATE. This MA shall be effective as of the last date that it is signed by the parties hereto.

(REMAINDER INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals the day and year first above written.

ATTEST:

CITY OF TAMARAC

Jennifer Johnson
City Clerk

Michael C. Cernech
City Manager

Date

Date

Approved as to form and legal
sufficiency

Samuel S. Goren, City Attorney

Date

ATTEST:

CITY OF SUNRISE

Felicia M. Bravo, CMC
City Clerk

Mark S. Lubelski
City Manager

Date

Date

Approved as to form and legal
sufficiency

Kimberly Kisslan, City Attorney

Date

EXHIBIT A

JPA

EXHIBIT B
COST SHARING OBLIGATIONS

SUNRISE shall reimburse TAMARAC for fifty percent (50%) of all costs incurred by TAMARAC under this MA related to the maintenance, repair, or replacement of the Improvements to the Property, including replacement costs of any trees, shrubs, landscaping, irrigation, and pumps, which are agreed upon as common benefit to both TAMARAC and SUNRISE. If any items/features are for the sole benefit/request of one city, then that city shall be responsible for 100% of the maintenance cost for these items/features. These items/ features will be determined during the design review period, as early on as possible, and be so designated in the conceptual design approved by both parties so isolation of cost can be accomplished.

EXHIBIT C
Minimum Insurance Coverage

1. Contractor agrees, at its sole expense, to maintain on a primary, non-contributory basis during the life of this Contract, or the performance of work under this Project, insurance coverages, limits, and endorsements as required herein. The Contractor agrees the insurance requirements herein as well as TAMARAC'S review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Contract. Any coverage maintained by the City of Sunrise and City of Tamarac shall apply excess of, or contingent upon the absence of, insurance required or maintained by Contractor.

2. **Commercial General Liability.** Contractor agrees to maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate. Contractor agrees its coverage will not contain any restrictive endorsement(s) excluding or limiting Product/Completed Operations, Independent Contractors, Broad Form Property Damage, X-C-U Coverage, Contractual Liability or Separation of Insureds.

3. **Business Automobile Liability.** Contractor agrees to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

4. **Worker's Compensation & Employer's Liability.** Contractor agrees to maintain Worker's Compensation & Employers Liability Insurance. Elective exemptions or coverage afforded through an employee leasing arrangement will NOT satisfy the contractual requirement.

5. **Commercial Umbrella/Excess Liability.** Contractor agrees to maintain either a Commercial Umbrella or Excess Liability at a limit of liability not less than \$2,000,000 Each Occurrence \$2,000,000 Aggregate. The Contractor agrees to endorse the City of Sunrise and the City of Tamarac as an "Additional Insured" on the Commercial Umbrella/Excess Liability, unless the Certificate of Insurance states the Commercial Umbrella/Excess Liability provides coverage on a pure/true follow-form basis, or the City of Sunrise and the City of Tamarac are automatically defined as an Additional Protected Person.

6. **Additional Insured Endorsement.** Contractor agrees to endorse the City of Sunrise and the City of Tamarac as an Additional Insured on the Commercial General Liability with the following Additional Insured endorsement, or similar endorsement providing equal or broader Additional Insured coverage, the CG 20 10 07 04 or GC 20 10 04 13 Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or Organization endorsement in combination with the additional endorsement GC 20 37 10 01 or GC 20 37 04 13 Additional Insured – Owners, Lessees, or Contractors – Completed Operations. The name of the organization endorsed as Additional Insured for all endorsements shall read “City of Sunrise” and “City of Tamarac.”

7. **Waiver of Subrogation.** Contractor agrees by entering into this written Contract to a Waiver of Subrogation in favor of the City of Sunrise/City of Tamarac, Contractor, sub-contractor, architects, or Engineer for each required policy providing coverage during the life of this Contract. When required by the insurer, or should a policy condition not permit the Contractor to enter into a pre-loss Contract to waive subrogation without an endorsement, the Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition that specifically prohibits such an endorsement, or voids coverage should the Contractor enter into such Contract on a pre-loss basis.

8. **Right to Revise or Reject.** Contractor agrees the City of Tamarac reserves the right, but not the obligation, to review or revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the City of Tamarac reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage due of its poor financial condition or failure to operating legally in the State of Florida. In such events, the City of Tamarac shall provide Contractor and City of Sunrise with written notice of such revisions or rejections.

9. **Certificate of Insurance.** Contractor agrees to provide the City of Sunrise and the City of Tamarac a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when a manuscript notice endorsement is available by Contractor’s insurer. If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the

insurance requirements herein, Contractor agrees to notify the City of Sunrise and City of Tamarac by fax or email within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder(s) address shall read:

For TAMARAC: Michael C. Cernech, City Manager
 City of Tamarac
 7525 NW 88th Avenue
 Tamarac, FL 33321
 Phone: (954) 597-3510
 Fax: (954) 597-3520
 Email: michael.cernech@tamarac.org

For SUNRISE: City Manager
 City of Sunrise
 10770 West Oakland Park Boulevard
 Sunrise, FL 33351
 Phone: (954) 746-3430
 Email: citymanager@sunrisefl.gov

10. **Other Terms.** City of Tamarac shall have the right, but not the obligation, of prohibiting Contractor from entering the Project site until a new Certificate of Insurance is provided to the City of Sunrise and the City of Tamarac evidencing the replacement coverage. The Contractor agrees the City of Tamarac reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to the City of Sunrise and the City of Tamarac. If the Contractor fails to maintain the insurance as set forth herein, the Contractor agrees the City of Tamarac shall have the right, but not the obligation, to purchase replacement insurance, which the Contractor agrees to reimburse any premiums or expenses incurred by the City of Tamarac.