

STORMWATER SERVICES AGREEMENT

THIS AGREEMENT is made this ____ day of ____, 2023, between FOREST LAKE ESTATES HOA, a corporation organized and existing under the laws of the State of Florida and having its principal office at 10191 W. Sample Rd. Coral Springs, Florida 33065 (hereinafter designated as "ASSOCIATION") and the CITY OF LAUDERHILL, a Florida municipal corporation, whose address is 5581 West Oakland Park Boulevard, Lauderhill, Florida 33313 (hereinafter designated as "CITY").

WITNESSETH:

WHEREAS, ASSOCIATION currently holds legal title to the private property contained within that parcel of real property which is the subject of this Agreement, the sketch and legal description of which is attached hereto as Exhibit "A" (the "PROPERTY"); and

WHEREAS, ASSOCIATION has chosen to voluntarily operate as a private Homeowner's Association and all roads, lakes, and property located within the gated community of the ASSOCIATION are privately owned by the ASSOCIATION and have not been dedicated nor deeded to the CITY or to the public and are not for public use; and

WHEREAS, ASSOCIATION has a private lake and catch basin within its private borders that feeds into the CITY canal and is connected to the CITY's stormwater system; and

WHEREAS, ASSOCIATION has received a Surface Water Management License No. SWM92-052 and a Modification of Surface Water Management Permit No. 06-00259-S for the construction and operation as the owner of a private water management system located within the private association which is subject to recertification every five (5) years; and

WHEREAS, ASSOCIATION has requested the CITY to agree to clean the ASSOCIATION's private catch basin on the same or similar schedule of frequency as when the CITY determines it is necessary to clean other single-family residential catch basins within the CITY; and

WHEREAS, in order for the CITY to spend tax revenues or public funds, it must serve a public purpose – which does not include the expenditure of tax revenues or public funds for the maintenance to, drainage improvements, or dredging of private property that would be to the primary benefit of private individuals (AGO 85-90; AGO 92-42; and *Brumby v. City of Clearwater*, 149 So. 203 (Fla. 1933)); and

WHEREAS, CITY's collection of Stormwater User Fees are separate, distinct, and distinguishable from tax revenues or public funds because they are collected from the user specifically for the sole purpose of stormwater. The User Fees are specifically designated as a separate Stormwater Enterprise Fund that is solely designated for expenditures associated with the Stormwater System. The User Fees are deposited into a separate account and are never co-mingled with tax revenues or any other public funds. The User Fees may not be used for any purpose except

in relation to Stormwater maintenance, improvements, and/or upgrades for which they are collected; and

WHEREAS, since Stormwater User Fees are not tax revenues and are distinguishable from public funds, it does not appear that the sole use of revenue collected from Stormwater User Fees is limited by the restrictions for expenditures provided for in the Florida Constitution and Attorney General Opinions which restrict the use of tax revenues and public funds; and

WHEREAS, each individual single family resident owner located within the ASSOCIATION is billed and pays Stormwater User Fees for the benefit of being tied into and utilizing the CITY's overall stormwater system; and

WHEREAS, the limited maintenance of waterways that connect into the CITY stormwater drainage system, utilizing solely Stormwater User Fee revenues, would assist in the overall CITY drainage and has been deemed by the City Commission to be an appropriate expenditure for the use of designated Stormwater User Fees and also serves a public purpose (AGO 2002-48); and

WHEREAS, ASSOCIATION wishes to grant CITY access, authority, and the right to exercise jurisdiction to enter over and into any private or limited access property within the ASSOCIATION in order to perform the cleaning of its catch basins when the CITY determines it is necessary or emergent to do so for the betterment of the CITY's overall stormwater management system;

NOW, THEREFORE, for and in consideration of the mutual benefits accruing to each party and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. CITY agrees to perform the limited maintenance which includes solely the cleaning of ASSOCIATION'S catch basins when the CITY determines it is necessary or emergent to do so for the betterment of the CITY's overall stormwater management system and in a manner consistent with or on the same or similar schedule of frequency as when the CITY determines it is necessary to clean other single-family residential catch basins within the CITY, with at least the frequency as established by the ASSOCIATION'S license recertification requirements (i.e. once every five (5) years). The CITY'S responsibilities are solely limited to clean up services at the CITY'S discretion including the removal of debris, grit, and trash removal from catch basins. The CITY is not responsible for any other services and this agreement specifically excludes: any repair to basin, pipes, root removal; removal, repair or replacement of baffle; cleanup of pipes and trenches; repair and replacement of the iron grates; repair and replacement of catch basin (concrete boxes); reconfiguration of swales; repair of sink-holes; repair, maintenance or replacement of control structures; the dredge, repair or maintenance of the storage ponds, lakes, and embankments; the cutting, pruning or trimming of trees; the cutting of roots; the treatment of aquatic vegetation; the removal of large objects obstructing the flow of waterways; street sweeping; roadway maintenance (asphalt repairs, milling, resurfacing, marking, signing, lighting, etc.), or any other services, maintenance, repair, improvements, or upgrades not expressly agreed to in writing by the CITY.

2. CITY will solely use revenues collected from Stormwater User Fees to pay for any

expenditures incurred to perform the limited maintenance cleaning of the catch basins as it has been deemed to be an appropriate expenditure and use for which the Stormwater User Fees are collected to assist in maintaining the City's overall stormwater management system.

3. ASSOCIATION, in further consideration for the above stated commitments of CITY, does hereby declare, establish, provide, give and grant to the CITY, its successors, administrators and assigns, a perpetual non-exclusive ingress/egress easement for the purpose of public service personnel and vehicles, ingress and egress over and across their private property.

a. The terms, covenants, conditions, grants and provisions of this easement may be extended, modified, abrogated, rescinded, or revoked in whole or in part only with the written consent of the grantor and grantee and only by the appropriate instrument in writing, duly executed by both grantor and grantee and duly recorded in the public records of Broward County, Florida.

b. The easements herein granted shall be effective on the date hereof, and shall be binding upon all parties or persons claiming under them, and shall run with the title for the above described properties until abrogated, rescinded or revoked as aforesaid.

4. The ASSOCIATION shall defend, indemnify and hold harmless the CITY, its agents, officers, officials and employees from and against any and all liabilities, claims, causes of action, demands, debts, costs, obligations or expenditures, including court costs and attorneys' fees, which may be made against or incurred by the CITY arising by reason of any negligent acts or omissions of the ASSOCIATION, its principals, agents, officers, directors, employees, volunteers, affiliates, owners, managers, or members (hereinafter collectively referred to as the "ASSOCIATION") in connection with this Agreement. If it becomes necessary for the CITY to defend any action seeking to impose any such liability for negligent acts or omissions of the ASSOCIATION, the ASSOCIATION, at the option of the CITY, will defend the CITY or pay all court costs and reasonable attorneys' fees incurred by the CITY in such defense, in addition to any other sums which the CITY may be called upon to pay by reason of the entry of a judgment or decree against the CITY in the litigation in which such claim is asserted.

5. This Agreement shall take effect upon execution and approval by the City Commission and the ASSOCIATION and shall continue in full force and effect until either rescinded or cancelled by either party.

6. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party.

7. This Agreement may only be modified in writing by mutual agreement of the parties.

8. ASSOCIATION, in further consideration for the above stated commitments of CITY, does hereby declare, establish, provide, give and grant to the CITY, its successors, administrators and assigns, a perpetual non-exclusive ingress/egress easement for the purpose of public service personnel and vehicles, ingress and egress over and across the property.

a. The terms, covenants, conditions, grants and provisions of this easement may be extended, modified, abrogated, rescinded, or revoked in whole or in part only with the written consent of the grantor and grantee and only by the appropriate instrument in writing, duly executed by both grantor and grantee and duly recorded in the public records of Broward County, Florida.

b. The easements herein granted shall be effective on the date hereof, and shall be binding upon all parties or persons claiming under them, and shall run with the title for the above described properties until abrogated, rescinded or revoked as aforesaid.

9. This instrument shall be binding upon, and shall inure for the benefit of the respective heirs, legal representatives, successors and assigns of the grantee and the grantor.

IN WITNESS WHEREOF, the parties have set their hands and seals for purposes herein expressed.

Witness:

Print Name

Witness:

Print Name

ASSOCIATION/PROPERTY OWNER:

By:

Print Name

Title:

Address:

STATE OF FLORIDA:

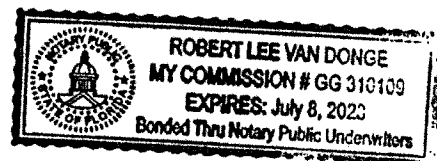
SS

COUNTY OF BROWARD:

I HEREBY CERTIFY that on this day in the county and state aforesaid, before me, an officer duly authorized and acting, Rachel Shender, on behalf of the ASSOCIATION, did appear before me by X physical presence OR by online notarization, to me known and known to me to be the person who signed the foregoing instrument for the uses and purposes mentioned therein; or who has produced drivers License as identification.

WITNESS my hand and official seal in the county and state last aforesaid, this 6th day of March, 2023.
My Commission expires:

Robert Lee Van Donge
Notary Public, State of Florida



CITY:

City of Lauderhill

Witness:

Print Name _____

By: _____

Print Name: Desorae Giles-Smith

Title: City Manager

Witness:

Print Name _____

Address: 5581 West Oakland Park Boulevard

Lauderhill, FL 33319

STATE OF FLORIDA:

SS

COUNTY OF BROWARD:

I HEREBY CERTIFY that on this day in the county and state aforesaid, before me, an officer duly authorized and acting, appeared DESORAE GILES-SMITH, as City Manager acting on behalf of the CITY, by physical presence, to me known and known to me to be the person who signed the foregoing instrument for the uses and purposes mentioned therein, or who has produced _____ as identification.

WITNESS my hand and official seal in the county and state last aforesaid, this _____ day of _____, 20____.

My Commission expires:

Notary Public, State of Florida