



Board of County Commissioners

Project Name: Lincoln Avenue Sidewalk Project
Parent Parcel ID No.: 272833-000000-033010

RIGHT-OF-WAY AGREEMENT

**STATE OF FLORIDA
COUNTY OF POLK**

THIS AGREEMENT made and entered into this _____ day of _____, 2023, by and between the **TOWN OF DUNDEE**, a municipal corporation organized and existing under the laws of the State of Florida, whose address is 202 East Main Street, Dundee, Florida 33838 (the “Town”), and **POLK COUNTY**, a political subdivision of the state of Florida, whose mailing address is P.O. Box 9005, Drawer RE-01, Bartow, Florida 33831-9005, (the “County”).

WITNESSETH

WHEREAS, the Town of Dundee (the “Town”) is a Florida municipal corporation vested with home rule authority pursuant to the Municipal Home Rule Powers Act (F.S. Chapter 166) and Article VIII, §2 of the Florida Constitution; and

WHEREAS, pursuant to Section 2(b), Article VIII of the Florida Constitution and Chapter 166, Florida Statutes, the Town, is vested with governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services, including the general exercise of any power for municipal purposes; and

WHEREAS, pursuant to Section 1(g), Article VIII of the Florida Constitution and Chapter 125, Florida Statutes, Polk County (the “County”) is vested with home rule authority which includes, but is not limited to, the general exercise of any power for local self-government; and

WHEREAS, pursuant to Section(s) 166.021 and 125.01, Florida Statutes and Section(s) 2(b) and 1(g), Article VIII, Florida Constitution, the Town and County are authorized to negotiate and enter into this Agreement; and

WHEREAS, by virtue of that certain Warranty Deed (the “Deed”) recorded in Official Records Book 12445, Page(s) 1157 – 1159, Public Records of Polk County, Florida, the County is the Fee Simple Owner of the land(s) identified by the Polk County Property Appraiser as Parcel Identification Number 272833-000000-033010 (the “County Property”); and

WHEREAS, a copy of the Deed is attached hereto as **Exhibit “A”** and incorporated herein by reference; and

WHEREAS, the Town has a current and/or planned capital improvement project which includes, but is not limited to, the design and construction of a sidewalk along the south side of a municipal road known as Lincoln Avenue (the “Project”); and

WHEREAS, in order for the Town to construct and/or complete the Project, the Town has requested that the County convey to the Town certain additional right-of-way along the south side of Lincoln Avenue as described and depicted in the attached **Exhibit “B”** (the “Property”); and

WHEREAS, in an effort to plan for future development and growth, the County agrees to donate and/or convey the Property (see **Exhibit “B”**) to the Town; and

WHEREAS, the County requested and The Town agrees to construct, as part of the Project, a 20-foot wide and 6-inch thick driveway (the “Driveway”) to serve as a point of access for the County Property to access the parent tract; and

WHEREAS, the Town and County agree that the cost(s) arising out of the design and construction of the Driveway will be initially borne by the Town and reimbursed by the County in accordance with the terms and conditions set forth by this Agreement; and

WHEREAS, on December 12, 2023, the Town Commission of the Town of Dundee, Florida, at a duly noticed public meeting, adopted Resolution No. 23-30 (the “Resolution”) approving and accepting the conveyance of the Property (see **Exhibit “B”**); and

WHEREAS, a copy of the Resolution is attached hereto as **Exhibit “C”** and incorporated herein by reference; and

WHEREAS, in order to construct the Driveway, the County acknowledges and agrees that the Town, its agents, representatives, contractors and consultants have a temporary easement to enter upon, over and across and to use any and all of the County Property as more particularly described in **Exhibit “D”** attached hereto and incorporated herein by reference (the “Construction Easement”); and

WHEREAS, to the extent permitted by applicable Florida law, County agrees to indemnify and hold harmless the Town, its agents, employees and officers from and against all liabilities, claims, damages, expenses or actions, either at law or in equity, including attorney’s fees and costs and attorney fees and costs on appeal, caused or incurred, in whole or in part, as a result of any act or omission by the County, or anyone for whose acts or omissions the County may be liable as a result of the County’s fee ownership or the County’s use of the Construction Easement (see **Exhibit “D”**); and

WHEREAS, to the extent permitted by applicable Florida law, the Town agrees to indemnify and hold harmless the County, its agents, employees and officers from and against all liabilities, claims, damages, expenses or actions, either at law or in equity, including attorney's fees and costs and attorney fees and costs on appeal, caused or incurred, in whole or in part, as a result of any negligent act or omission by the Town or anyone for whose negligent acts or omissions the Town may be liable as a result of the Town's rights under this Agreement; and

WHEREAS, the Town and County acknowledge, represent and agree that nothing contained in this Agreement shall constitute a waiver of either parties' sovereign immunity under applicable Florida law and or the limits of either parties' limits of liability as set forth in Section 768.28, Florida Statutes, or to extend the limits of liability or recovery under Section 768.28, Florida Statutes regardless of whether based on contract, statute, negligence, products liability, strict liability, or otherwise.

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar each to the other paid, it is agreed as follows:

- (a) The foregoing factual recitals are incorporated herein by the parties as true and correct statements which form the factual and material basis for entry into this Agreement between the Town and County.
- (b) County agrees to donate and convey the Property (see **Exhibit "B"**) by County Deed unto the Town for the Project.
- (c) The Town agrees to construct for the County, as part of the Project, a 20-foot wide and 6-inch thick driveway (the "Driveway") in accordance with applicable Town standards to serve as a point of access for the County in order to access the parent tract. The County agrees to reimburse the Town for the cost(s) arising out of the design and construction of the Driveway in a sum **not to exceed Two Thousand Three Hundred Eighty Dollars (\$2,380.00)** as more particularly set forth in **Exhibit "E"** attached hereto and incorporated herein by reference.
- (d) The County, by this Agreement, hereby grants a temporary easement to enter upon, over and across and to use any and all of the County Property as more particularly described in **Exhibit "D"** attached hereto and incorporated herein by reference (the "Construction Easement") for the purpose of constructing the Driveway.
- (e) The Town agrees and expressly acknowledges that the monies paid and other consideration given in accordance with this Agreement are just and full compensation for the construction of the Driveway and no other monies including fees and/or cost are owed by the County to Town.
- (f) Notwithstanding any other provision set forth in the Agreements, nothing contained in this Agreement shall be construed as a waiver of the parties' right to sovereign immunity under applicable Florida law and/or a waiver of the limits of the parties' liability set forth in Section

768.28, Florida Statutes (2023), or other limitations imposed on the parties’ potential liability under state or federal law regardless of whether such claims are based in tort, contract, statute, strict liability, negligence, product liability or otherwise. This Section shall survive termination of this Agreements.

- (g) All exhibits annexed hereto are incorporated by reference and made a part of the Agreement.
- (h) Any controversy over the construction of this Agreement shall be decided neutrally and without regard to events of authorship or negotiation.
- (i) This Agreement shall be governed by Florida law. Venue for any litigation pertaining to or arising out of the subject matter hereof shall be exclusively in the state courts of Polk County, State of Florida, in the 10th Judicial Circuit.
- (j) This Agreement which includes, but shall not be limited to, the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other prior or contemporaneous communications between the Parties relating to the subject matter herein.
- (k) If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared to be severable.
- (l) This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constitute one Agreement.

*** THIS AGREEMENT IS SUBJECT TO FINAL APPROVAL BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA AND THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA.**

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names, and on the date shown above.

COUNTY:
POLK COUNTY, a political subdivision of
the State of Florida

Town:
TOWN OF DUNDEE

By: _____
R. Wade Allen, Administrator
Real Estate Services

By: _____

Print Name/Title

Its Agent

Approved by the County Board:

Approved by the Town Commission:

Date

Date