



Interoffice Memorandum

April 3, 2024

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Joseph C. Kunkel, P. E., Director, Public Works Department

CONTACT PERSON: Dale V. Mudrak, P. E., Manager
Development Engineering Division

PHONE NUMBER: (407) 836-7974

SUBJ: **Pavers for Residential Driveways
Right-of-Way Use Agreement**

The Public Works Department, along with the County Attorney's Office, have developed a Right-of-Way Use Agreement template for the construction and installation of paver improvements for driveway aprons. Public Works is seeking to use this new template as a standard agreement for all future paver installations.

These documents would allow property owners to use pavers inside Orange County Right-of-Way for the driveway apron instead of concrete or asphalt. The property owners would be allowed to install, construct, and maintain the brick pavers. The County shall not have any obligation to participate in the maintenance of the paver improvements. The new agreement eliminates a previous proof of insurance requirement but continues to provide a hold harmless and indemnification provision.

Staff recommends approval of the Right-of-Way Use Agreement as an item for recording.

Action Requested: Approval of the Right-of-Way Use Agreement to be used as a template for paver installation for driveway aprons inside of Orange County Right-of-Way. All Districts

DVM/cmck

Attachment

BCC Mtg . Date: April 23, 2024

Return to:

Parcel ID No.

USE AGREEMENT BETWEEN <HOMEOWNER NAME> AND ORANGE COUNTY

THIS AGREEMENT (the “Agreement”), is entered into by and between _____, a property homeowner (“Homeowner”) with a mailing address at _____, and **Orange County**, a charter county and political subdivision of the State of Florida (“County”) with a mailing address at P.O. Box 1393, Orlando, FL 32802-1393.

RECITALS

WHEREAS, a residential home on a certain parcel of real property (the “Property”), as more particularly described in **Exhibit “A”**, attached hereto and by this reference made a part hereof, the title of which is held by Homeowner, has been constructed and is located in the unincorporated area of Orange County; and

WHEREAS, Homeowner desires to obtain a Right-of-Way Utilization permit (the “Permit”) from County, whereby Homeowner will be allowed to install, construct, and maintain the following improvement(s): **BRICK PAVERS** (the “Improvement(s)”) in the road, median, parkway, and/or drainage areas located within the rights-of-way adjacent to the Property which have been, or will be, dedicated to public use (collectively, the “Dedicated Areas”), said Dedicated Areas being adjacent to the Property and more particularly described in the attached and incorporated **Exhibit “B”**; and

WHEREAS, the work associated with the Improvement(s) is detailed in **Exhibit “C”**, attached hereto and incorporated herein; and

WHEREAS, County requires that Homeowner be solely responsible for the fulfillment of

certain commitments and covenants to assure the perpetual and continuous maintenance of any such Improvement(s) which commitments and covenants are more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set forth herein, the parties agree as follows:

1. **RECITALS**. The foregoing recitals are true and correct and form a material part of this Agreement.
2. **RIGHT-OF-WAY UTILIZATION PERMIT**. Any such Permit issued by County to Homeowner shall be subject to the terms of this Agreement. Homeowner shall not, while installing or maintaining the Improvement(s), damage or disturb any portion of the Dedicated Areas without prior written approval by County and County's prior written approval of a plan to restore the Dedicated Areas. Nothing contained herein or by virtue of the issuance of the Permit shall give or grant the Homeowner any Homeownership rights to any portion of the Dedicated Areas.
3. **IMPROVEMENTS**. Any improvement(s) that, in County's sole opinion, may impede the functional operation of planned, proposed, or existing underdrains shall not be permitted under this Agreement. The Improvement(s) shall be established and maintained in such a manner as will not interfere with the use of the Dedicated Areas by the public nor create a safety hazard on such Dedicated Areas. If County determines, in its sole discretion, that the Improvement(s) do present a safety hazard, then Homeowner, at its sole expense and at no cost to County, shall relocate the Improvements in such a manner as to eliminate the hazard, to the satisfaction of

County.

4. **REMOVAL/RELOCATION.** If, in the sole opinion of County, the Improvements interferes with any construction, reconstruction, alteration, improvements, or maintenance which County desires to perform on, around, or under the Dedicated Areas, or if County desires removal for any reason, then written notice of such shall be sent to Owner. Homeowner shall remove or relocate the Improvements as requested by County, and to County's satisfaction, within thirty (30) days of said notice or, in the event such notice is returned as undeliverable to Homeowner's address listed above, within thirty (30) days of the first date of publication of legal notice, which publication shall appear in not less than two weekly issues of a newspaper of general circulation in Orange County, Florida. Any such relocation or removal of the Improvement(s) shall be at no cost or expense to County.
5. **INDEMNIFICATION.** To the fullest extent permitted by law, Homeowner shall defend, indemnify, and hold harmless Orange County from and against all claims, damages, losses, and expenses, including reasonable attorney fees and costs, arising out of, or resulting from, the performance of their operations under this Agreement. Homeowner shall indemnify and hold harmless County (and any governmental body or utility authority properly using the Dedicated Areas) from and against all expenses, costs, or claims for any damages to the Improvement(s) which may result from the use of the right-of-way by County or other governmental body or authority due to maintenance, construction, installation, or other proper use within the

Dedicated Areas.

6. **RECORDING**. This Agreement shall be recorded in the Public Records of Orange County, Florida within thirty (30) days of its execution. Promptly upon execution of this Agreement, Homeowner shall pay to County an amount equal to the applicable cost of recording this Agreement in the Public Records of Orange County, Florida.
7. **COVENANTS RUNNING WITH THE LAND**. The provisions of this Agreement shall constitute covenants running with the land or an equitable servitude upon the land, as the case may be, applicable to all of the Property described herein or any portion thereof. Furthermore, this Agreement shall be binding on all parties having any right, title, or interest in the Property described herein or any portion thereof, and their heirs, personal representatives, successors, and assigns. Homeowner declares that the Property described in this Agreement and any portion thereof shall be held, sold, and conveyed subject to the provisions of this Agreement. This Agreement shall inure to the benefit of and be enforceable by County and its respective legal representatives, successors, and assigns.
8. **DURATION**. The provisions, restrictions, and covenants of this Agreement shall run with and bind the land for a period of twenty-five (25) years from the date this Agreement is recorded in the Public Records of Orange County, Florida. Thereafter, this Agreement shall be automatically extended for successive periods of ten (10) years each, unless a written instrument agreeing to revoke said provisions, restrictions, and covenants is approved by a majority of the Orange County Board of

County Commissioners and Homeowner. No such agreement to revoke shall be effective until said written instrument has been signed, acknowledged, and recorded in the Public Records of Orange County, Florida. Notwithstanding any of the above provisions, County shall have the right to cancel this Agreement upon thirty (30) days prior written notice to Homeowner. No such cancellation shall be effective until a written instrument has been executed and acknowledged by the Board of County Commissioners and recorded in the Public Records of Orange County, Florida.

9. **AMENDMENT**. The provisions, restrictions, and covenants of this Agreement shall not be modified or amended except in a written instrument approved by a majority of the Orange County Board of County Commissioners and Homeowner of the Property described herein. No such modification or amendment shall be effective until said written instrument has been signed, acknowledged, and recorded in the Public Records of Orange County, Florida.
10. **COMPLIANCE WITH APPLICABLE LAWS**. Homeowner shall comply with all applicable state laws and county ordinances, including the Orange County Right-of-Way Utilization Regulations.
11. **DISCLAIMER OF COUNTY RESPONSIBILITY**. Nothing contained herein shall create any obligation on the part of County to maintain or participate in the maintenance of the Improvement(s).
12. **EFFECTIVE DATE**. This Agreement shall take effect upon being recorded in the Public Records of Orange County, Florida.

Agreement for <property address>
Parcel ID No.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed
by their respective duly authorized representatives on the dates set forth below.

COUNTY

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Jerry L. Demings
Orange County Mayor

Date: _____

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

Agreement for <property address>
Parcel ID No.

I hereby acknowledge receipt of this notice and further acknowledge that I have read and understand all of the provisions contained herein.

HOMEOWNER

By: _____

Print Name: _____

WITNESS:

Print Name: _____

WITNESS:

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me **by means of physical presence / online notarization**, this **(date)** by **(name of person acknowledging)**, who is personally known to me or has produced **(type of identification)**, as identification.

Signature of person taking acknowledgement
Name typed, printed or stamped: _____
Title or rank: _____

Agreement for <property address>
Parcel ID No.

I hereby acknowledge receipt of this notice and further acknowledge that I have read and understand all of the provisions contained herein.

HOMEOWNER

By: _____

Print Name: _____

WITNESS:

Print Name: _____

WITNESS:

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me **by means of physical presence / online notarization**, this **(date)** by **(name of person acknowledging)**, who is personally known to me or has produced **(type of identification)**, as identification.

Signature of person taking acknowledgement
Name typed, printed or stamped: _____
Title or rank: _____

Agreement for <property address>
Parcel ID No.

EXHIBIT "A"

Legal Description and Sketch of Description for Property

[See attached __ page(s)]

Agreement for <property address>
Parcel ID No.

EXHIBIT "B"

Legal description and sketch of description for the Dedicated Areas

[See attached __ page(s)]

Agreement for <property address>
Parcel ID No.

EXHIBIT "C"

Detailed description of Improvement(s)

- **INSTALL HARDSCAPE – BRICK PAVERS**