

**CITY OF MIRAMAR
PROPOSED CITY COMMISSION AGENDA ITEM**

Meeting Date: July 10, 2019

Presenter's Name and Title: Salvador Zuniga, Asst. City Engineer, on behalf of Engineering Services.

Temp. Reso. Number: R6906

Item Description: Temp. Reso. No. R6906, APPROVING THE REVOCABLE LICENSE AGREEMENT WITH BROWARD COUNTY TO PERMIT A FENCE ENCROACHMENT INTO THE PUBLIC RIGHT-OF-WAY; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION OF THE AGREEMENT (Asst. City Engineer Salvador Zuniga)

Consent ☒ Resolution ☐ Ordinance ☐ Quasi-Judicial ☐ Public Hearing ☐

Instructions for the Office of the City Clerk: The Agreement shall be recorded in the Public Records of Broward County, Florida.

Public Notice – As Required by the Sec. _____ of the City Code and/or Sec. _____, Florida Statutes, public notice for this item was provided as follows: on _____, in a _____ ad in the _____; by the posting the property on _____ and/or by sending mailed notice to property owners within _____ feet of the property on _____. (Fill in all that apply)

Special Voting Requirement – As required by Sec. _____, of the City Code and/or Sec. _____ Florida Statutes, approval of this item requires a _____ (unanimous 4/5ths etc. vote of the City Commission.

Fiscal Impact: Yes ☐ No ☒

REMARKS:

Content:

- **Agenda Item Memo from the City Manager to City Commission**
- **Resolution TR No. R6906**
 - **Exhibit A: Revocable License Agreement to Permit a Fence Encroachment into the Public Right-of-Way**
- **Attachment(s)**
 - **Attachment 1: Location Map**



**CITY OF MIRAMAR
INTEROFFICE MEMORANDUM**

TO: Mayor, Vice Mayor, & City Commissioners

FROM: *WV* Vernon E. Hargray, City Manager *V. H*

BY: Bissy Vempala, City Engineer

DATE: July 3, 2019

RE: Temp. Reso. No. R6906, Approving the Revocable License Agreement with Broward County to permit a fence encroachment into the public right-of-way

RECOMMENDATION: The City Manager recommends approval of Temp. Reso. No. R6906, approving the Revocable License Agreement with Broward County to permit a fence encroachment into the public right-of-way.

ISSUE: City Commission approval required to allow any encroachment into a public right-of-way.

BACKGROUND: Broward County owns a parcel of property located at 3601 SW 62nd Avenue in Miramar, adjacent to the Snake Warrior's Island Park. The County wants to enclose their property by constructing a fence around its perimeter. However, an archeological grave site was identified on the Northern part of the property abutting the City's public right-of-way along SW 35th Street (see attached Location Map). The County wants to jog the fence around the grave site to protect its integrity, which will require encroachment into the public right-of-way. The subject right-of-way is 50' wide with 22' of paved roadway and 14' of grass swale on each side. The proposed fence would encroach approximately 5' into the swale of the right-of-way and run parallel for approximately 20'. Engineering Services staff has reviewed the proposed location and determined that there's no conflict with any use or proposed use for that portion of right-of-way.

The Project Manager for this project is Salvador Zuniga, Assistant City Engineer.

Temp. Reso. No. R6906
05/29/19
06/28/19

**CITY OF MIRAMAR
MIRAMAR, FLORIDA**

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, APPROVING THE REVOCABLE LICENSE AGREEMENT WITH BROWARD COUNTY TO PERMIT A FENCE ENCROACHMENT INTO THE PUBLIC RIGHT-OF-WAY; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Miramar (the "City") owns the Public Right-of-Way running along Southwest 35th Street and Southwest 62nd Way (the "Right-of Way"); and

WHEREAS, Broward County (the "County") desires to obtain permission from the City to utilize the Right-of-Way to install a fence that encroaches five (5) feet into the Right-of- Way and jots twenty-five (25) feet around an archeological grave site for the preservation of the County's property generally located at 3601 Southwest 62nd Way; and

WHEREAS, the County has submitted a "Revocable License Agreement to Permit a Fence Encroachment into the Public Right-of-Way (Revocable License Agreement)", attached hereto as Exhibit "A" for City's approval; and

WHEREAS, the City Commission finds that the Revocable License Agreement is in the best interest and welfare of the citizens and the residents of the City and wishes to approve the same in substantially the form attached hereto as Exhibit "A."

Reso. No. _____

Temp. Reso. No. R6906
05/29/19
06/28/19

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF
MIRAMAR, FLORIDA AS FOLLOWS:**

Section 1. That each of the above stated recitals is hereby adopted and confirmed.

Section 2. The Revocable License Agreement between the City and the County, substantially in the form attached hereto as Exhibit "A" and by this reference incorporated herein, is hereby approved. The City Commission authorizes the City Manager to execute the Revocable License Agreement on behalf of the City, together with such non-substantive changes as may be approved by the City Manager and City Attorney for legal sufficiency.

Section 3. The City Manager and/or designee are authorized to take any and all action necessary to implement the Revocable License Agreement and the purposes of this Resolution.

Section 4. That the Revocable License Agreement shall be recorded in the public records of Broward County, Florida, with the actual cost of recording and the actual recording to be accomplished by the County with a copy of the recorded documents returned to the Engineering Services.

Temp. Reso. No. R6906
05/29/19
06/28/19

Section 5. That this Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this _____ day of _____, _____.

Mayor, Wayne M. Messam

Vice Mayor, Alexandra P. Davis

ATTEST:

City Clerk, Denise A. Gibbs

I HEREBY CERTIFY that I have
approved this RESOLUTION
as to form:

City Attorney
Weiss Serota Helfman
Cole & Bierman, P.L.

Requested by Administration

Commissioner Winston F. Barnes
Commissioner Maxwell B. Chambers
Commissioner Yvette Colbourne
Vice Mayor Alexandra P. Davis
Mayor Wayne M. Messam

Voted

REVOCABLE LICENSE AGREEMENT
TO PERMIT A FENCE ENCROACHMENT INTO THE
PUBLIC RIGHT-OF-WAY

Property ID No. 514125010630

Permit No. 1809528

(Building Permit/Site Plan Process No. 1809528)

THIS REVOCABLE LICENSE AGREEMENT ("Revocable License") is entered into this ____ day of _____, 20____, by and between BROWARD COUNTY, a political subdivision of the State of Florida ("County"), whose address is 115 South Andrews Avenue, Fort Lauderdale, Florida 33301, and CITY OF MIRAMAR, FLORIDA, a Florida municipal corporation ("City"), whose address is 2300 Civic Center Place, Miramar, Florida 33025.

WHEREAS, City is the owner of a public right-of-way abutting Southwest 35th Street and Southwest 62nd Way in Miramar, Florida ("Right-of-Way"); and

WHEREAS, County owns the property located at 3601 Southwest 62nd Way, Miramar, Florida, Property ID No. 514125010630 (the "Property"), and desires to build a fence around a portion of the Property that would encroach upon the Right-of Way; and

WHEREAS, County seeks permission from City to encroach upon the Right-of-Way; and

WHEREAS, County has requested that City grant this Revocable License to County to utilize the Right-of-Way for the purposes set forth in this Revocable License; and

WHEREAS, City is willing to grant County this Revocable License for the purposes set forth herein, subject to certain terms and conditions; and

WHEREAS, in consideration of receipt of this Revocable License, County agrees to be bound by the limiting conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing Recitals are true and correct and are made a part of this Revocable License by this reference.

2. **Use of Right-of-Way.** County shall use and occupy a portion of the Right-of-Way under this Revocable License to install a fence ("Encroachment") for the protection of County's archeological site encroaching five (5) feet into the Right-of-Way and jutting twenty-five (25) feet around the archeological grave site (as specifically described in Exhibit A, the "Encroachment Area"). The Encroachment Area shall not be used by County for any other purpose whatsoever without written consent of City. County covenants that County will not, without written consent of City, permit the Encroachment Area to be used or occupied by any person, firm, entity, or corporation other than County and County's agents. County further covenants that no nuisance or hazardous trade or occupation shall be permitted or carried on, in, or upon the Encroachment Area, and no act shall be permitted and nothing shall be kept in or about the Encroachment Area which will increase the risk of any hazard, fire, or catastrophe, and no waste shall be permitted or committed upon or any damage done to the Encroachment Area. County shall not permit the Encroachment Area to be used or occupied in any manner which will violate any laws or regulations of any governmental authority.

3. **Access.** City and County acknowledge that access to the Encroachment Area may be limited due to the construction of the Encroachment.

3.1 **Routine Access.** In the event City or a public utility wishes to obtain ingress and/or egress to the Encroachment Area for any purposes, including, but not limited to, installation, maintenance, or repair of facilities, County agrees that it shall, at its sole expense, temporarily remove the Encroachment. In the event County fails to comply within 30 days after receipt of notice, City may remove such Encroachment and materials from the Encroachment Area, and County shall be responsible for all reasonable removal costs. City may lien County's property for any and all such reasonable removal costs incurred. County shall be responsible for any replacement or reconstruction to restore County's Encroachment.

3.2 **Emergency Access.** In the event City or a public utility must obtain emergency access to the Encroachment Area to prevent property damage or avoid the endangerment of the health, safety, or welfare of the public, City shall have the right to immediate access. City shall make reasonable efforts to provide oral notice to County that shall be confirmed in writing by City within twenty-four (24) hours, and allow County the opportunity to remove the Encroachment from the Encroachment Area. However, in the event County is not available or is unable to remove the Encroachment within twenty-four (24) hours after oral notice is provided, City shall remove the Encroachment, and County shall be responsible for all reasonable removal costs. County shall be responsible for any replacement or reconstruction to restore County's Encroachment.

3.3 **Release.** City shall have no liability to County, or its employees, contractors, agents, and invitees in connection with the

Encroachment, this Revocable License and the subject matter hereof, for any claims in connection with, related to, or arising from City's emergency access to the Encroachment Area and any claims for damage to the Encroachment. County hereby releases City, its officials, employees, and agents with respect to the foregoing.

4. **Costs.** County agrees to pay reasonable investigative costs, court costs, and reasonable attorneys' fees resulting from any successful action taken by City to obtain compliance with the conditions of this Revocable License or removal of the Encroachment.

5. **Liability.** Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Revocable License or any other contract. County is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law. The provisions of this section shall survive the expiration or earlier termination of this Revocable License.

6. **Assignability.** In the event County sells or in any way conveys the Property to another party, County shall either remove the Encroachment or, with the written consent of City, may assign and delegate to that party the rights and responsibilities set forth hereunder through execution by that party of a replacement Revocable License with City.

7. **Applicable Law and Venue.** This Revocable License shall be construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Revocable License shall be in Broward County, Florida.

8. **Term.** This is an annual Revocable License, automatically renewable each year unless terminated pursuant to Section 9 of this Revocable License.

9. **Termination.** This Revocable License is only a right to use, and grants no estate or ownership rights in the Right-of-Way. This Revocable License may be cancelled by City during the term hereof, at its sole discretion, upon no less than thirty (30) days prior notice to County. This Revocable License may be terminated by County by removing the Encroachment, by returning the Encroachment Area to its original condition, and notifying City of said removal in writing. Upon confirmation of the foregoing, City shall provide County with a release of this Revocable License.

10. **Alterations and Improvements to Right-of-Way.** Except for the Encroachment, County may not make any alteration, adjustment, partition, addition, or improvement to the Right-of-Way or any part thereof without first obtaining the written consent of City. All requests by County shall be in writing and

shall contain all pertinent plans and specifications. All alterations, adjustments, partitions, additions, or improvements to the Right-of-Way shall remain the exclusive property of City. All such alterations or improvements shall be made at the sole cost, expense, and risk of County. County shall keep the Encroachment Area in a clean, safe, and sanitary condition.

11. Inspections. City or its agents, or any authorized employee of said agents, may enter upon said Encroachment Area at all reasonable times and hours to examine same to determine if County is properly maintaining the Encroachment pursuant to this Revocable License.

12. Amendments. No modification, amendment, or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

13. Severance. In the event this Revocable License or a portion of this Revocable License is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or County elect to terminate this Revocable License.

14. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or event referred to herein, or any document incorporated into this Revocable License by reference, and a term, statement, requirement, or provision of this Revocable License, the term, statement, requirement, or provision contained in this Revocable License shall prevail and be given effect.

15. Prior Agreements. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Revocable License that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document utilizing the same formalities as this Revocable License.

16. Compliance With Laws. County shall comply with all federal, state and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Revocable License.

17. Surrender Upon Termination. Upon termination in accordance with paragraph 9 above, County shall peaceably surrender and deliver the Encroachment Area to City or its agents. County further agrees that it will leave

the Encroachment Area in the condition existing at the commencement of this Revocable License, with all alterations, adjustments, partitions, additions, or improvements excepted and any normal wear and tear excepted, subject to the repair and maintenance obligations provided in this Revocable License.

18. Waiver. Failure of City to insist upon strict performance of any covenant or condition of this Revocable License, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition, or right; but the same shall remain in full force and effect. None of the conditions, covenants, or provisions of this Revocable License shall be waived or modified except by the parties hereto in writing.

19. Notices. Any notice or demand that, under the terms of this Revocable License or by any statute or ordinance, is given or made by a party hereto shall be in writing and shall be given by certified U.S. mail sent to the other party at the address set forth below or to such other address as such party may from time to time designate by notice.

Notice to City shall be addressed to:

City of Miramar
Vernon Hargray, City Manager
2300 Civic Center Place
Miramar, Florida 33025
E-mail Address: vehargray@miramarfl.gov
Telephone: (954) 602-3333

Notice to County shall be addressed to:

Broward County
Dan West, Director of Broward County Parks and
Recreation Division
950 NW 38th Street
Oakland Park, Florida 33309
E-mail Address: danwest@broward.org
Telephone: (954) 357-8106

20. City Attorney Approval. The City Attorney has approved the terms and conditions set forth in this Revocable License as to form and legality. Accordingly, no modification of these terms and conditions shall be binding upon City unless they are specifically endorsed and approved by the City Attorney.

21. Representation of Authority. Each party represents and warrants to the other that each individual executing this Revocable License on its behalf is duly authorized by all necessary and appropriate action to do so and does so with full legal authority.

IN WITNESS WHEREOF, the parties hereto have executed this Revocable License as of the day and year written below: City of Miramar, signing by and through its City Manager, duly authorized to execute same, and Broward County, signing by and through its Mayor, duly authorized to execute same.

CITY OF MIRAMAR, FLORIDA

Attest:

Denise Gibbs
City Clerk

By: _____
Vernon Hargray
City Manager

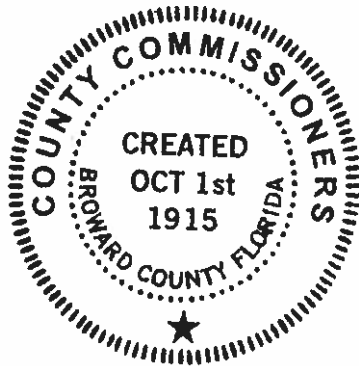
Approved as to form and legal sufficiency
for the use of and reliance by City of
Miramar only:

By _____
Weiss Serota Helfman Cole & Bierman, PL
City Attorney


COUNTY

ATTEST:



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




BROWARD COUNTY, by and through
its Board of County Commissioners

By: 
Mayor
9 day of April, 2019
(#33)

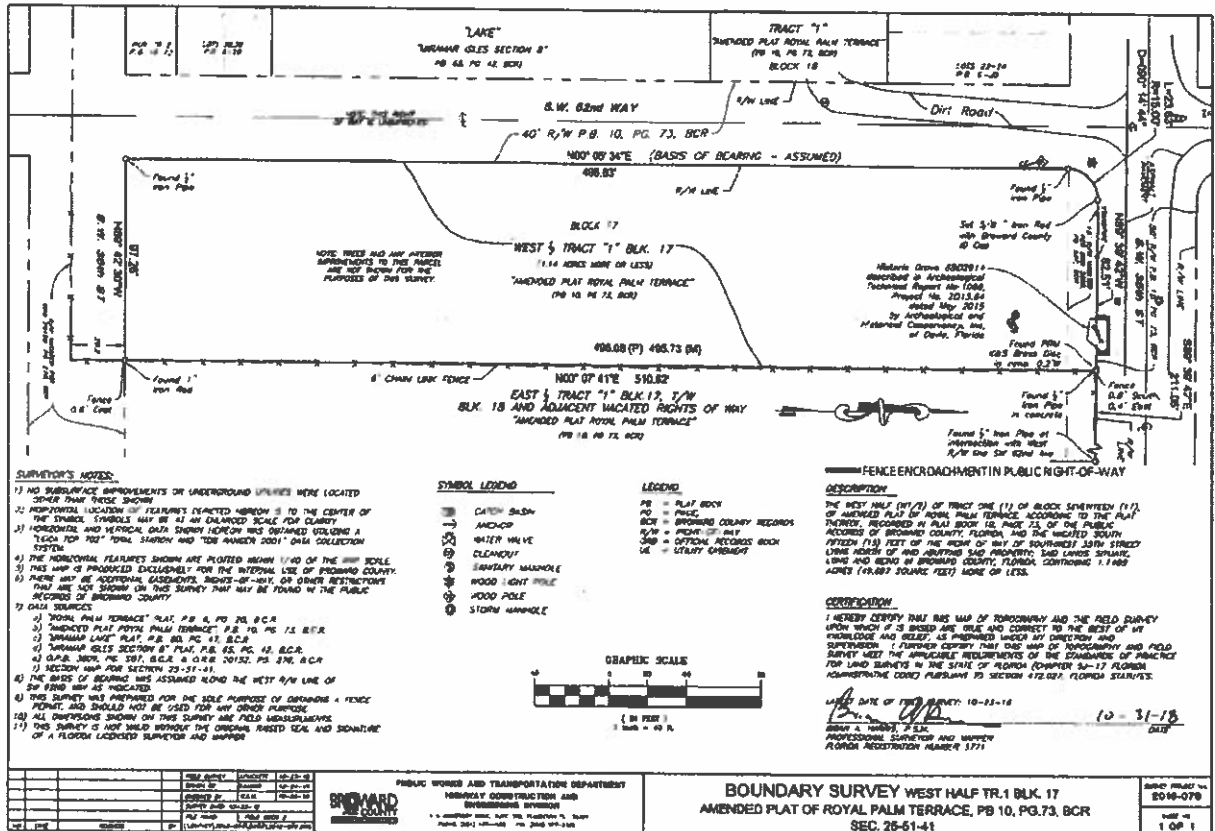
Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By:  2/11/19
Alicia C. Lobeiras (Date)
Assistant County Attorney

By:  2/11/19
Jeffrey S. Siniawsky (Date)
Senior Assistant County Attorney

REVOCABLE LICENSE AGREEMENT TO PERMIT A FENCE ENCROACHMENT INTO THE PUBLIC RIGHT-OF-WAY

EXHIBIT A



LOCATION MAP

