

## PERMISSIVE USE LICENSE AGREEMENT

THIS LICENSE made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between **Fort Myers Beach Fire Control District**, an independent special district of Florida, whose mailing address is 100 Voorhis St., Fort Myers Beach, Florida 33931, hereinafter called "**LICENSOR**", and **Lee County**, a political subdivision of the State of Florida, whose mailing address is P.O. Box 398, Fort Myers, Florida 33902-0398, hereinafter called "**COUNTY**", and

WHEREAS, **LICENSOR** is the owner of certain property in the Town of Fort Myers Beach, Lee County, Florida, located at 2545 and 2555 Estero Boulevard, Fort Myers Beach, Florida and being further identified as Strap #19-46-24-W3-00458.0000 and #19-46-24-W3-00458.0010 (collectively the "Parcel"); and

WHEREAS, **COUNTY** is desirous of obtaining permission to use, as hereinafter provided, a portion of said Parcel of the **LICENSOR**.

NOW, THEREFORE, in consideration of the covenants to be kept and performed by each of the parties hereto, and the sum of One Dollar (\$1.00) cash in hand paid by the **COUNTY** to the **LICENSOR**, receipt of which is hereby acknowledged, and further consideration as herein provided, it is agreed as follows:

- (1) USE – LICENSOR, subject to the conditions herein expressed, does hereby grant unto the **COUNTY**, the privilege and license to use the area indicated in Exhibit "A" of the above-described Parcel ("Site Area") for overnight parking of vehicles.

In the event of an emergency which necessitates LICENSOR being able to use a portion the Site Area, LICENSOR and COUNTY mutually agree to coordinate the shared use of the Site Area. Based on the circumstances of the emergency event, LICENSOR will provide as much notice as possible to the COUNTY before accessing the Site Area. COUNTY acknowledges prior notice before accessing the Site Area may not be possible and LICENSOR shall notify COUNTY of access and use of the Site Area as soon as practicable. Unless otherwise agreed upon by the parties hereto, COUNTY is not obligated to move any of its vehicles in order to facilitate LICENSOR's shared use of the Site Area during an emergency event. LICENSOR acknowledges that it may only be able to use portions of the Site Area that are not in use by COUNTY.

- (2) TERM – This License will commence on November 1, 2023, and terminate on or before May 1, 2024.
- (3) SITE AREA WORK – COUNTY will be responsible for fencing all sides of the Site Area and will make sure that all lighting is in working order and in compliance with, and approved by, the appropriate regulatory agencies through the term of this

License. COUNTY will be responsible to restore said Site Area to as good or better condition than that which existed prior to its use.

- (4) CONSIDERATION – COUNTY will pay as consideration for this License One (\$1.00) Dollar, net of any applicable tax, payable on or before the date of commencement of this agreement, for said license and privilege.
- (5) RESTRICTION – The license and privilege granted COUNTY under this License will be exercised only on the subject property of LICENSOR and upon no other property.
- (6) TERMINATION OF LICENSE – Either Party may, with or without cause, upon written notice, terminate this Agreement. Notice of termination must be given with no less than ninety (90) days' prior written notice.
- (7) INDEMNIFICATION – COUNTY agrees to indemnify and hold harmless LICENSOR, to the extent allowed under Section 768.28 of the Florida Statutes, as may be amended from time to time, from all claims, loss, damage and expense, arising from the negligent acts or omissions of COUNTY, its officers, employees and agents related to its performance under this agreement. This provision does not constitute a waiver of the COUNTY's sovereign immunity under Section 768.28 of the Florida Statutes, as may be amended from time to time, or extend the County's liability beyond the limits established in Section 768.28 of the Florida Statutes, as may be amended from time to time. This indemnity and hold harmless agreement shall include indemnity against all costs and expenses, including attorney fees incurred in or in connection with any such claim or proceedings brought thereon and the defense thereof.
- (8) LIENS – COUNTY will not incur any indebtedness giving right to a lien of any kind upon the LICENSOR's interest in and to lands described herein. LICENSOR's interest will not be subject to liens for improvements made by the COUNTY on the lands described herein. In the event any liens are filed, due to improvements made by the COUNTY, the COUNTY will immediately discharge said lien by such manner as permitted by law.
- (9) ENJOYMENT – Nothing herein contained will be construed as limiting the LICENSOR from having the full use and enjoyment of its lands, save only as to the rights granted to the COUNTY by the terms of this License, and nothing herein contained will be construed or interpreted as granting anything to COUNTY other than use of the property provided herein.
- (10) BREACH – In the event of any breach or non-performance of any of the covenants, agreements, terms or conditions to be performed by COUNTY, and said breach or non-performance continues for one day, LICENSOR has the right to declare this License terminated and to re-enter the property and remove COUNTY and its

respective property therefrom, and COUNTY agrees to peacefully vacate said property and pay all costs, including reasonable attorneys' fees, that may be incurred by LICENSOR in enforcing the covenants, agreements, terms and conditions of this License.

- (11) RIGHTS AND PROPERTY INTEREST - No rights or property interests are granted to or created in the COUNTY by this License except as otherwise provided herein. The granting of this License is only as an accommodation to the COUNTY.
- (12) ENTIRE AGREEMENT – It is understood and agreed that this License sets forth all the covenants, agreements, terms and conditions between the parties and that there are no other oral or written agreements between them.
- (13) AMENDMENT – It is further understood that no subsequent amendments, alterations or additions to this License will be binding upon the parties hereto unless reduced to writing and executed by said parties.
- (14) GOVERNING LAW – LICENSOR and COUNTY agree that this License will be governed by and construed under the laws of the State of Florida.
- (15) ASSIGNMENT – COUNTY will not transfer or assign its interest or rights provided in this License, nor attempt to grant any sub-license to any persons whom so-ever without the written consent of the LICENSOR. The consent of the LICENSOR will be at the LICENSOR's sole discretion.
- (16) NOTICE – All notices or request between the parties will be in writing and will be deemed to have been duly given or served by either personally delivered (deemed given same day), delivered via private local courier services (deemed given same day), sent via fed ex or other nationally recognized overnight delivery service (deemed given on the next business day after deposit with the service), or deposited in the United States Mail, Certified Mail, return receipt requested, postage prepaid (deemed given on the fourth business day after deposit in the mail) addressed as follows:

**TO THE COUNTY:**

LEE COUNTY DEPARTMENT OF COUNTY LANDS  
Attn: Director Robert Clemens  
PO Box 398  
Fort Myers, FL 33902-0398  
OR  
1500 Monroe Street, 4<sup>th</sup> Floor  
Fort Myers, FL 33901  
239-533-8747  
[clemenrg@leegov.com](mailto:clemenrg@leegov.com)

**TO THE LICENSOR:**

FORT MYERS BEACH FIRE CONTROL DISTRICT  
Attn: Scott Wirth - Fire Chief  
100 Voorhis St.  
Fort Myers Beach, FL 33931  
239-590-4200  
[swirth@fmbfirefl.gov](mailto:swirth@fmbfirefl.gov)

- (17) BINDING EFFECT – This License and all of its terms and conditions will extend to and be binding upon the parties hereto and upon their respective successors and assigns.
- (18) SEVERABILITY – The invalidation of any provision or clause in whole or in part by judgment or court order will in no way affect any of the other provisions or clauses, which will remain in full force and effect.
- (19) CONDITION – It is understood between the parties hereto that the property has been inspected by the COUNTY and that the property is being accepted in an “As Is” condition. COUNTY acknowledges the lands being considered in this License, as described in Section (1), are a portion of the land owned by the LICENSOR.
- (20) ENVIRONMENTAL – COUNTY will not, and will ensure that others do not install, use, generate, store, locate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit, or dispose of Hazardous Substances in, upon, under, over or onto the Property.

If the LICENSOR has reason to believe a Hazardous Substance has been discharged, spilt, or released on the Property by COUNTY or its contractors or consultants, then the LICENSOR has the right, but not the obligation, to require COUNTY, at COUNTY's sole cost and expense, to perform an environmental audit by an environmental consultant satisfactory to the LICENSOR. Such an investigation will be commenced within ten (10) days after the LICENSOR's request, and thereafter be diligently prosecuted to completion. COUNTY will provide the LICENSOR with an electronic copy of the environmental audit immediately after it is completed.

- (21) RELATIONSHIP – Nothing contained in this License will be deemed to constitute or be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto, other than the relationship of COUNTY / LICENSOR.
- (22) PREVAILING PARTY – The prevailing party in any litigation brought to enforce rights hereunder will be entitled to reimbursement of all reasonable costs and

expenses, including, but not limited to, court costs, fees, and attorneys' fees at all judicial levels.


- (23) MISCELLANEOUS – The COUNTY will be responsible for the payment for any trash removal that may be required. The COUNTY is responsible for obtaining any required local, state and/or federal permits for activities to be conducted on the LICENSOR's property.

IN WITNESS WHEREOF, the **LICENSOR** and **COUNTY** have executed this License as of the date and year first above written.

**LICENSOR:**

WITNESSES :

**Fort Myers Beach Fire Control District,**  
a special district of Florida

  
\_\_\_\_\_  
Signature

Jennifer Campbell  
\_\_\_\_\_  
Print Name

BY:   
\_\_\_\_\_

By: Scott Wirth - Fire Chief  
\_\_\_\_\_

Its: \_\_\_\_\_

  
\_\_\_\_\_  
Signature

Christina Ensor  
\_\_\_\_\_  
Print Name

Date: 10/06/2023  
\_\_\_\_\_

Approved and accepted for and on behalf of Lee County, Florida, intending to be bound as of the date first written above.

ATTEST:  
KEVIN C. KARNES  
CLERK OF CIRCUIT COURTS

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: \_\_\_\_\_  
Deputy Clerk

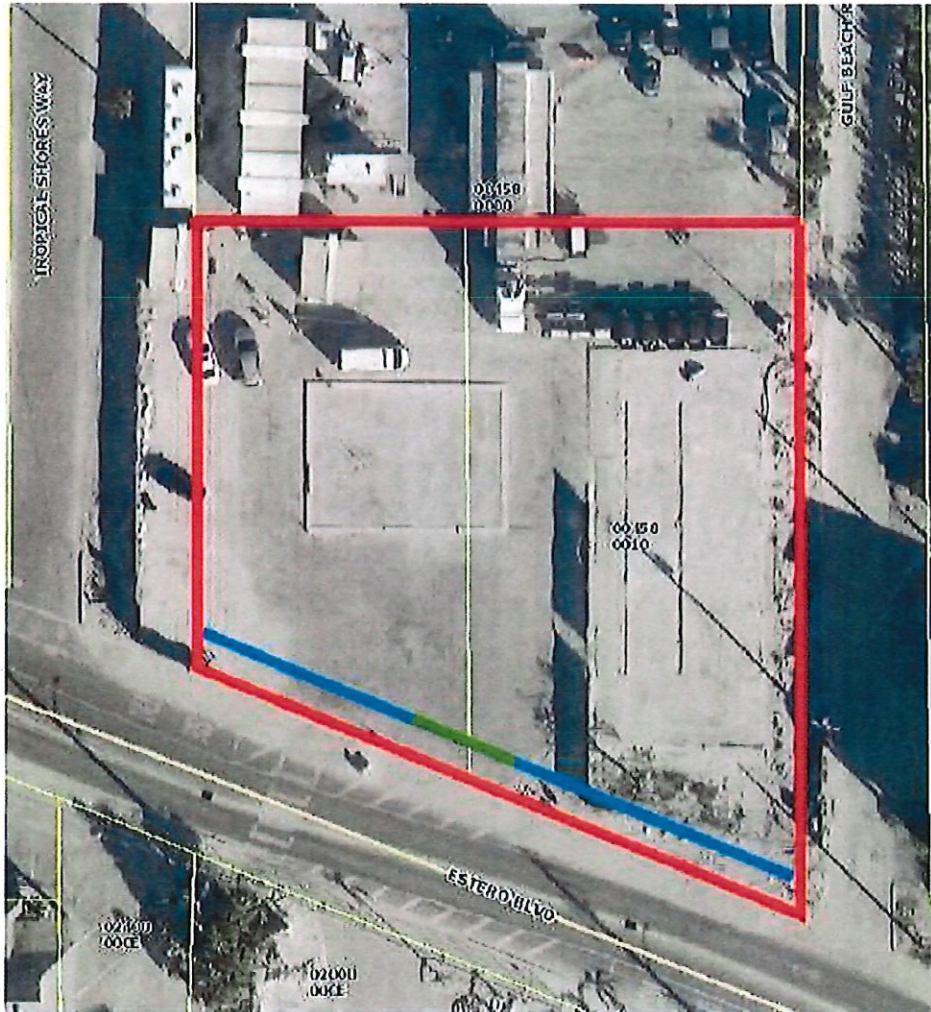
BY: \_\_\_\_\_  
Brian Hamman, Chair




APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

\_\_\_\_\_  
County Attorney's Office

EXHIBIT A

LeeTran Tram Parking - Fort Myers Beach Property  
Fence and Gate Area



-  Fire Department Property Line – Existing Fence on North, East & West Side
-  Proposed Additional Temporary Fence
-  Proposed 2 – 10' Wide Double Role Gates