



**CITY OF FORT LAUDERDALE
City Commission Agenda Memo
REGULAR MEETING**

#22-0724

TO: Honorable Mayor & Members of the
Fort Lauderdale City Commission

FROM: Greg Chavarria, City Manager

DATE: October 18, 2022

TITLE: Motion Approving and Authorizing the Execution of 1) A Revocable License Agreement Between Powerline Wawa LLC, Broward County and the City of Fort Lauderdale for the Installation and Maintenance of Improvements on West Cypress Creek Road in Association with the “Wawa – Cypress Creek” Project Located at 6191 North Powerline Road; and 2) An Agreement Ancillary to Revocable License Agreement, Between Powerline Wawa LLC and the City of Fort Lauderdale – **(Commission District 1)**

Recommendation

Staff recommends the City Commission consider a motion approving and authorizing the execution of two separate agreements more specifically described below, for the perpetual maintenance of public realm improvements on West Cypress Creek Road, in association with the “Wawa – Cypress Creek” project located at 6191 North Powerline Road. The agreements are, as follows: 1) A Revocable License Agreement (“RLA”) among Powerline Wawa LLC (“Developer”), Broward County and the City of Fort Lauderdale (“Tri-Party RLA”); and 2) An Agreement Ancillary to said Tri-Party RLA, between Powerline Wawa LLC and the City of Fort Lauderdale (“AARLA”).

Background

The site plan for this project received City approval in June 2017 (DRC Case #ZR16001), December 2018 (Administrative Review Case #ZR16001A2), and August 2021 (Administrative Review Case #UDP-A21022). The site plan includes a one-story (33-foot, 4-inch high), 5,991 square foot gas station/convenience store, a 9,020 square foot gas canopy area, and an electric vehicle charging station (8 parking stalls). A “Location Map” is attached as Exhibit 1.

The City’s site plan approval conditions require the Developer, Powerline Wawa LLC, to install and perpetually maintain landscaping and irrigation on the south side of West Cypress Creek Road (Right-of-Way Improvements). Since West Cypress Creek Road is under Broward County jurisdiction, the County is requiring execution of the Tri-Party RLA so that the Right-of-Way Improvements are installed and maintained in compliance with minimum County engineering standards. The Developer has already constructed the building, and the Right-of-Way Improvements. At the Developer’s request, the County has

allowed the Right-of-Way Improvements to be installed under a County construction permit with the understanding that their final approval is subject to the execution of the subject Tri-Party RLA. A sketch showing the "License Area" is attached as Exhibit 2.

A copy of the Tri-Party RLA is provided as Exhibit 3 and a copy of the AARLA is included as Exhibit 4.

Approval of this item should be carefully considered since the Tri-Party RLA holds the City ultimately responsible for curing deficiencies and failures that may arise from non-compliance by the Developer. In addition to this project, agreeing to these obligations may have future financial implications for the City since it is likely that the County will be including these requirements as standard provisions in all Tri-Party Agreements needed for upcoming developments along North/South Andrews Avenue, Northeast/Southeast 3rd Avenue and other County Rights-of-Way.

Specifically, Section 4 of the Tri-Party RLA (Exhibit 3) provides that if the Licensee, Powerline Wawa LLC, does not comply with the requirements in the Tri-Party RLA, the City is responsible for performing the maintenance obligations and curing all deficiencies within 30 days, or pay for the County's expenses to cure such deficiencies. Section 4.2 of the Tri-Party RLA states that the City may not relieve itself of any of its obligations under the Tri-Party RLA by contracting with a third party. Additionally, Section 7.11 of the Tri-Party RLA allows the County to terminate the agreement for cause or convenience; however, there are no provisions for the City to terminate the Agreement. Moreover, if the Agreement is terminated by the County and the Licensee does not comply with its obligations, the City is still responsible for performing the Licensee's duties after the Agreement is terminated.

In turn, as a condition precedent to the execution of the Tri-Party RLA, the City is requiring the execution of the AARLA that provides certain remedies for the City in the event of default by the Developer. These remedies include the Developer paying fines to the City or reimbursing the City for all reasonable and necessary costs and expenses related to curative actions taken by the City, and the City reserving the right to record a Claim of Lien against the Developer's property. These remedies should be weighed against the potential financial exposure created for the City by the Tri-Party RLA.

If the City Commission approves execution of both agreements, then originals of the Tri-Party RLA executed by the City will be forwarded to Broward County for consideration and formal action by the Board of County Commissioners to enter into the Agreement.

Resource Impact

There is no fiscal impact to the City associated with this action.

Strategic Connections

This item is a *2022 Commission* Priority, advancing the Smart Growth initiative.

This item supports the *Press Play Fort Lauderdale 2024* Strategic Plan, specifically advancing:

- The Infrastructure Focus Area
- Goal 2: Build a multi-modal and pedestrian friendly community
- Objective: Improve roads, sidewalks, and trails to prioritize a safer, more walkable and bikeable community

This item advances the *Fast Forward Fort Lauderdale 2035* Vision Plan: We Are Connected.

This item supports the *Advance Fort Lauderdale 2040* Comprehensive Plan, specifically advancing:

- The Infrastructure Focus Area
- The Transportation & Mobility Element
- Goal 1: Ensure the equitable development of a Complete Network for transportation that prioritizes Safety and emphasizes multimodal mobility and accessibility

Attachments

Exhibit 1 – Location Map

Exhibit 2 – License Area

Exhibit 3 – Tri-Party RLA

Exhibit 4 – AARLA

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