



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 1

DATE: April 22, 2021

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

THROUGH: Mindy T. Cummings, Manager
Real Estate Management Division *MTC*

FROM: Alex Feinman, Assistant Manager
Real Estate Management Division *AF*

CONTACT PERSON: Mindy T. Cummings, Manager

DIVISION: Real Estate Management
Phone: (407) 836-7090

ACTION REQUESTED: Approval and execution of License Agreement by and between Orange County, Florida and the United States Geological Survey, authorization to the Real Estate Management Division to furnish notices, and authorization to the Real Estate Management Division and Parks and Recreation Division to jointly exercise termination options, required or allowed by the License Agreement, as needed

PROJECT: USGS Monitoring Devices at Kelly Park
400 E Kelly Park Road, Apopka, Florida 32712
Lease File #10106

District 2

PURPOSE: To provide space for the United States Geological Survey to monitor water nitrate levels at Kelly Park.

ITEM:

License Agreement

Revenue: None

Size: 100 square feet

Term: 10 years

Options: Automatic 5-year renewals until terminated

APPROVALS:

Real Estate Management Division

County Attorney's Office

Environmental Protection Division

Parks and Recreation Division

Risk Management Division

REMARKS:

This License Agreement (Agreement) between County and the United States Geological Survey (USGS) will allow the USGS to install, maintain, and operate a monitoring device to continue to evaluate nitrate levels in Rock Springs Run.

This Agreement will provide for USGS's use of a bridge spanning Rock Springs Run for 10 years, with automatic 5-year renewals thereafter.

MAY 11 2021

LICENSE AGREEMENT

between

ORANGE COUNTY, FLORIDA

and

UNITED STATES GEOLOGICAL SURVEY

related to

NITRATE MONITORING STATIONS

THIS LICENSE AGREEMENT (“**Agreement**”) is made and entered into as of the date last executed below (the “**Effective Date**”) by and between **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida (“**County**”), and the **UNITED STATES GEOLOGICAL SURVEY**, a bureau of the U.S. Department of the Interior which is an agency of the United States of America (“**USGS**”).

RECITALS

WHEREAS, the County is the owner of certain real property located in Orange County, Florida, called Kelly Park, more particularly described herein and depicted in **Exhibit “A,”** attached hereto and incorporated herein by this reference (“**County Property**”); and

WHEREAS, **USGS** seeks permission to enter a portion of the County Property (“**License Area**”), legally described in **Exhibit “B,”** attached hereto and incorporated herein by reference, for the purposes of installing, maintaining, and operating monitoring devices in order to continue to evaluate nitrate levels; and

WHEREAS, the County agrees to authorize **USGS** to enter the County Property pursuant to the terms and conditions stated herein; and

WHEREAS, the parties hereto desire to set forth their mutual understanding of the terms and conditions of their agreement contained herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the parties agree as follows:

Section 1. Recitals. The above recitals are true and correct and form a material part of this Agreement.

Section 2. Documents.

- A. The documents that are incorporated by either reference or attachment and thereby form this Agreement are:

1. This Agreement
2. **Exhibit A:** County Property
3. **Exhibit B:** License Area

Section 3. Grant of License.

A. The County hereby grants the USGS a license to use the License Area located at 400 E Kelly Park Road, Apopka, Florida, 32712, commonly known as Kelly Park, and identified as Parcel ID 10-20-28-0000-00-010, as further detailed in Exhibit "A."

B. The parties understand and agree that this Agreement only grants a license to enter upon and use the License Area as contemplated herein and confers no other rights of occupancy and/or use of the License Area by the USGS.

Section 4. USGS Obligations. The USGS shall:

A. USGS shall give prior notification to the Manager of the Orange County Parks and Recreation Division or his or her designee ("**County Official**") of all activities that USGS, and/or its employees, agents, and contractors, undertakes on the License Area and shall coordinate all such activities with the County Official. Licensee shall make available on URL https://waterdata.usgs.gov/fl/nwis/current/?type=flow&group_key=basin_cd all data recorded or developed by USGS or its employees, agents, or contractors, which relates directly or indirectly to water quality or quantity or to aquifer conditions, within sixty (60) days of the recording of the data. Upon request of the County Official, USGS shall cooperate in interpreting such data.

B. Subject to the availability of appropriations, USGS shall install and maintain the existing fencing surrounding the License Area and ensure the fence gate remains locked at all times when USGS or its contractors are not physically present on the License Area. In the event there is a breach in the fence or gate, or the gate is not secured and locked, the County, at its sole discretion, may take whatever steps it reasonably deems necessary to secure the License Area and the United States of America will be liable to the extent provided for in the Federal Tort Claims Act ("FTCA") 28 U.S.C. §§ 2671-2680.

C. USGS, its employees, agents, or contractors, may bring necessary equipment onto the License Areas as needed for the purposes of this Agreement. USGS shall promptly remove any equipment not in active use and no storage of any kind is permitted on the County Property.

D. Subject to the availability of appropriations, the USGS shall, at its sole cost and expense, maintain the License Area in a good, safe, and clean condition.

Section 5. Term. This Agreement shall become effective and commence on the first day of the first month following the Effective Date (the "**Commencement Date**") and shall have an initial term of ten (10) years. Thereafter, this Agreement will be automatically renewed in five (5) year increments, unless terminated as otherwise set forth herein.

Section 6. **Creation of License.** The County hereby grants to the USGS and its employees, agents, and contractors a non-exclusive license to enter onto a portion of the County Property from time to time during the term of this Agreement for the purpose of installing, operating, maintaining, and collecting data from its monitoring device(s) (“**the Project**”) located on the County Property. The license granted hereunder is limited solely to use of those areas of the County Property identified as the License Area in Exhibit “B;” however, the USGS and its employees, agents, and contractors shall be allowed pedestrian and vehicular ingress and egress over such portion of the County Property as is reasonably necessary to reach the License Area. Only USGS and its employees, agents, and contractors will be permitted to enter and use the License Area. The USGS shall be solely responsible for the Project. The USGS and its employees, agents, and contractors may enter the County Property for operation, general maintenance, and data collection activities on weekdays between the hours of 7:00 AM and 5:00 PM. In the event that the USGS or its employees, agents, or contractors enter the County Property on a weekday prior to 5:00 PM in accordance with this Agreement, they may stay beyond 5:00 PM to complete any activities initiated. In addition, the USGS may enter the County Property at any time in the event an emergency repair is needed with respect to the Project. Any unauthorized use of the County Property by the UGS or its employees, agents, or contractors shall be cause for termination of this Agreement. This Agreement does not create an ownership or possessory interest in Licensee.

Section 7. **Termination.**

A. **Termination for Convenience.** Either party may terminate this Agreement at any time and for any reason by providing at least thirty (30) days written notice to the other party.

B. **Termination for Cause.** The failure of the USGS, its employees, or contractor(s) to comply with any covenant or condition of this Agreement shall constitute a breach of this Agreement.

1. If the breach of this Agreement, as determined by the County Official, is not material and can be readily cured, the County may, in its sole and absolute discretion, provide the USGS with ten (10) days written notice and an opportunity to cure the breach within the timeframe provided therein. Should the USGS fail to cure the breach within the timeframe provided, the County may immediately terminate this License Agreement and reserves the right to prohibit the USGS from future use of any of its sites.

2. If the breach of this Agreement, as determined by the County Official, is material and cannot be readily cured, the County may immediately terminate this Agreement and reserves the right to prohibit the Agency from future use of any of its sites.

C. Nothing in this Agreement shall be construed to interfere with the County’s absolute right to terminate this Agreement without cause.

D. Through execution of this Agreement, the Board hereby delegates joint

signature authority to the Managers of the Parks and Recreation and Real Estate Management Divisions, so that they may execute any termination notices as contemplated herein.

Section 8. Removal of Monitoring Device(s); Restoration.

A. Subject to the availability of appropriations, prior to termination or expiration of this Agreement, the USGS shall have completed removal of all materials, including, without limitation, concrete pads and other fixtures, related to the purpose of this Agreement and have filled in and capped the wells in a manner and with materials satisfactory to the County Official (“**Removal**”); provided, however, in the event the County elects to terminate this Agreement prior to the expiration of the term of this Agreement, the USGS shall have one hundred twenty (120) days from the date of the notice of early termination to complete the Removal. Such Removal shall, at a minimum, include cutting off all well casings at least five (5) feet below land surface and backfilling and grading the spaces with natural materials. If the USGS fails to complete the Removal prior to termination of this Agreement, the County may, at its own option, perform the Removal and the United States shall be liable in accordance with the FTCA.

B. **Restoration.** Subject to the availability of appropriations, the USGS shall be responsible for the complete restoration of the License Area and any other portion of the County Property affected by the USGS pursuant to this Agreement to the same condition it was in immediately prior to the USGS’ use. If the USGS fails to restore the County Property within one hundred twenty (120) days of the County’s request, the County may restore it to its original condition and the United States of America shall be liable to the extent provided in the FTCA.

Section 9. Indemnification. USGS shall include the following indemnification requirement in all contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement.

“The contractor/subcontractor/consultant/subconsultant shall indemnify, defend, save and hold harmless Orange County, Florida and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor/subcontractor/ consultant/subconsultant, its officers, agents or employees.”

Section 10. Protection of Persons and Property.

A. USGS agrees that the County does not guarantee the security of any equipment or personal property brought by the USGS, its employees, agents or contractors, onto the County Property and that the County shall in no way be liable for damage, destruction, theft, or loss of any equipment or personal property, including without limitation all tools, equipment, and appurtenances related to the wells, unless such damage, destruction, theft, or loss is due to the intentional or negligent acts or omissions of the County or its employees.

B. USGS shall comply with and shall ensure that its employees, agents, and contractors comply with all applicable safety laws, ordinances, rules, regulations, standards, and lawful orders from authority bearing on the safety of persons or property for their protection from damage, injury, or loss. In any emergency affecting the safety of persons or property,

USGS shall act with reasonable care and discretion to prevent any threatened damage, injury, or loss.

Section 11. Hazardous Waste and Materials. The USGS shall comply with all applicable Federal and State environmental laws.

Section 12. Notices. All notices to either party shall be given (i) by certified or registered mail, postage prepaid, return receipt requested, or (ii) by nationally recognized overnight courier service providing proof of delivery.

To the County: Orange County Administrator
 P.O. Box 1393
 Orlando, Florida 32802

with copies to: Orange County Parks and Recreation Division
 Attn: Manager
 4801 W. Colonial Drive
 Orlando, Florida 32808

AND

Orange County Real Estate Management Division
Attn: Manager
P.O. Box 1393
Orlando, Florida 32802

AND

Orange County Attorney's Office
P.O. Box 1393
Orlando, Florida 32802

To the USGS: United States Geological Survey
 12703 Research Parkway, Suite 200
 Orlando, Florida 32826

The names and/or addresses may be changed by written notice as above provided. Notice shall be effective upon receipt.

Section 13. Breach of Agreement. The failure of the USGS to comply with any covenant or condition of this Agreement shall constitute a breach of this Agreement. If the USGS is in breach of this Agreement in any manner, the County shall give the USGS written notice of any such breach. If (i) the USGS fails to cure such breach within 120 days after receiving such notice, or (ii) fails to commence such cure within 120 days after receiving such notice and to diligently prosecute such cure to completion should the nature of such breach is such that more time is reasonably required by Licensee in order to cure such breach, then the

County may terminate this Agreement. The County expressly reserves any and all other legal remedies available at law and in equity.

Section 14. General Provisions.

A. **Independent Contractor.** It is understood and agreed that nothing contained in this Agreement is intended or should be construed as creating or establishing the relationship of copartners between the parties, or as constituting the USGS as the agent, representative, or employee of the County for any purpose or in any manner whatsoever.

B. **Use of Logos.** The USGS is prohibited from use of any and all County emblems, logos, and/or identifiers without written permission from the County as per Section 2-3, Orange County Code. The County is prohibited from using any emblems, logo or identifiers of the USGS or the U.S. Department of the Interior.

C. **No Waiver of Sovereign Immunity.** Nothing contained herein shall constitute, or be in any way construed to be, a waiver of the County's sovereign immunity or the protections and provisions of Section 768.28, Florida Statutes. Nothing contained in this Agreement shall constitute nor be construed to be a waiver of the sovereign immunity of the USGS or the United States of America beyond what is contained in Federal law.

D. **Assignments and Successors.** Neither Party may assign this Agreement without the written consent of the other, which consent shall be in the sole determination of the party with the right to consent.

E. **Waiver.** No delay or failure on the part of any party hereto to exercise any right or remedy accruing to such party upon the occurrence of an event of violation shall affect any such right or remedy, be held to be an abandonment thereof, or preclude such party from the exercise thereof at any time during the continuance of any event of violation. No waiver of a single event of violation shall be deemed to be a waiver of any subsequent event of violation.

F. **Remedies.** The Parties shall have all remedies provided for in applicable law.

Governing Law. The USGS shall comply with all applicable Federal, state, and local laws to the extent that Congress has waived the sovereign immunity of the United States of America.

G. **No Third Party Beneficiaries.** Nothing in this License Agreement, express or implied, is intended to, or shall confer, upon any person, other than the parties and their respective successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature under or by reason of this License Agreement.

H. **No Representations.** Each party represents that they have had the opportunity to consult with an attorney, and have carefully read and understand the scope and effect of the provisions of this License Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth

in this License Agreement.

I. **Headings.** The headings or captions of articles, sections, or subsections used in this License Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this License Agreement.

J. **Survivorship.** Those provisions which by their nature are intended to survive the expiration, cancellation, or termination of this License Agreement, shall survive the termination of this Agreement.

K. **Authority of Signatory.** Each signatory below represents and warrants that he or she has full power and is duly authorized by their respective party to enter into and perform this License Agreement. Such signatory also represents that he or she has fully reviewed and understands the above conditions and intends to fully abide by the conditions and terms of this License Agreement as stated.

L. **Severability.** If any provision of this License Agreement is held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

M. **Written Modification.** No modification of this License Agreement shall be binding upon any party to this License Agreement unless reduced to writing and signed by a duly authorized representative of each party to this License Agreement.

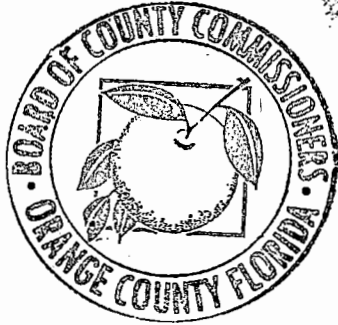
N. **Entire License Agreement.** This License Agreement, and any documents incorporated herein, sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof. This License Agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this License Agreement.

(signature pages and exhibits follow)

IN WITNESS WHEREOF, County and the USGS have caused this "License Agreement" to be executed by their respective officers and parties thereunto duly authorized to be effective as of the Effective Date..

"COUNTY"
ORANGE COUNTY, FLORIDA

By: Board of County Commissioners



By: *Jerry L. Demings*
Jerry L. Demings
Orange County Mayor

Date: *11 May 2021*

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

By: *Noelia Perez*
Deputy Clerk

Printed Name: *Noelia Perez*

IN WITNESS WHEREOF, County and Licensee have caused this "License Agreement" to be executed by their respective officers and parties thereunto duly authorized to be effective as of the Effective Date.

"USGS"

UNITED STATES GEOLOGICAL SURVEY

By: Darrell S Lambeth

Printed Name: Darrell S Lambeth

Title: Hydrologic Data Chief - Orlando

Date: 4-6-2021

EXHIBIT a

THAT PART OF E1/2 OF SW1/4 LYING E OF BAPTIST CAMP RD R/W PER DB 1014/379
& W1/2 OF SE1/4 ALL IN SEC 10-20-28 & NW1/4 OF NE1/4 & NE1/4 OF NW1/4 IN SEC
15-20-28 SEE DB 335/200 5130/3231

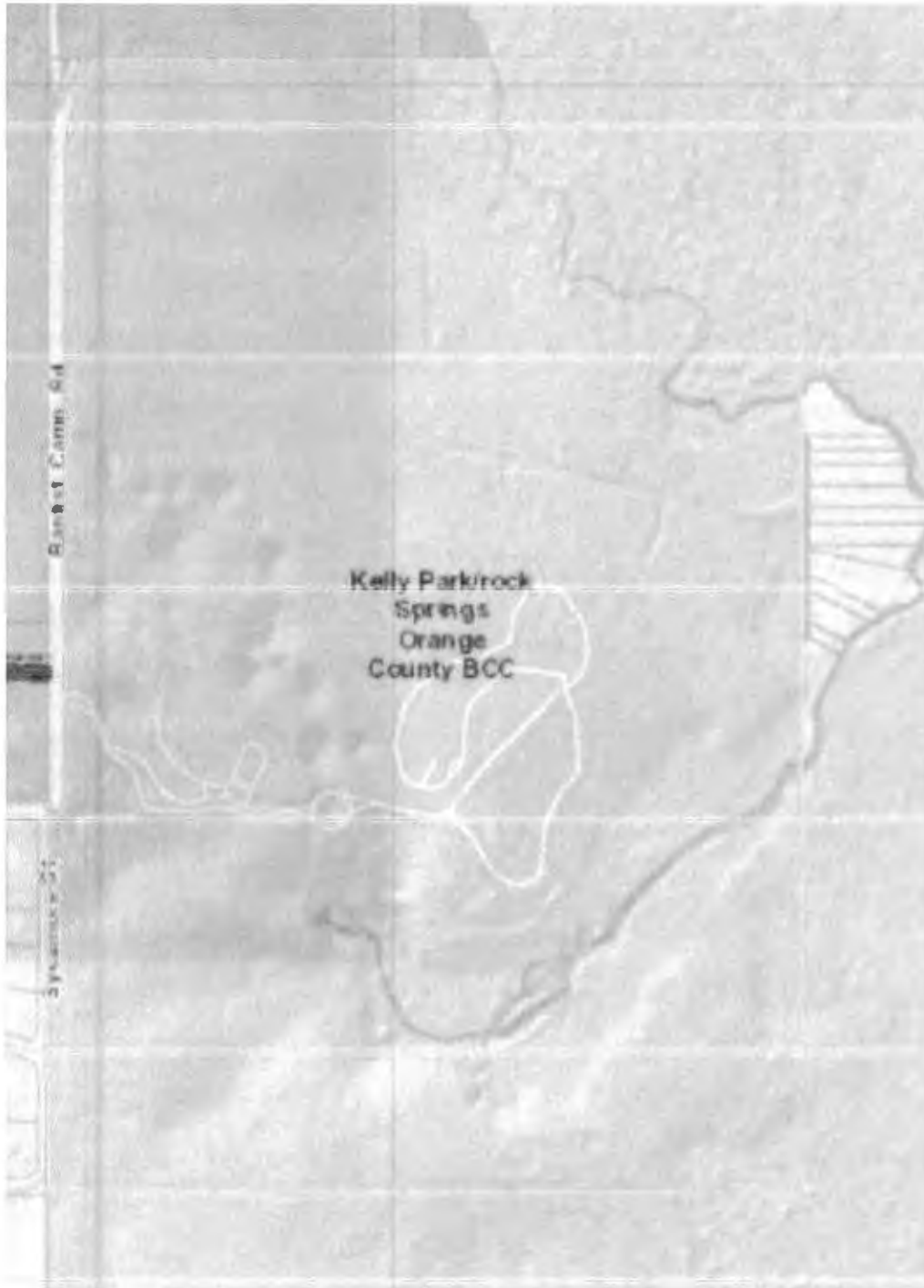


EXHIBIT B

