



Legislation Text

File #: 24-1549, **Version:** 1

Interoffice Memorandum

DATE: October 8, 2024

TO: Mayor Jerry L. Demings and County Commissioners

THROUGH: Mindy T. Cummings, Manager

FROM: Steve Cochran, Acquisition Agent

CONTACT: Mindy T. Cummings, Manager

PHONE: 407-836-7090

DIVISION: Real Estate Management Division

ACTION REQUESTED:

Approval and execution of License Agreement for Right of Entry by and between Southpark Property Owners' Association, Inc. and Orange County, and authorization for the Real Estate Management Division to exercise renewal options, execute a termination notice, and furnish notices required or allowed by the License Agreement as needed for Shingle Creek Trail Phase 1, Segments 2 and 3 - Southpark Property Owners' Association, Inc. District 6. **(Real Estate Management Division)**

PROJECT:

Shingle Creek Trail Phase 1, Segments 2 and 3 -
Southpark Property Owners' Association, Inc.

PURPOSE: To provide for temporary access for construction.

ITEM:

License Agreement

Term: Three years

Cost:

Initial Fee: \$52,589 (one-time payment due within 10 business days of execution) Year One \$2,000 per month

Year Two - \$2,000 per month

Year Three - \$2,000 per month

Option: Two, six-month renewals

BUDGET: Account No.: 1265-062-2119-3620

REVENUE: None

FUNDS: NA

APPROVALS:

Real Estate Management Division
County Attorney's Office
Risk Management Division
Parks and Recreation Division

REMARKS: The Parks and Recreation Division is requesting this temporary access agreement for certain real property located at Southpark Center Loop, Orlando Florida 32819, Parcel ID 32-23-29-8221-00-002, to continue the construction of the Shingle Creek Trail in the area located between Destination Parkway and State Road 528.

This License Agreement will not be recorded.

ACCEPTED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
OCT 29 2024

Project: Shingle Creek Trail Phase – 1 – Segment 2 & 3

**LICENSE AGREEMENT FOR RIGHT OF ENTRY
BY AND BETWEEN SOUTHPARK PROPERTY OWNERS' ASSOCIATION, INC.
AND ORANGE COUNTY**

This License Agreement for Right of Entry (the "Agreement") is made and entered into as of the last date signed below ("Effective Date") by and between SOUTHPARK PROPERTY OWNERS' ASSOCIATION, INC., a Florida not-for-profit corporation, whose mailing address is 2808 Carroll Place, Orlando, Florida 32804 ("SPOA"), and ORANGE COUNTY, a charter county and political subdivision of the State of Florida, whose mailing address is P.O. Box 1393, Orlando, Florida 32802-1393 ("Orange County") (singularly, "Party" and together, "Parties).

RECITALS

- A. SPOA has an undivided interest in that certain real property located at Southpark Center Loop, Orlando, FL 32819 bearing Parcel Identification Number 32-23-29-8221-00-002, which is more particularly described in **Exhibit "A"** attached hereto and generally depicted in **Exhibit "B"** attached hereto (the "Property").
- B. Orange County requires temporary rights for ingress and egress over the Property for the construction of the Shingle Creek Multi Use Trail (the "Trail"), as generally shown in **Exhibit "C"** attached hereto.
- C. SPOA has agreed to grant to Orange County a right of entry for ingress and egress over a portion of the Property, as depicted and labeled as the "Subject Area" on **Exhibit "B"** (the "Subject Area"), for access to and construction of the Trail.
- D. Orange County will access the Subject Area via public roads such as Challen Court, SouthPark Center Loop and Cordova Park Drive (the "Roads"), as depicted on Plat entitled "GRAN PARK AT SOUTHPARK PHASE II" recorded in Plat Book 55, Pages 41 through 43, of the Public Records of Orange County, Florida.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

TERMS

1. Recitals. The above referenced recitals are true and correct and hereby incorporated into this Agreement.
2. Term. The term of this Agreement shall commence on the Effective Date and shall expire three (3) years from the Effective Date or on the date of completion of the Trail, whichever occurs first (the "Term"). Orange County shall have the option to extend the Term for two (2) additional periods of six (6) months each. Orange County shall exercise its extension option by written notice to SPOA given not less than thirty (30) days prior to the expiration of the Term or extension thereof.

This Agreement shall automatically terminate on the date that is one (1) year from the Effective Date if no construction of the Trail has commenced. In addition, this Agreement shall automatically terminate in the event construction of the Trail ceases and has not recommenced for a period greater than six (6) months.

3. License Fee. During the Term, the consideration for this Agreement is the payment by Orange County to SPOA of Two Thousand and No/100 Dollars (\$2,000.00) per month (prorated for the first month of this Agreement) on or before the first (1st) day of each month ("License Fee").
4. One-Time Fee. Orange County shall pay SPOA a one-time fee in the amount of Fifty-Two Thousand Five Hundred Eighty-Nine and No/100 Dollars (\$52,589.00) within ten (10) business days after the Effective Date.
5. Right of Entry; Purpose. In accordance with the terms of this Agreement (including without limitation Section 8), SPOA grants to Orange County and its employees, contractors, agents, and representatives (singularly, "Authorized Party" and collectively, "Authorized Parties") a temporary license for ingress and egress to the Subject Area subject to the terms, conditions, and obligations set forth herein and subject to all matters of record. Orange County and its Authorized Parties' temporary rights under this Agreement are limited to the following terms and conditions: ingress and egress to the Subject Area at reasonable locations and times as set forth herein, at no cost to SPOA, and in a manner reasonably acceptable to SPOA for the construction of the Trail with the rights of ingress and egress to and from the Trail over the Subject Area (the "Work"). Any fees, permits, or other documentation required for construction, environmental disturbance, access, or use of the Subject Area shall be paid for by Orange County at no cost to SPOA.
6. Indemnity. Without waiving its sovereign immunity and the statutory protections and limitations in Section 768.28, Florida Statutes, Orange County will release, hold harmless, defend, and indemnify SPOA and its officers, employees, contractors, agents, tenants, or representatives from and against all claims, damages, injuries, losses, releases, or costs arising out of or in any way related to and to the extent caused by the negligent or wrongful acts of Orange County and its Authorized Parties' entrance on the Subject Area, and the Work. This indemnification shall survive the expiration or sooner termination of the Agreement. Orange County or its Authorized Parties shall be responsible for the safety

and security of all persons and property directly or indirectly associated with Orange County and its Authorized Parties' entrance upon the Subject Area and/or the Work.

7. Insurance. Any Authorized Party working for Orange County performing this Work shall carry: (i) commercial general liability insurance in an amount of \$1,000,000 per occurrence, \$2,000,000 in the aggregate and (ii) statutory workers' compensation coverage, no less than \$5,000,000 for Employer's Liability. Insurance carriers furnishing these coverages must be authorized to do business in the State of Florida, must possess a minimum, current rating of A-Class VIII in the most recent edition of "Best's Key Rating Guide", and must possess investment grade credit quality. SPOA shall be listed as an additional insured under the insurance policies. Orange County must file with SPOA current certificates of all required insurance on forms acceptable to SPOA and thirty (30) days prior written notice of cancellation or reduction in coverage, except ten (10) days prior written notice is allowed for cancellation due to non-payment of premium.
8. Notice Before Entry. Orange County and its Authorized Parties shall provide written notice (email will suffice) to SPOA at least three (3) business days before entering the Subject Area to perform the Work. Orange County and its Authorized Parties will reasonably cooperate and coordinate the Work within the Subject Area with representatives of SPOA. If a representative of SPOA reasonably believes that Orange County or its Authorized Parties' Work or activity on the Subject Area is creating or could create an interference with its ordinary use of the Subject Area, then SPOA shall immediately notify Orange County in writing and Orange County shall immediately cease or cause the cessation of such Work or activity until the interference is remediated to SPOA's reasonable satisfaction. Orange County and its Authorized Parties may only enter and exit the Subject Area at the points of entry reasonably approved by SPOA. Orange County and its Authorized Parties shall not do any damage to the Subject Area for SPOA's ordinary use of the Subject Area.
9. Non-Interference and Standards of Work. The Property is a vacant commercial property. Orange County and its Authorized Parties shall not materially interfere with or impair any use or activity being conducted on the Property, pedestrian or vehicular access to/from the Property, or the visibility of any signage situated on the Property and Orange County and its Authorized Parties shall not do any damage to the Property other than that associated with the Work. Orange County and its Authorized Parties' exercise of their rights under this Agreement shall be conducted subject to applicable matters of record and in conformity with applicable laws and restrictions encumbering the Property.
10. Construction Status Updates. Orange County shall, on or before the fifteenth (15th) day of the first month of each quarter during the Term, submit to SPOA a written status report, showing accurately and in reasonable detail the status of construction of the Trail and projected completion date of the Trail, including, but not limited to, the following: physical progress of the Trail, permits, and construction schedule.
11. Fencing. If the Subject Area is fenced, SPOA and Orange County acknowledge and agree that the fencing will be provided at no cost to SPOA. Both SPOA and Orange County may use the fence for signage to announce new construction "coming soon" or for directional

signage. The location, extent, material content, and type of fencing, if any, will be mutually acceptable to the parties.

12. Security. The Subject Area shall be fully secured at no cost to SPOA. Security measures for the Subject Area may include, but are not limited to, the following: lock and key, security guard, or video recording.
13. Coordination of Vehicular Access. In the event SPOA commences construction on the Property, Orange County and SPOA shall mutually agree upon a schedule determining vehicle delivery and access to the Property.
14. Condition of the Subject Area, the Property, and the Roads. During the Term Orange County shall use commercially reasonable efforts both to maintain the Subject Area, the Property, and the Roads in accordance with standards of good construction, and to remove waste materials, trash, debris, and other rubbish on a regular basis (“Maintenance Standards”). Orange County shall repair any damage to the Subject Area, the Property, and the Roads caused by Orange County and shall restore same to substantially the same condition in which it existed immediately prior to Orange County’s performance of the Work. Orange County will reimburse SPOA for actual, reasonable costs incurred by SPOA for repair of any damage to SPOA’s real property, and/or any damage to improvements that is not so restored by Orange County. This obligation shall survive the expiration or sooner termination of the Agreement.
15. Self-Help Rights. If Orange County fails to maintain the Subject Area, the Property, and the Roads in accordance with the Maintenance Standards by the date that is ninety (90) days after notice from SPOA to Orange County of SPOA’s demand for Orange County to comply with the Maintenance Standards and Orange County is not otherwise diligently pursuing such (which for purposes of this Agreement shall mean that there has been no maintenance activity occurring for a period of ninety (90) days after receipt of notice from SPOA to Orange County) then SPOA may, at SPOA’s sole discretion, elect to exercise self-help rights to perform such maintenance by providing written notice to Orange County. If SPOA elects to exercise its rights of self-help, Orange County agrees that SPOA shall not be liable for any costs, damages, injuries or claims not directly related to SPOA’s exercise of self-help, or arising out of any occurrence or matter occurring prior to the date SPOA commences the exercise of its self-help rights; and Orange County shall indemnify and hold SPOA harmless from any such costs, damages, injuries or claims. Additionally, Orange County acknowledges that in the exercise of SPOA’s right of self-help to complete maintenance of the Subject Area, the Property, and the Roads, SPOA will incur significant expenses, and therefore agrees that: Orange County shall reimburse SPOA for actual, reasonable out of pocket expenses incurred by SPOA in its exercise of its right of self-help, including all hard costs associated with the maintenance of the Subject Area, the Property, and the Roads by any provider of SPOA’s choice, soft costs including, but not limited to maintenance expenses and any such other expenses as are reasonably necessary under the circumstances. If Orange County fails to reimburse SPOA upon demand by SPOA of the amount to which SPOA is entitled to reimbursement pursuant to the terms hereof, SPOA shall have the right to pursue any and all remedies available under applicable law.

16. Future Obligation. Upon the completion of construction of the Trail, as evidenced by issuance of a Certificate of Completion, Orange County, at no cost to SPOA, shall construct a trailhead at the south end of the pond located on the Property as generally depicted on **Exhibit B**. This “Future Obligation” clause shall survive termination of the Agreement and not expire until such time as the Parties have met in good faith and negotiated and executed an agreement to construct the aforementioned trailhead within nine (9) months of the Effective Date.
17. Environmental Condition. The execution of this Agreement by SPOA is not intended, nor should it be construed, as an admission of liability on the part of SPOA or SPOA’s successors and assigns for any contamination discovered on the Property.
18. Attorney’s Fees. The Parties expressly agree that each Party shall bear the cost of its own attorney and legal fees in connection with any dispute arising out of this Agreement, or the breach, or interpretation of this Agreement, regardless of whether such dispute results in mediation, arbitration, litigation, all or none of the above, and regardless of whether such attorney and legal fees are incurred at trial, retrial, on appeal, at hearings or rehearing’s, or in administrative, bankruptcy, or reorganization proceedings.
19. Governing Law. This Agreement will be construed and enforced in accordance with Florida law. The parties agree the venue for any litigation arising out of this License Agreement will be in the Ninth Judicial Circuit Court in and for the County of Orange within the state of Florida. Should any federal claims arise for which the courts of the State of Florida lack jurisdiction, venue for those actions shall be in the Orlando Division of the U.S. Middle District of Florida. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision(s). **THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR THEIR SUCCESSORS UNDER OR CONNECTED WITH THIS AGREEMENT OR ANY OF ITS PROVISIONS AND ANY NEGOTIATIONS IN CONNECTION HEREWITH.**
20. Entire Agreement. This Agreement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Agreement, and this Agreement supersedes any previous oral or written agreements between the parties. This Agreement may be signed in counterpart so long as all parties have executed the agreement.
21. Modifications and Amendments. The Agreement may be amended or modified only by a written instrument duly executed by an authorized representative of each Party. The Manager of the Real Estate Management Division will be hereby authorized, on behalf of Orange County, to furnish any notice required or allowed hereunder and to issue written extensions and approvals of any amendments or modifications to the Agreement.
22. Successors and Assigns. The terms, covenants, conditions, and provisions contained in this Agreement shall be binding upon and inure to the benefit of SPOA, and its respective successors and assigns. In the event that ownership or lease of all or a portion of the Subject Area is transferred, the Agreement shall be assigned to the new owner or tenant.

Notwithstanding the foregoing, transfer of a leasehold shall not release the underlying fee owner.

23. Notices. Any notice or demand to be given or that may be given hereunder shall be in writing and shall be (i) delivered by hand, or (ii) delivered through United States mail, postage prepaid, certified, return receipt requested and U.S. First Class Mail; addressed to the parties at the address, and (iii) delivered by electronic mail. Any notice or demand that may be given hereunder shall be deemed complete (i) three (3) days after mailing of such notice or demand in the United States mail with proper postage affixed thereto, certified, return receipt requested and U.S. First Class Mail, or (ii) upon hand-delivery or electronic delivery to the appropriate address as follows:

Any notice to SPOA required hereunder shall be delivered to:

Southpark Property Owners' Association, Inc.
P.O. Box 541557
Orlando, Florida 32854
Phone: (407) 864-4220
Attn: Edna P. Trimble, CPM,
Email edna@trumanagementgroup.com

Any notice to Orange County required hereunder shall be delivered to:

Orange County
Real Estate Management Division
400 East South Street, 5th Floor
Orlando, FL 32801
Attn: Mindy T. Cummings, Manager
Phone: (407) 836-7070
Email: mindy.cummings@ocfl.net

With a copy to:

Orange County Parks and Recreation Division
4801 West Colonial Drive
Orlando, Florida 32839
Attn: Cedric M. Moffett, Principal Planner
Phone: (407) 836-6200
Email: cedric.moffett@ocfl.net

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

{signatures appear on following page}

IN WITNESS WHEREOF, the Parties have executed this Agreement to be made effective as of the Effective Date.

SPOA:

SOUTHPARK PROPERTY OWNERS' ASSOCIATION, INC.,
a Florida not-for-profit corporation

By: [Signature]

Name: DAMIAN MADSEN

Title: PRESIDENT

Dated: 5-9-2024



ORANGE COUNTY:

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: [Signature]
for Jerry L. Demings
Orange County Mayor

Dated: 29 October 2024

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

for By: [Signature]
Deputy Clerk

Printed Name: Jennifer Lara Kimetz

Date: OCT 29 2024

EXHIBIT "A"

THE PROPERTY

[Parcel Identification Number 32-23-29-8221-00-002]

Being all that property designated as Tract "B", Stormwater Management as shown on a plat thereof, entitled SOUTHPARK UNIT EIGHT, a plat of lands in Section 32, Township 23 South, Range 29 East, and Section 5, Township 24 South, Range 29 East, and Replatting a portion of Block "C", SOUTHPARK UNIT FOUR, Plat Book 20, Page 137, Orange County, Florida, which plat is recorded in Plat Book 64, page 12, Public Records of Orange County, Florida. Lying and being in Section 32, Township 32, Township 23, South, Range 29 East, and Section 5, Township 24 South, Range 29 East, Orange County.

EXHIBIT "B"



EXHIBIT "C"

