Interoffice Memorandum



June 22, 2020

TO:

Mayor Jerry L. Demings

and Board of County Commissioners

FROM:

Raymond E. Hanson, P.E., Director

Utilities Department

SUBJECT:

BCC AGENDA ITEM - Consent Agenda

July 7, 2020 BCC Meeting

Access and License Agreement between Orange County, Florida and Universal City Development Partners, LTD. (42"

Wastewater Force Main)

Contact Person:

Andres Salcedo, P. E., Deputy Director

Utilities Department

407-254-9719

As part of their improvements, Universal City Development Partners, LTD., the "developer", will be relocating an existing Orange County 42" wastewater force main on their property to run along the southern and eastern perimeter of their project boundary and over the Orange County South Water Reclamation Facility (SWRF) property.

Orange County will grant a non-exclusive license to the developer to enter the SWRF property for the purposes of (i) constructing and reconnecting the relocated force main to SWRF, (ii) constructing a permanent berm, fencing, walls, landscaping, irrigation and landscape lighting, (iii) installing temporary security fence to be removed after completion of construction, and (iv) constructing any other improvement identified on the construction plans. This non-exclusive license will commence on the effective date of the agreement and continue until the developer has completed their improvements as determined by the County.

The County Attorney's Office and Risk Management Department staff have reviewed the agreement and find it acceptable. Utilities Department staff recommends approval.

Action Requested: Approval and execution of Access and License Agreement between Orange County, Florida and Universal City Development Partners, LTD. (42" Wastewater Force Main).

District 6.

BCC Mtg. Date: July 7, 2020

ACCESS AND LICENSE AGREEMENT

between

ORANGE COUNTY, FLORIDA

and

UNIVERSAL CITY DEVELOPMENT PARTNERS, LTD.

(42" WASTEWATER FORCE MAIN)

This Access and License Agreement ("Agreement") is entered into as of the date of last execution below ("Effective Date") by and between ORANGE COUNTY, a charter county and political subdivision of the State of Florida, whose address is 201 South Rosalind Avenue, Orlando, Florida 32801 ("Licensor"), and UNIVERSAL CITY DEVELOPMENT PARTNERS, LTD., a Florida limited partnership, whose address is 1000 Universal Studios Plaza, Orlando, Florida 32819 ("Licensee").

RECITALS:

WHEREAS, Licensor is the owner of certain real property located at 4760 W Sand Lake Road, Orlando, Florida 32819, Parcel ID # 32-23-29-0000-00-003, known as the Orange County South Water Reclamation Facility (the "Licensor's Property"); and

WHEREAS, Licensee is the owner of certain real property located immediately adjacent to the west boundary of the Licensor's Property at 4700 W Sand Lake Road, Orlando, Florida 32819, bearing Parcel ID # 31-23-29-0000-00-007, Parcel ID # 31-23-29-0000-00-015, and Parcel ID # 31-23-29-0000-00-013 (the "Licensee's Property"); and

WHEREAS, Licensee's Property is subject to a 15' wide easement in favor of Licensor as described in the Easement Donation Deed (Orangewood Force Main Connector) recorded in Book 2706, Page 1644, as modified by the Partial Termination of Easement Interests recorded in Book 8004, Page 4246, all in the Official Records of Orange County, Florida (the "Force Main Easement"); and

WHEREAS, Licensor owns and operates a 42" wastewater force main (the "Force Main") located within the Force Main Easement, which Force Main connects to the Orange County South Water Reclamation Facility on the Licensor's Property; and

WHEREAS, Licensee desires to relocate a portion of the Force Main, such work being the "Utility Work" as such term is defined and described in the Utility Line Construction Reimbursement Agreement (42" Wastewater Force Main) between Licensee and Licensor of even date herewith (the "Utility Agreement"); and

WHEREAS, for purposes of constructing and reconnecting the Relocated Force Main (as such term is defined in the Utility Agreement) to the Orange County South Water Reclamation Facility as required for completion of the Utility Work, and as approved by Licensor, Licensee desires to obtain from Licensor, and Licensor desires to grant to Licensee, a temporary license over, under, upon, across, and through that portion of the Licensor's Property described in Exhibit "A" attached hereto and incorporated herein by reference (the "License Area"); and

WHEREAS, Licensor deems the granting of the license providing access to the License Area for the proposed utility connection to serve a public purpose; and

WHEREAS, the parties desire to set forth the terms and conditions under which Licensee will be permitted to enter the License Area.

NOW THEREFORE, for Ten Dollars (\$10.00) paid to Licensor, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensor and Licensee do hereby agree as follows:

Section 1. **Grant of License and Purpose**. Licensor hereby grants a non-exclusive license to Licensee, its employees, authorized agents, contractors and subcontractors to enter the Licensor's Property for purposes of undertaking the following activities (collectively, the "**Licensee's Improvements**"): (i) constructing and reconnecting the Relocated Force Main to the Orange County South Water Reclamation Facility, as more particularly described in the Construction Plans (as such term is defined in the Utility Agreement), (ii) constructing a permanent berm, fencing, walls, landscaping, irrigation and landscape lighting, (iii) installing a temporary security fence to be removed by Licensee upon completion of construction, and (iv) constructing any other improvements identified in the Construction Plans.

Licensee's Use of the Licensor's Property. Licensee's use of the Licensor's Property, including the License Area, shall be subject to, and shall not unreasonably interfere with, Licensor's use of the Licensor's Property; provided, however, that Licensee's performance of the Licensee's Improvements shall not be deemed to be unreasonable interference in accordance with this Section. Licensee agrees to minimize any unreasonable interference with Licensor's use of the Licensor's Property by providing reasonable notice prior to, and cooperation in the scheduling of, all activities that may unreasonably interfere with the activities by Licensor. Licensee will confine its operations on the Licensor's Property (except as required for egress and ingress) to the License Area. In no event shall Licensee, or Licensee's employees, authorized agents, or contractors place, locate, insert, install, construct, or otherwise perform any work within the Licensor's Property or License Area that is not included in the Construction Plans, or amendments thereto, or as otherwise permitted by this Agreement or the Utility Agreement or any amendments thereto. Any other use of the Licensor's Property or License Area by Licensee, or Licensee's employees, authorized agents, contractors or subcontractors not otherwise provided for in this Agreement or the Utility Agreement or any amendments thereto shall be deemed a breach of this Agreement and may result in its termination if not cured.

Section 3. **Term and Termination**.

- 3.1 **Term**. The term of this Agreement shall commence on the Effective Date and continue until such time as Licensee has completed the Licensee's Improvements hereunder and Licensor has accepted the Utility Work as provided in the Utility Agreement (the "**Term**"). Upon expiration of the Term, this Agreement and the license granted hereunder shall be deemed expired. The Term shall be a maximum of five (5) years, and shall terminate and expire upon the termination of the Utility Agreement. Any extension to the Term shall require prior written approval by Licensor, which shall be attached to and made a part of this Agreement (the "**Extension**"). Licensor and Licensee agree that any Extension shall be subject to the same terms and conditions set forth herein unless otherwise amended in writing and signed by both parties.
- 3.2 **Termination**. In the event Licensor finds Licensee to be in breach of any term of this Agreement, Licensor shall notify Licensee in writing within ten (10) days of such breach. The notice shall describe in sufficient detail the nature of the breach. If within thirty (30) days of receipt of such notification, Licensee has not cured or, if such breach is not capable of being cured within said thirty (30) day period, commenced to cure the breach, Licensor may unilaterally terminate this Agreement, effective fifteen (15) days after providing written notification of intent to terminate.
- Section 4. **Property "As Is.**" Licensor makes no representations about the condition of the Licensor's Property, including the License Area, or the suitability of the Licensor's Property, including the License Area, for Licensee's intended use. This License is conditioned upon Licensee's use of the License Area "AS IS" and "WITH ALL FAULTS."
- Section 5. Restoration of Property and License Area. Upon completion of the Licensee's Improvements contemplated under this Agreement, or upon receipt of notice of termination of this Agreement, Licensee agrees to restore the License Area at its sole cost and expense to the condition shown in the approved Construction Plans, including, without limitation, all property, facilities, or improvements located within the License Area and removal of the temporary security fence. If Licensee fails to restore the License Area within thirty (30) days of completion of the Licensee's Improvements or receipt of notice of termination of this Agreement, Licensor may restore the License Area to as near the condition as existed prior to the commencement of the Licensee's Improvements as is reasonably possible and Licensee shall be immediately liable for and shall reimburse Licensor for reasonable out-of-pocket costs and expenses incurred by Licensor in restoring the License Area. This provision shall survive the termination of this Agreement.
- Section 6. **Ownership of Property**. This Agreement is intended and shall be construed only as a temporary license to enter and conduct the Utility Work and construct the Licensee's Improvements and other improvements outlined in this Agreement upon the License Area and does not grant an easement, or create or confirm any ownership or possessory interest in any portion of the License Area or the Licensor's Property.
- Section 7. Indemnification. To the extent permitted by law, Licensee shall, and shall cause its contractor(s) to, defend, indemnify, and hold harmless Licensor, its officials, agents, and employees from and against any and all liabilities, claims, damages, losses, costs and

expenses (including attorneys' fees) arising out of or resulting from the construction and installation of the Licensee's Improvements, except to the extent arising from the negligence of Licensor, its employees, agents or contractors, and provided that any such liability, claim, damage, loss, cost or expense:

- (i) Is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the construction and installation activities themselves) including the loss of use resulting therefrom, and
- (ii) Is caused in whole or part by an act or omission relating to the construction or installation of the Licensee's Improvements by Licensee, its agents or employees, or any contractor employed by Licensee, or anyone directly or indirectly employed by Licensee or its contractor(s), their subcontractors, or anyone for whose acts any of them may be liable with respect to construction or installation of the Licensee's Improvements.

Notwithstanding the foregoing, if this Agreement or any underlying contract for construction of the Licensee's Improvements is deemed by a court of competent jurisdiction to be a construction contract under Section 725.06, *Florida Statutes*, any obligation of the Licensee or its contractor(s), as applicable, to defend, indemnify or hold harmless Licensor, its officers, and employees shall be limited to an obligation to indemnify and hold harmless to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Licensee or its contractor(s), as applicable, and persons employed or utilized by Licensee or its contactor(s), as applicable, in the performance of construction activities under this Agreement.

The indemnification provisions contained herein shall survive for a period of five (5) years after the date the certificate of completion is issued for the Relocated Force Main (the "Indemnification Period"); provided, however, if during the Indemnification Period the Licensor significantly alters the Relocated Force Main, the indemnification provisions contained herein shall automatically terminate and be of no further force or effect as of the date the Licensor commences such significant alteration. A significant alteration includes any of the following actions performed by the Licensor: relocating the Relocated Force Main, adding a valve or new connection to the Relocated Force Main, or changing the flow direction of the Relocated Force Main. Routine maintenance, minor repairs, or an emergency repair due to a construction defect, on the Relocated Force Main are not significant alterations. However, if the Licensor repairs the Relocated Force Main during the Indemnification Period solely as a result of a force majeure event, the Licensee's obligation to indemnify the Licensor will not apply to the segment of, or any damages arising out of or related to, the Relocated Force Main repaired by the Licensor as a result of the force majeure event.

Notwithstanding the foregoing, the Licensee's aggregate indemnification obligation under this Section 7 and under the Utility Agreement shall be capped at the sum of Twenty-Three Million and 00/100 Dollars (\$23,000,000.00). The Licensee's indemnification of the Licensor under the Utility Agreement shall offset and reduce the Licensee's indemnification obligation under this Agreement accordingly.

- Section 8. **Insurance**. Prior to commencing any portion of the Licensee's Improvements and throughout the course of construction of the Licensee's Improvements, Licensee shall cause its contractor(s) or consultant(s), as applicable, to procure and maintain insurance with such limits and terms as follows:
 - (i) Workers' compensation insurance with statutory workers' compensation limits and no less than One Million and 00/100 Dollars (\$1,000,000.00) for Employer's Liability.
 - (ii) Commercial general liability insurance for all operations including, but not limited to contractual, products and completed operations and personal injury with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and an aggregate limit of at least twice the per occurrence limit.
 - (iii) Business automobile liability insurance for all owned, hired, or non-owned vehicles with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.
 - (iv) Professional Liability (errors and omissions) for engineering design in amounts not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.
 - (v) Contractor's Pollution Liability insurance for all construction activities with a limit of not less than Five Million and 00/100 Dollars (\$5,000,000.00) per occurrence and an aggregate limit of at least twice the per occurrence limit.

Licensee shall be responsible for ensuring that each of its contractors and subcontractors maintain reasonably appropriate insurance. Licensor shall be listed as an additional insured on all insurance policies required herein, except workers' compensation and, if required, professional liability. All coverage shall be primary and not contributory with any insurance or self-insurance maintained by Licensor, but only with respect to losses for which Licensee is responsible hereunder. Licensee shall notify Licensor (or cause Licensor to be notified) at least thirty (30) days prior to any cancellation or non-renewal of any policy required herein which would cause Licensee to no longer comply with the insurance requirements of this Section.

Section 9. **Notices**.

- 9.1 **Notice of Default**. Notwithstanding anything herein to the contrary, no party shall be considered in default for failure to perform the terms and conditions hereof, unless said party shall have first received written notice specifying the nature of such failure, and said party fails to cure the same within the time specified in such notice, or in the event no such time is provided within thirty (30) days of receipt of such written notice, unless otherwise provided for herein.
- 9.2 **Notices**. Any notice required or permitted hereunder shall be delivered by hand delivery, express courier, or certified mail, return receipt requested, and shall be effective

upon receipt of the same. Notices shall be delivered to each of the parties at the following addresses or at such other addresses as specified by written notice in compliance with the terms of this paragraph.

Licensor: Orange County Utilities Department

9150 Curry Ford Road Orlando, Florida 32825-7600

Attn: Director

With copy to: Orange County Administrator

201 South Rosalind Avenue, 5th Floor

Orlando, Florida 32801-3527 Attn: County Administrator

Licensee: Universal City Development Partners, Ltd.

1000 Universal Studios Plaza Orlando, Florida 32819-7601

Attn: John Sprouls, Chief Executive Officer

With copy to: Universal City Development Partners, Ltd.

1000 Universal Studios Plaza Orlando, Florida 32819-7601

Attn: Adam Williams, Senior Vice President of Legal &

Business Affairs, Universal Parks & Resorts

and

Shutts & Bowen LLP

300 South Orange Avenue, Suite 1600

Orlando, Florida 32801-3382 Attn: Juli Simas James, Esq.

Section 10. **Assignment**. Licensee shall not assign or transfer any interest, rights, or duties under this Agreement to any other party except upon written approval by Licensor, which shall not be unreasonably withheld, conditioned, or delayed.

Section 11. **Permits and Licenses.** Licensee, with reasonable cooperation of Licensor, but at no expense to Licensor, shall obtain any and all permits, approvals, and licenses which may be required for the Utility Work it conducts pursuant to this Agreement.

Section 12. **Compliance with Applicable Laws**. Licensee shall comply with all applicable federal, state and local rules, orders, laws and regulations pertaining to the use of the Licensor's Property and License Area.

Section 13. Entire Agreement. This Agreement contains the entire understanding between the parties. Any change, amendment, or alteration shall be in writing and signed by both

parties. This Agreement supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof.

- Section 14. Admission of Facts. Nothing contained in this Agreement shall be construed as an admission of any fact or liability of any party to this Agreement.
- Section 15. Waiving or Right to Jury, Attorneys' Fees, and Venue. Both parties hereby waive their right to a jury trial for any dispute or legal action resulting from or associated with this Agreement. All claims, controversies, or disputes arising out of this Agreement shall be settled as required herein or by law in the Ninth Judicial Circuit, Orange County, Florida. Each party shall be responsible for all of its attorneys' fees and costs associated with any legal action arising out of this Agreement. However, if any legal action is subject to mediation, the parties shall share the fees and costs of the mediator equally.
- Section 16. Severability. The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependence is material inducement for the parties to enter into this Agreement. Therefore, should any material term, provision, covenant or condition of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate agreement language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from the holding. This Agreement shall be governed by the laws of the State of Florida.
- Section 17. **Captions**. Titles used throughout this Agreement are intended for ease of reference only and are not intended to be dispositive.
- Section 18. **Time is of the Essence**. Time is hereby declared of the essence as to the lawful performance of all duties and obligations set forth in this Agreement.
- Section 19. Construction of Agreement. This Agreement shall not be construed against either Licensor or Licensee on the basis of it being the drafter of the Agreement. Licensor and Licensee agree that both herein played an equal part in negotiating the terms and conditions of this Agreement. Captions and section headings in this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify, or aid in the interpretation, construction, or meaning of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below by their duly authorized representatives.

LICENSOR:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

Jerry L. Demings
Orange County Mayor

JUL 0 7 2020 Date:

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

By:

Deputy Clerk

Katie Smith

Print:

[REMAINING SIGNATURES ON THE FOLLOWING PAGE]

WITNESSES:	LICENSEE:	
	UNIVERSAL CITY DEVELOPMENT PARTNERS, LTD., a Florida limited partnership	
	By: Universal City Florida Holding Co. II, a Florida general partnership, its general partner	
By: Heather W. Himes By: By:	By: Universal City Property Management II LLC, a Delaware limited liability company, its general partner	
Print Name: Carchaedoanna Solomon	2 Mothet	
	Print Name: <u>Colon L. McReynolds</u> Title: <u>S. Vice President, External Affairs</u> Date: <u>due 18, 2021</u>)	
STATE OF FLORIDA COUNTY OF ORANGE		
The foregoing instrument was sworn to, subscribed and acknowledged before me this day of, 2020, by		

SKETCH OF DESCRIPTION

SEE SHEET 2 FOR SKETCH

DESCRIPTION: (prepared by Donald W. McIntosh Associates, Inc.)

That part of Section 31, Township 23 South, Range 29 East, Orange County, Florida, described as follows:

Commence at the Northeast corner of said Section 31; thence S00°01'46"E along the East line of the Northeast 1/4 of said Section 31, a distance of 149.99 feet to the South Right-of-way line of Sand Lake Road (State Road 482) as recorded in Official Records Book 223, Page 321, of the Public Records of Orange County, Florida; thence S89°44'41"W along said South Right-of-way line, a distance of 99.99 feet to the POINT OF BEGINNING; thence continue S89°44'41"W along said South Right-of-way line, a distance of 100.00 feet to the West line of lands described in Official Records Book 3907, Page 1921, of said Public Records; thence departing the said South Right-of-way line run the following three (3) courses along the West and Southerly line of said lands described in Official Records Book 3907, Page 1921: S00°01'46"E, 2520.85 feet; thence S00°07'44"E, 278.25 feet; thence S66°03'27"E, 109.52 feet; thence N00°07'44"W, 322.83 feet; thence N00°01'46"W, 2521.16 feet to the POINT OF BEGINNING: Bearings and distances are based on the Florida State Plane Coordinate System East Zone, NAD 83/2011 Datum; the reciprocal grid factor is 1.000034632.

Containing 6.478 acres more or less and being subject to any rights-of-way, restrictions and easements of record.

LINE NUMBER CURVE NUMBER

C1

L1

SECTION 31, TOWNSHIP 23 SOUTH, RANGE 29 EAST

SEC 31-23-29

PROPERTY LINE AKA ALSO KNOWN AS

LEGEND

DOCUMENT NUMBER DOC# FDOT FLORIDA DEPARTMENT OF TRANSPORTATION

OFFICIAL RECORDS BOOK **ORB**

NO. NUMBER PLAT BOOK PB PG(S)PAGE(S)

RIGHT-OF-WAY STATE ROAD

NOTES

- This is not a survey.
- Bearings and distances shown hereon are based on the Florida State Plane Coordinate System, North American Datum of 1983/2011 Adjustment, East Zone, deriving a bearing of South 00°01'46" East along the East line of the Northeast 1/4 of Section 31, Township 23 South, Range 29 East, Orange County, Florida.
- This Sketch of Description does not depict any easements of record that may be within or adjoining the lands described hereon.

PREPARED FOR:

UNIVERSAL CITY DEVELOPMENT PARTNERS, LTD.

LICENSE AREA

	2/05/20		REVISED BORDER
	10/01/19	JPF	REVISED TO "LICENSE AREA"
	09/24/19	WMS	ADDED UNITS TO CALL IN LEGAL
	DATE	BY	DESCRIPTION
			DEMOINE



ENGINEERS

DONALD W. McINTOSH ASSOCIATES, INC. **PLANNERS SURVEYORS**

2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789 (407) 644-4068 CERTIFICATE OF AUTHORIZATION NO. LB68

DRAWN BY: WMS 9/2019 DATE: _

CHECKED BY: RLC

JOB NO. 16197.060 SCALE

SHEET. OF

DONALD W MOINTOCH ASSOCIATES, INC. AUTHORIZATION NO. LB68

Rocky L.) Carson: February 05, 2020
Florida Registered Surveyor and Mapper
Certificate No. 4265
NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL
OR AN ELECTRONIC SIGNATURE (5.1-17.082(3) F.A.C.),
OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

