



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 2

DATE: May 25, 2023

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

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

FROM: Sara Solomon, Senior Title Examiner *SS/MTC*
Real Estate Management Division

CONTACT PERSON: **Mindy T. Cummings, Manager**

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

ACTION REQUESTED: Approval and execution of Limited Non-Exclusive Access License by and between Orange County and City of Winter Garden.

PROJECT: 902 Avalon Road Limited Non-Exclusive Access License

District 1

PURPOSE: To provide for access across county property.

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ITEM: Limited Non-Exclusive Access License
Size: N/A

APPROVALS: Real Estate Management Division
County Attorney's Office
Environmental Protection Division

REMARKS: This Limited Non-Exclusive Access License is to provide access from Avalon Road across the existing entrance road to the Johns Lake Conservation Area, so the City of Winter Garden can access its adjacent property. Access is needed so that the City of Winter Garden can construct and operate its temporary Fire Station on the adjacent parcel.

The County is executing to show acceptance of the terms and conditions.

LIMITED NON-EXCLUSIVE ACCESS LICENSE

This Limited Non-Exclusive Access License Agreement (“Agreement”) is made and entered into as of the Effective Date by and between **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida, whose principal address is 201 South Rosalind Avenue, Orlando, Florida 32801 (the “County”), and **CITY OF WINTER GARDEN**, a Florida municipal corporation, whose address is Attn: City Manager, 300 West Plant Street, Winter Garden, Florida 34787 (“City”). The County and the City may be referred to collectively as the “parties” or individually as a “party.”

WHEREAS, County owns in fee simple that certain real property located at 880 Avalon Road, Winter Garden, Florida, known as Johns Lake Conservation Area, having Orange County Tax Identification Number 33-22-27-0000-00-009 (the “County Property”); and

WHEREAS, the City owns in fee simple that certain real property located at 902 Avalon Road, Winter Garden, having Orange County Tax Identification Numbers 33-22-27-0000-00-023 and 33-22-27-0000-00-014 (the “City Property”);

WHEREAS, the County Property has an existing approximately twenty (20) foot wide gravel/sand access road (“Existing Road”) running adjacent to the City Property along the southern approximately 70 feet of the County Property that affords ingress and egress to and from Avalon Road; as shown on the attached **Exhibit A**, and

WHEREAS, access to the County Property is currently controlled by a locked metal cattle gate (“Gate”) as shown in the image attached as **Exhibit B**, and

WHEREAS, the City is installing a temporary fire station (“Fire Station”) on the City Property in the approximate location and configuration as shown on the site plan attached as **Exhibit C**, and

WHEREAS, County desires to grant to City, and City desires to obtain from County, a limited non-exclusive access license for the purposes of using the area of the County Property as shown on **Exhibit D** (“Licensed Premises”) as specified herein for vehicular and pedestrian access pursuant to the terms set forth herein;

NOW THEREFORE, in consideration of permitted uses and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Recitals.

The above referenced recitals are true and correct and hereby incorporated into this Agreement.

2. Purpose of License.

County hereby permits the City to enter the County Property to use the Licensed Premises for the following limited purposes and subject to the obligations contained herein: vehicular and pedestrian access associated with the construction of the Fire Station as well as access once the Fire Station is constructed, access for the preparation and installation of improvements to the Existing Road, relocation of the Gate, and the installation of signage.

3. Term.

The term of this license shall begin as of the Effective Date and end at 12:00PM (EST) on December 31, 2025.

City shall surrender the Licensed Premises in as good of condition as it was at the commencement of this Agreement, and remove all personal property (i.e., signage) belonging to City and clean up all debris or garbage that may have been generated by its use of the Licensed Premises. At the expiration of this Agreement, all improvements made by the City to the Licensed Premises (i.e., asphalt pavement, gate relocation, etc.) shall remain and become the property of the County.

4. Extension.

After December 31, 2025, the City may request an extension from the County and the County may extend this Agreement under the same terms and conditions herein on a month-to-month basis.

5. County's Rights and Restrictions.

A. Repair and Maintenance - City agrees that County has no obligation to maintain or repair the Licensed Premises and therefore, County does not warrant or represent that the premises are safe, healthful, or suitable for the purposes for which they are permitted to be used under the terms of this Agreement.

B. Right of Entry and Inspection - County has a right during the term of this Agreement to enter upon Licensed Premises at any time for the purpose of inspecting the premises.

C. Access by the Public - City agrees that the Licensed Premises are also used by the public to access the County's Property in accordance with the schedule for the County Property. This use will continue uninterrupted.

6. City's Obligations.

A. Access for Construction of Fire Station - the City may use the Licensed Premises to provide vehicular access for the construction of the Fire Station.

B. Gate - Prior to use of the Licensed Premises, the City at its expense shall relocate the Gate to an area west of the proposed turnoff into the temporary fire station, as shown on the attached **Exhibit C**. During the term of this Agreement, the City shall open and close the Gate at sunrise and sunset, seven (7) days a week to allow access to the Johns Lake Conservation Area (a County Green PLACE Property that is open for nature-based recreation 365 days a year). The City shall relocate the Gate to its original position at the end of the term of this Agreement in the approximate location in the area as shown on **Exhibit C**. Exact location shall be confirmed by County prior to installation.

C. Temporary Signals - Prior to the operation of the Fire Station, the City at its expense will install two (2) temporary emergency signal lights in locations to be determined by Orange County Public Works on Avalon Road to facilitate controlled access to the Fire Station.

D. Improvements to Licensed Premises - City shall at its sole cost and expense, stabilize the area of the Licensed Premises for the safety and stability of the City's fire trucks and equipment by grading and installing 1,020 square yards of 1 ½" type S-1 structural course 8" base – compacted concrete fines (98% max density) 12" compacted subgrade (98% max density) LBR 40 asphalt. City will ensure that during these improvements, access to the County's Property will not be interrupted.

E. Signage - City shall install at its expense "no parking signage" at the entrance to the parking area in the area shown on Exhibit C. In addition, the City will have the right to place informational, directional and safety signs, on the Licensed Premises with the prior written authorization of County, which shall not be unreasonably withheld.

F. Repair and/or Improvements to County Property - City agrees that, except as set forth herein, it shall not improve, maintain or alter the Licensed Premises during the term of this Agreement without the express written permission of County, which may be withheld at its sole discretion, and, if approved, City bears the sole responsibility for the cost of all such improvements.

G. Permits and Licenses - City shall be solely responsible for obtaining and maintaining all necessary permits, inspections, and licenses for the use of the Licensed Premises as well as for the installation of the Temporary Signals. The City will be responsible for all necessary Federal, State and local permitting that may be needed to install the improvements and for the stabilization of the Licensed Premises.

H. Buildings or Structures - City shall not erect any permanent or temporary buildings, shelters, other structures or other things attached to or being on the Licensed Premises.

H. Timber and Wetlands - City shall not cut, mutilate, injure or permit any of City's invitees, participants, volunteers or employees to cut, mutilate or injure any growing trees or wetlands on the County Property.

I. Restriction on Use - City shall not use the Licensed Premises for any purpose other than that set forth in Paragraph 2 above, without the express prior written consent of the County. County reserves the right on behalf of itself and the public to use the Licensed Premises for vehicular, bicycle and pedestrian access to the County Property.

7. Termination/Revocation. County and City agree that this Agreement automatically terminates on December 31, 2025 at 12:00 PM (EST). It is agreed between the parties hereto that if City shall default and breach any other covenant or provision of this Agreement, then the County, after giving City twenty (20) days prior written notice of such default and an opportunity to cure, may terminate this Agreement and thereafter the City will cease use of the Licensed Premises. Upon revocation, surrender, expiration, or other termination of the permission given by this License, City shall quietly and peaceably surrender the portion of the Licensed Premises occupied by City in as good of condition as same were at the time of entry thereon.

8. Insurance. City, at City's sole cost and expense, shall procure and maintain during the term of this Agreement general liability insurance policies covering the City's use of the Access Road being consistent with insurance limits of the City's current Public Risk Management of Florida insurance coverage.

9. Limitation on Liability. The City and County shall each be responsible for the acts and omissions on their own officers, officials, employees and agents. Nothing herein is intended as a waiver of sovereign immunity or of any other privilege, immunity or defense afforded by law to each of the parties or their respective officers, officials, employees and agents.

10. Assignment. This Agreement is not assignable by either party.

11. Notice. 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 shown below. 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 to the appropriate address as follows:

COUNTY Orange County, Florida Attn: Manager, Real Estate Management Division 400 East South Street 5 th Floor Orlando, Florida 32801	<i>With copies to:</i> Orange County, Florida Attn: Manager, Environmental Protection Division 3165 McCrory Place Orlando, Florida 32803 Orange County, Florida Attn: County Attorney's Office 201 South Rosalind Avenue, 3 rd Floor P.O. Box 1393 Orlando, Florida 32801-1393
CITY City of Winter Garden, Florida Attn: City Manager 300 West Plant Street Winter Garden, Florida 34787	<i>With copies to:</i> City of Winter Garden, Florida Attn:

12. Applicable Law. The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. The parties to this Agreement further agree that any and all litigation arising from the terms of this Agreement and the subject matter contained herein shall be filed and heard in a court of competent jurisdiction located in Orange County, Florida.

13. Dispute Resolution. In the event a dispute arises under this License, each party mutually agrees to the following course of action:

- a. First attempt to resolve the dispute amongst the respective parties;
- b. Then, if no resolution can be met, each party mutually agrees to subject the dispute to mediation; and
- c. Then, if no resolution can be reached in mediation, then the dispute may be filed with a court having jurisdiction.

14. Attorneys' 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, enforcement, 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 rehearings, or in administrative, bankruptcy, or reorganization proceedings.

15. Waiver. The failure of either party to insist upon the strict performance of any given provision of this Agreement shall not constitute a waiver of or estoppels against asserting the right to require that performance in the future. A waiver or estoppel in any one instance shall not constitute a waiver or estoppel with respect to a later breach of similar nature or otherwise.

16. Severability. A determination of invalidity of any one or more of the provisions or conditions hereof by judgment, order or decree of a court shall not affect in any manner the other provisions hereof which shall remain in full force and effect.

17. Counterparts. This Agreement may be executed in several counterparts and/or by signature transmitted by facsimile or electronic mail, and as so executed shall constitute one agreement, binding on the County and City, notwithstanding that the County and City are not signatory to the original or the same counterpart.

18. Headers/Captions. All headers, paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

19. Construction. The parties hereto acknowledge that each party and its counsel have reviewed this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

20. Effective Date. This Agreement shall become effective on the date it is approved by the County.

21. Amendment/Modification. This Agreement may not be amended or modified except by a written agreement executed by all parties.

22. Delegation of Authority.

22.1 County. The Manager of the Orange County Real Estate Management Division is hereby authorized, on behalf of the County, to furnish any notice required or allowed hereunder, and to grant and sign extensions to the Term of this Agreement.

22.2 City. The City Manager is hereby authorized, on behalf of the City, to furnish any notice required or allowed hereunder, and to grant and sign extensions to the Term of this Agreement.

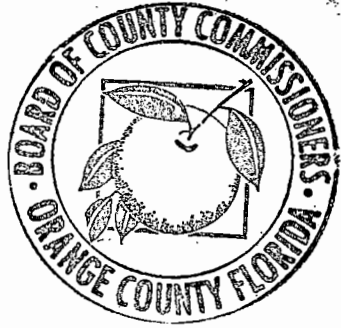
23. Entire Agreement. This Agreement constitutes the entire agreement of the parties, insofar as it concerns the Agreement granted over the County Property and this Agreement supersedes all prior and/or contemporaneous oral or written agreements and understandings of the parties which may conflict with the express terms, covenants and conditions herein set forth, reserved and contained on the part of the parties hereto to be kept and performed.

Signatures to Follow

IN WITNESS WHEREOF, the County and City have hereunto set their hands and seals the day and year above written.

“COUNTY”

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners



BY: *Bryan W. Brooks*
for Jerry L. Demings
for Orange County Mayor

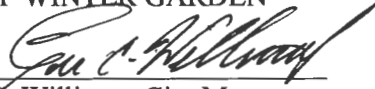
DATE: 20 June 2023

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

BY: *Craig Stopyra*
for Deputy Clerk
Craig Stopyra
Printed Name

“CITY”

CITY OF WINTER GARDEN

BY: 
Jon C. Williams, City Manager

Date: May 4, 2023

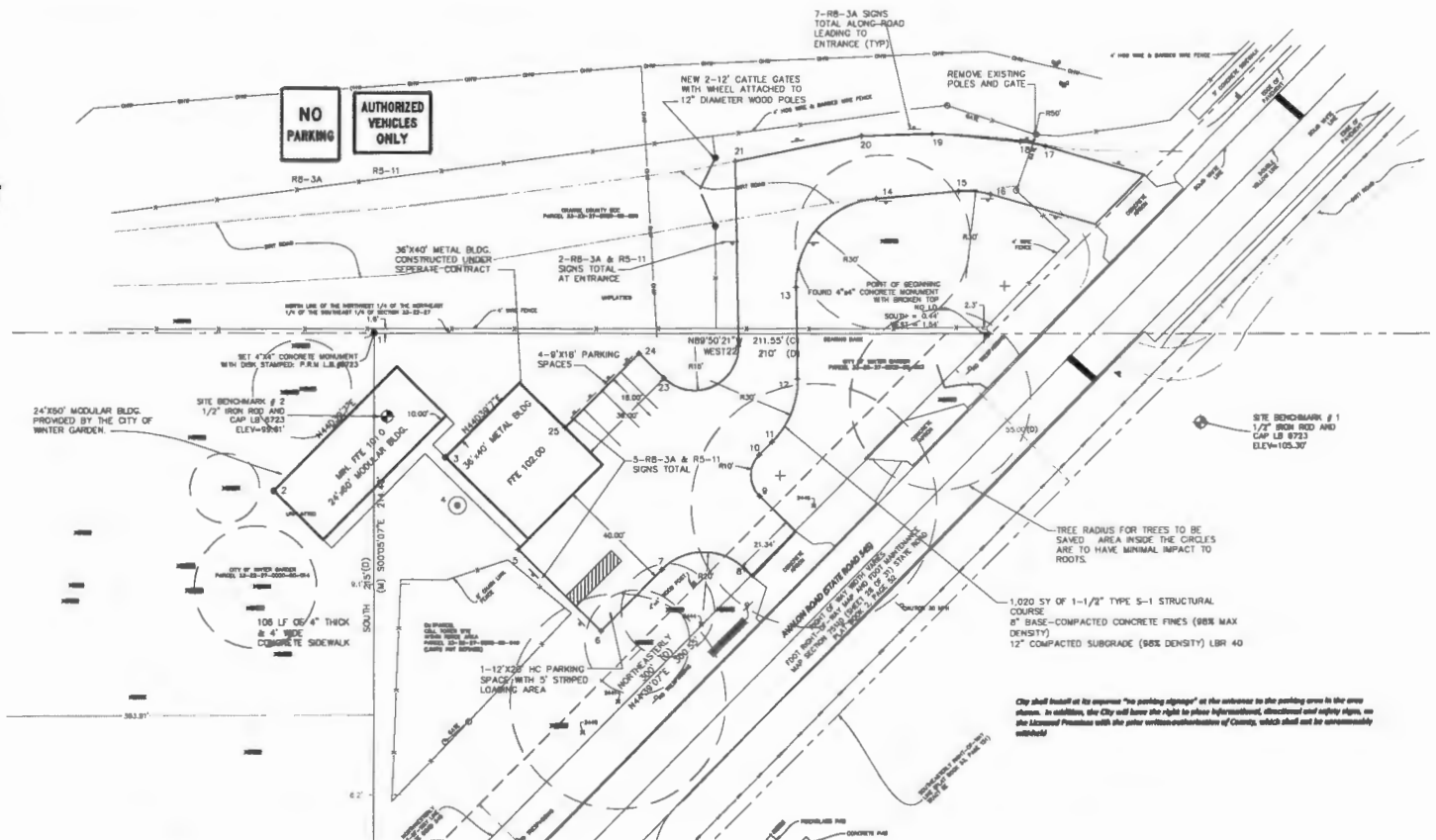
EXHIBIT A
Aerial Image of Existing Road



EXHIBIT B
Image of Existing Gate on County Property



EXHIBIT "C"



POINT NO.	NORTHING	EASTING	DESCRIPTION
2402	1377.00	480235.02	4\"/>

POINT NO.	NORTHING	EASTING	DESCRIPTION
2409	1377.00	480235.02	4\"/>

POINT NO.	NORTHING	EASTING	DESCRIPTION
2405	1377.00	480235.02	4\"/>

POINT NO.	NORTHING	EASTING	DESCRIPTION
1	152504.71	480235.02	4\"/>

POINT NO.	NORTHING	EASTING	DESCRIPTION
16	152561.50	480246.29	EDGE OF PAVEMENT
17	152562.56	480246.29	EDGE OF PAVEMENT
18	152563.39	480246.48	EDGE OF PAVEMENT
19	152563.33	480228.20	EDGE OF PAVEMENT
20	152563.46	480229.07	EDGE OF PAVEMENT
21	152563.85	480158.82	EDGE OF PAVEMENT
22	152566.00	480160.13	EDGE OF PAVEMENT
23	152549.13	480154.58	EDGE OF PAVEMENT
24	152557.84	480125.87	EDGE OF PAVEMENT
25	152552.03	480100.87	EDGE OF PAVEMENT



TEMPORARY FIRE STATION 21
902 AVALON ROAD
SITE LAYOUT & TREE SAVE PLAN

DATE: _____
REVISIONS:

JOB # _____
DATE: _____
SCALE: _____
GAIN BY: _____
FIELD BY: _____
DRAWN BY: _____
CHECKED BY: _____

EXHIBIT "D"



Legend

Aerials 2022

- Red: Band_1
- Green: Band_2
- Blue: Band_3

Route Shields

- CR 16
- CR 419
- CR 420
- CR 423
- CR 424
- CR 424A
- CR 425
- CR 427
- CR 429
- CR 481
- CR 436
- CR 437A
- CR 438
- CR 438A
- CR 439
- CR 448
- CR 600A
- CR 606
- CR 626
- CR 627
- CR 628
- CR 632
- CR 636
- CR 646
- I 4
- SR 16
- SR 414
- SR 416
- SR 423
- SR 424
- SR 426
- SR 434
- SR 436
- SR 436

1:1,000

0.0 0 0.02 0.0 Miles

NAD_1983_StatePlane_Florida_East_FIP9_0801_Feet
Orange County, FL BCC

This map is a user generated static output from an internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes
This map was automatically generated using Geocortex Essentials.