



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 6

DATE: January 6, 2023

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

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

FROM: Juanita Thomas, Senior Title Examiner *JT/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 Right of Entry Agreement among Orange County, City of Orlando, and City of Clermont.

PROJECT: Conserv II – Clermont Right of Entry (PN 19670)

PURPOSE: To provide temporary Right of Entry to the City of Clermont its employees, contractors, consultants, and agents to enter upon the property located in Lake County, to complete the work of collecting wetland data.

ITEMS: Right of Entry Agreement
Revenue: None/Donation
Total size: n/a
Term: Until October 11, 2031, or until the work is completed
and property is restored

APPROVALS: Real Estate Management Division
County Attorney's Office
Utilities Department

REMARKS: The Right of Entry Agreement (Agreement) will remain in effect until the earlier of: (a) the expiration date of the City of Orlando's Conditional Use Permit on October 11, 2031, or (b) at such time as the work has been completed and City of Clermont has satisfied its obligations under Section 6 (Property Restoration) of the Agreement.

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

JAN 24 2023

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT (the “**Agreement**”), effective as of the last date of execution below (the “**Effective Date**”), is made among **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida (“**County**”), **CITY OF ORLANDO**, a municipal corporation organized and existing under the laws of the State of Florida (“**City**”, and together with County, the “**Owners**”), and **CITY OF CLERMONT**, a municipal corporation organized and existing under the laws of the State of Florida (“**Licensee**”). County, City, and Licensee are individually referred to herein as a “**Party**” and collectively referred to as the “**Parties**.”

RECITALS

A. County and City jointly own certain real property located in Lake County, Florida, located at Five Mile Road, Clermont, Florida 34711, bearing Lake County Property Appraiser’s Parcel Identification Number 13-23-25-0900-013-00000 (the “**Conserv II Property**”).

B. Licensee has requested a right of entry license for access to the cross-hatched portion of the Conserv II Property shown on Exhibit “A” (the “**License Area**”) in order to collect wetland data (the “**Work**”).

C. The Parties desire to enter into this Agreement for the purposes of evidencing their respective rights and obligations in connection with Licensee’s request.

NOW THEREFORE, for and in consideration of the mutual promises and obligations set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Recitals; Exhibits. The foregoing recitals are true and correct. The recitals and exhibits attached to this Agreement are hereby incorporated into this Agreement by reference.

2. License; No Grant of Easement. The Owners hereby grant Licensee a non-exclusive license over, upon, and across the License Area for the purposes, and under the terms and conditions, set forth in this Agreement (the “**License**”). This Agreement is intended and will be construed only as a temporary license to enter the License Area and complete the Work. This Agreement does not grant an easement to the Licensee or anyone else or create or confirm any ownership or possessory interest in any portion of the License Area, in the Licensee or anyone else. The Owners reserve the right to use the License Area in any manner whatsoever.

3. Purpose of the License. The sole purpose of the License is to permit Licensee and its employees, contractors, consultants, and agents (collectively, the “Entrants”) to enter upon the License Area to complete the Work.

4. Prior Notice and No Interference with Owners’ Operations Permitted. Licensee will provide at least ten (10) days written notice to Owners prior to entering upon the License Area to conduct Work under this License. Under no circumstances may Licensee block any operation of the Owners or impede or restrict the normal operation of the Owners on the License Area without the prior written consent of the Owners. Any interference with operations of the Owners as determined by the Owners in their sole discretion may result in immediate suspension or termination of this Agreement. If the Owners determine that Licensee’s activities, in whole or in part, unreasonably interfere in any way with the convenient, safe, or continuous use, maintenance, or improvement of the License Area, Licensee will, upon receipt of notice, immediately alleviate the interference at no cost to the Owners.

5. Term. This Agreement will commence upon the Effective Date and, except as otherwise provided in this Agreement, will remain in effect until the earlier of: (a) the expiration date of the City’s Conditional Use Permit (“CUP”) on October 11, 2031, or (b) at such time as the Work has been completed and Licensee has satisfied its obligations under Section 6 (Property Restoration) (the “Term”). **Notwithstanding the foregoing, this Agreement is terminable at will by the Owners, upon written notice to Licensee.**

6. Property Restoration. Licensee will restore the License Area to a condition as good as, or better than, the condition existing prior to the commencement of Work. This Section will survive any termination of this Agreement or revocation of the License.

7. Inspections. All work, materials, and equipment are subject to inspection and approval by the Owners at any time.

8. Information Sharing. Within thirty (30) days after Owners’ request, all information and data obtained by Licensee from the Work will be provided to Owners and Woodard & Curran, Inc./Water Conserv II, either electronically or in writing. In addition, Licensee will provide Owners and Woodard & Curran, Inc./Water Conserv II a written or electronic copy of any and all reports, studies, summaries, analyses, or other such documentation prepared by Licensee or Licensee’s consultants/contractors, that incorporate any information or data obtained by Licensee from the Work.

9. Presence of Abnormal Conditions. In the event Licensee or the Entrants encounter any abnormal condition which may indicate the presence of a hazardous substance, toxic waste, or pollutants, Licensee must immediately cease all work within the License Area and immediately contact the Owners. Abnormal conditions may include, but are not limited to, discolored earth or groundwater, visible fumes or smoke, abnormal odors, excessively hot soil or water, tanks or barrels, or other conditions which appear abnormal. The Owners will notify Licensee of any suspension or revocation of the License to allow for contamination assessment and remediation. The suspension or revocation will remain in effect until otherwise notified by the Owners.

10. Regulatory Compliance. Licensee will ensure that the Work is performed in compliance with all applicable laws, rules and regulations, and will obtain all permits necessary for the conduct of the Work. Licensee will locate utilities on the License Area prior to any invasive work on the License Area.

11. Indemnification. To the extent provided by law, Licensee agrees to indemnify, defend, and hold harmless the Owners from and against any and all claims, suits, actions, causes of action, damages, liabilities, injuries, judgments, fines, attorneys' and other professionals' fees, penalties, losses, costs, or expenses ("**Claim**") arising from Licensee's use of the License Area or from the exercise by Licensee of any rights granted by this Agreement, provided that Licensee has no obligation to indemnify or hold harmless the Owners against that portion of any Claim to the extent caused by or resulting from the negligence of the Owners. Nothing herein will be construed to waive the Owners' sovereign immunity protections or the limitations of liability established under Florida law, including those limitations established in Section 768.28, Florida Statutes. This Section will survive any termination of this Agreement or revocation of the License.

12. Insurance. During the term of this Agreement, Licensee will maintain, and will ensure that the Entrants performing Work on the License Area maintain, general liability and automobile insurance with limits of not less than \$1,000,000 per occurrence and workers' compensation insurance or self-insurance as required by Florida Statutes chapter 440. All such insurance or self-insurance must be primary to, and not contribute with, any insurance or self-insurance maintained by the Owners. The Owners must be listed as an additional insured on all such insurance policies except for workers' compensation coverage. Licensee must provide the Owners with notice of any material change, cancellation, or non-renewal of any insurance policy required by this Section at least 30 days prior to the occurrence thereof.

13. No Liens. Licensee must keep the License Area free and clear of all liens and encumbrances arising from the exercise by Licensee of its rights under this Agreement.

14. Limitation of Liability. The Owners make no representations about the condition of the License Area. This Agreement is conditioned upon Licensee's use of the License Area "AS IS" and "WITH ALL FAULTS." Licensee and the Entrants will enter upon the License Area at their own risk, and the Owners will not be held responsible or liable for injury, damage, or loss incurred by Licensee or any Entrants arising out of or in connection with activities under this Agreement.

15. No Partnership. Nothing contained in this Agreement will be deemed or construed by the Parties or by any third party to create the relationship of principal and agent, or of partnership, or joint venture, or of any other association between the Owners and Licensee.

16. Notices. Any notice, request, direction, instruction, payment, or other communication required or permitted to be made or given by any Party must be in writing and sent to the addresses set forth below or to such other address as the recipient may designate in writing to all Parties and must be (i) delivered in person, (ii) sent registered or certified mail, return receipt requested, or (iii) sent Federal Express, USPS Express Mail, UPS or other overnight delivery service with delivery confirmation.

If to the County: Director, Utilities Department
9150 Curry Ford Road
Orlando, FL 32825-7600

with a copy to: Manager, Real Estate Management
400 E. South Street, 5th Floor
Orlando, FL 32802-2816

Project Manager/Principal
Woodard & Curran, Inc./Water Conserv II
PO Box 783125
Winter Garden, FL 34778-3125

If to the City: Manager, Real Estate Management
400 S. Orange Avenue, 7th Floor
Orlando, FL 32801-3317

with a copy to: Public Works Director
400 S. Orange Avenue, 8th Floor
Orlando, FL 32801-3317

If to Licensee: City Manager
685 W. Montrose Street
Clermont, FL 34711-2119

With a copy to: Public Services Director
400 12th Street
Clermont, FL 34711-2018

17. Attorneys' Fees. The Parties agree that each Party will bear the cost of its own attorney fees, paralegal fees, professional fees, and other incidental costs incurred for any action arising out of or in connection with this Agreement.

18. Enforcement. If any Party fails to perform or breaches any obligation, requirement, duty, or covenant contained in this Agreement, the non-defaulting Parties will have the right, at their option, in addition to any of its other rights, privileges, or remedies otherwise stated elsewhere in this Agreement, to bring an action for specific performance in a court of competent jurisdiction. The failure to enforce any other terms or provisions of this Agreement, however long continued, will in no event be deemed a waiver of the right to enforce the same

thereafter as to the same breach or violation, or as to any other breach or violation occurring prior to or subsequent thereto. The Parties waive their right to a jury trial for any dispute or legal action resulting from or associated with this Agreement.

19. Applicable Law. This Agreement will be governed by and construed under and in accordance with the laws of the State of Florida. The Parties consent and agree that Orange County, Florida, will be the exclusive, proper and convenient venue for any legal proceeding in federal or state court relating to this Agreement, and each Party hereby waives any defense, whether asserted by motion or pleading, that Orange County is an improper or inconvenient venue.

20. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to Licensee's access to the License Area and supersedes all previous discussions, understandings, and agreements between the Parties relating to the subject matter of this Agreement.

21. Amendments. This Agreement may not be modified or amended in any respect except by written agreement entered into by the Parties in the same a manner as this Agreement.

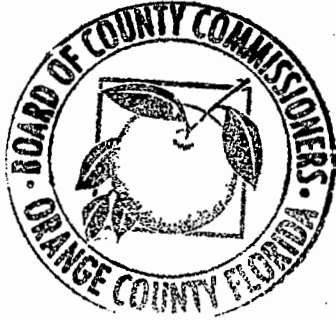
22. Authority. Each Party to this Agreement warrants and represents that such Party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a Party warrants and represents that he/she has been fully authorized to execute this Agreement on behalf of such Party and that such Party is bound by the signature of such representative.

23. Third Party Beneficiary. There are no intended or unintended third-party beneficiaries of this Agreement.

24. Assignment. Licensee may not assign or transfer any interests, rights, or duties under this Agreement to any other party without the prior written consent of the Owners.

**[REMAINDER OF PAGE LEFT BLANK;
SIGNATURES APPEAR ON FOLLOWING PAGES]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year written below their signatures.



ORANGE COUNTY, FLORIDA,
a charter county and political subdivision of
the State of Florida

By: Board of County Commissioners

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

Date: *24 January 2023*

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

By: *Gloria Hernandez*
Deputy Clerk

Print: Gloria Hernandez

CITY OF ORLANDO, FLORIDA,
a municipal corporation

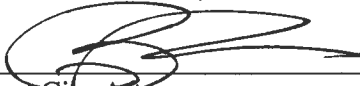


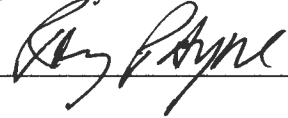
Laurie J. Botts
Real Estate Division Manager

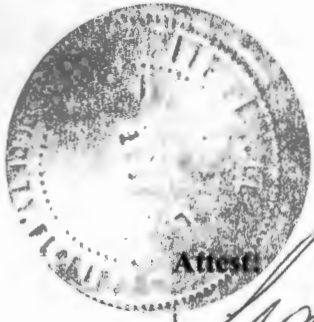
10/11/23

Date

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
CITY OF ORLANDO, FLORIDA:


Assistant City Attorney


Print Name



Attest:

Tracy Ackroyd

Tracy Ackroyd, City Clerk

CITY OF CLERMONT,
a municipal corporation organized and
existing under the laws of the State of
Florida

Tim Murry

Tim Murry, Mayor

This 13th day of December, 2022

Approved as to form and legality:

Daniel F. Mantzaris

Daniel F. Mantzaris, City Attorney

Exhibit A

