



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 4

DATE: January 24, 2017

TO: Mayor Teresa Jacobs
and the
Board of County Commissioners

THROUGH: Ann Caswell, Manager *AC*
Real Estate Management Division

FROM: Monica L. Hand, Senior Title Examiner *MLH*
Real Estate Management Division

CONTACT PERSON: Ann Caswell, Manager

DIVISION: Real Estate Management
Phone: (407) 836-7082

ACTION REQUESTED: APPROVAL AND EXECUTION OF LICENSE AGREEMENT FOR
LAY DOWN AREA AT 10901 TANGORA STREET BETWEEN
SCHULLER CONTRACTORS INCORPORATED AND ORANGE
COUNTY

PROJECT: Park Manor Estates Underdrain Y16-7000-RM

District 4

PURPOSE: To provide for the temporary use of County property as a construction
storage area.

ITEM: License Agreement For Lay Down Area at 10901 Tangora Street
Revenue: None
Term: 1 year

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

REMARKS:

Schuller Contractors Incorporated was awarded a contract pursuant to Invitation for Bid Y16-7000-RM for the underdrain project in the Park Manor Estates residential area. This License Agreement (Agreement) will grant Schuller Contractors Incorporated (Schuller) the right to enter upon and use the County property located at the corner of Tangora Street and Park Manor Drive as a lay down area for the limited purpose of storing construction-related equipment, materials, and supplies, and other related activities in support of the construction of the Project. This Agreement shall take effect upon County's execution and shall terminate one year thereafter. This Agreement may be extended upon the written request by Schuller and approval by the County Administrator, no less than 30 days prior to initial termination date.

A file labeled "BCC Agenda Backup" containing a copy of this agenda item and all supporting documentation is in the top drawer of the BCC file cabinet in the supply room adjacent to Commissioner Thompson's office.

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
FEB 21 2017

LICENSE AGREEMENT

For Lay Down Area at

10901 Tangora Street

THIS LICENSE AGREEMENT ("Agreement") is made as of the last date of execution below ("Effective Date"), by and between Schuller Contractors Incorporated, a Florida corporation (hereinafter "Schuller"), having an address at 9125 Parkers Landing, Suite #6, Orlando, Florida 32824 and Orange County, Florida, a charter county and political subdivision of the State of Florida (hereinafter "County"), having an address c/o Orange County Administrator, P.O. Box 1393, Orlando, Florida 32802-1393.

RECITALS

WHEREAS, Schuller was awarded a contract pursuant to Invitation for Bid Y16-7000-RM ("Contract") for the construction of the under drain project in the Park Manor Estates residential area ("Project"); and

WHEREAS, the County owns vacant property on Tangora Street near the location of the Project, as more specifically described in Exhibit "A", attached hereto and incorporated herein by this reference ("County Property"); and

WHEREAS, Schuller desires to use the County Property as a lay down area in connection with Schuller's construction of the Project; and

WHEREAS, the parties hereto desire to work together for their mutual benefit, as contemplated in the Contract.

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

1. **Creation of License.** The County grants to Schuller the right to enter upon and use the County Property. Schuller's use of the County Property shall be for the limited purpose of storing construction-related equipment, materials and supplies and other related activities in support of the construction of the Project, subject to the terms and conditions herein. No storage of material, other than those specified herein, and no structures shall be permitted on the County Property. Schuller shall ensure that its employees, agents, contractors, sub-

contractors, vendors, and suppliers comply with the terms and conditions of this Agreement. Use of the County Property for any other purpose by Schuller shall be cause for termination of this Agreement, pursuant to Paragraph 10 herein. This Agreement shall not create an ownership or possessory interest by Schuller in the County Property.

2. **Term.** The term of this Agreement shall commence upon full execution by both parties hereto and shall terminate one (1) year thereafter, unless sooner terminated pursuant to the provisions contained herein. The term of this Agreement may be extended through written request by Schuller to the County Administrator with copies to Real Estate Management Division, Utilities Department and Public Works Department, and upon written approval by the County Administrator, or his designee, no less than thirty (30) days prior to the initial termination date.
3. **Site Preparation and Maintenance.** Schuller shall bear all costs of site preparation necessary for its use of the County Property including, but not limited to, the fencing off of any above-ground facilities located on the County Property. All such site preparation shall conform in all respects to all applicable statutes, ordinances, codes, and governmental rules and regulations including, but not limited to, environmental regulations. Schuller shall be fully and solely responsible for maintaining the County Property in a clean and safe condition (e.g. no trash and/or debris on premises; mowing of grass) during the entire term of this Agreement. Trees shall not be removed from County Property without the advanced written consent of the County.
4. **Access.** To the extent the area furnished by the County so abuts, Schuller shall access the County Property only by way of the public road access.
5. **Safety and Security Precautions.** During the term of this Agreement:
 - a. Schuller shall take all necessary precautions for, and will be responsible for initiating, maintaining, and supervising all activities relating to the safety and security of all persons and property affected by or involved in Schuller's use of the County Property under this Agreement.
 - b. Schuller shall take all reasonable precautions for the safety and security of, and will provide all reasonable protection to damage, injury or loss to:
 - i) All persons who may be affected by Schuller's use of the County Property including, but not limited to, Schuller's employees;
 - ii) All materials and equipment located on the County Property; and
 - iii) County Property.

- c. Schuller shall comply with all applicable and security laws, ordinances, rules, regulations, standards and lawful orders of any public authority bearing on the safety and security of persons or property or their protection, damage, injury or loss affected by Schuller's use of the County Property under this Agreement.
 - d. Schuller shall act with reasonable care and discretion to prevent any threatened damage, injury or loss in any emergency affecting the safety and security of persons or property affected by Schuller's use of the County Property under this Agreement.
6. **Insurance.** Schuller shall procure and maintain, on a primary basis and at its sole expense, for the duration of this Agreement, insurance of the types and limits specified below and in the Contract. The following types of insurance coverage shall be within the limits and on forms (including endorsements) as described herein. These requirements, as well as the County's review and acceptance of the insurance maintained by Schuller, is not intended to and shall not in any manner limit or qualify the liabilities assumed by Schuller under this Agreement.

Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A-Class VIII or better. (Note: State licenses can be check via www.floir.com/companysearch and A.M. Best's Ratings are available at www.ambest.com.)

- a. Workers' Compensation – covering its employees with statutory workers' compensation limits, and no less than Five Hundred Thousand Dollars (\$500,000) for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the County and its agents, employees and officials.
- b. Commercial General Liability – covering all operations including, but not limited to, Contractual, Products and Completed Operations and Personal Injury. The limits shall be not less than One Million Dollars (\$1,000,000), per occurrence, Combined Single Limits (CSL) or its equivalent. The General Aggregate limit shall either apply separately to the Contract or shall be at least twice the required occurrence limit. The County shall be specifically named as an additional insured.
- c. Business Automobile Liability – covering all owned, non-owned, and hired vehicles with limits of not less than One Million Dollars (\$1,000,000), per occurrence, Combined Single Limit (CSL) or its equivalent.
- d. Pollution Legal Liability – Pollution Legal Liability with a limit of not less than One Million Dollars (\$1,000,000) per occurrence on a per-project basis.

- e. "All-Risk" property insurance, including equipment, for the full replacement value of such property.

Prior to entering upon County Property, and during the duration of this Agreement, Schuller shall provide the County with current certificates of insurance evidencing all required coverage. The certificates shall clearly indicate that Schuller has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice (ten (10) days for non-payment of premiums) to the county. Certificates shall specifically reference the Contract number and project title.

It is the sole responsibility of Schuller to ensure that all its sub-contractors maintain adequate insurance until the completion of the work under the Contract. Schuller shall obtain certificate evidencing such insurance from its sub-contractors, and shall promptly furnish copies of certificates of insurance evidencing coverage for each sub-contractor when requested by the County. Failure by Schuller to maintain adequate insurance coverage for itself or for any other persons or entities for whom it is responsible, or to ensure that its sub-contractors maintain adequate insurance coverage, shall not relieve Schuller of any contractual responsibility, obligation, or liability.

- 7. **Indemnification.** Schuller shall indemnify, defend, and hold harmless the County from and against any and all liabilities, claims, losses, costs, damages, fees, fines, suits or expenses of any kind and nature (including without limitation, attorneys' fees), for injury or death to persons or damage to property or property rights arising out of Schuller's use of the County Property, or the use of the County Property by Schuller's employees, agents, contractors, sub-contractors, vendors and suppliers.

Schuller assumes all risk of damage to property owned by Schuller, its employees, agents, contractors, sub-contractors, vendors and suppliers that may occur while on or about the County Property for any reason whatsoever. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes.

The indemnification provisions contained herein shall survive the termination of this Agreement.

- 8. **Breach of Agreement.** The failure of Schuller to comply with any covenant or condition of this Agreement shall constitute a breach of this Agreement. If Schuller is in breach of this Agreement in any manner, the County shall give Schuller thirty (30) days written notice and an opportunity to cure the breach before terminating the Agreement.

9. ***Waiver of Breach.*** Waiver of breach of one covenant or condition of this Agreement is not a waiver of breach of other covenants and conditions of this Agreement, or of a subsequent breach of the waived covenant(s) or condition(s).
10. ***Termination.***
 - a. This Agreement may be terminated at any time by mutual written consent of the parties.
 - b. The County may terminate this Agreement upon the breach of this Agreement by Schuller pursuant to the terms of Paragraph 8 herein.
11. ***Restoration.***
 - a. Schuller shall restore the County Property to the condition it was prior to Schuller's use. The entire County Property shall be graded and level at the time it is returned to the County.
 - b. If Schuller fails to restore the County Property as provided in subparagraph a. above, the County may restore the County Property to such condition, and Schuller shall reimburse the County for all expenses thereby incurred for such restoration.
12. ***Compliance with Applicable Laws.*** Schuller shall observe and comply with all applicable federal, state, and local rules, orders, laws and regulations pertaining to its use of the County Property.
13. ***Amendments to Agreement.*** The conditions and covenants of this Agreement shall not be amended or modified other than in writing signed by the parties hereto.
14. ***Entire Agreement.*** The entire Agreement between the parties with respect to the subject matter herein is contained in this Agreement. No other Agreement, oral or written, regarding the subject matter herein shall be deemed to exist or to bind the parties hereto.
15. ***Notices.*** All notices to either party shall be given (i) by certified or registered mail, postage prepaid, return receipt requested; (ii) by national recognized overnight courier service providing proof of delivery 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. Notice shall also be given simultaneously to any secured lenders whose addresses have been given to the County.

As to County:

Orange County, Florida
Attn: County Administrator
201 South Rosalind Avenue
Orlando, Florida 32801

Copy to: Orange County Public Works Department
Attn: Manager, Road and Drainage Division
4200 South John Young Parkway
Orlando, Florida 32839

and

Copy to: Orange County Utilities Department
Attn: Manager, Water Operations
9150 Curry Ford Road
Orlando, Florida 32825

and

Copy to: Real Estate Management Division
Attn: Manager
P.O. Box 1393
Orlando, Florida 32802-1393

As to Schuller: Schuller Contractors Incorporated
9125 Parkers Landing, Suite #6
Orlando, Florida 32824
Attn: Vice President Operations

Schuller shall notify the county of any changes to its ownership or mailing address.

16. **Validity.** The validity, interpretation, construction and effect of this Agreement shall be in accordance with and be governed by the laws of the State of Florida. In the event any provision hereof shall be determined unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.
17. **Hazardous Waste and Materials.** Schuller, its employees, agents, contractors, sub-contractors, vendors and suppliers shall not discharge any hazardous or toxic materials or waste on the County Property. The storage and containment of any hazardous or flammable materials shall be in accordance with all OSHA requirements and in compliance with all state and local laws, regulations and ordinances. Furthermore, the County may, within thirty (30) days of termination of this Agreement, request, and Schuller shall promptly cause to be prepared, at its sole expense, and provide to the County, a Phase I Environmental Site Assessment for the County Property conducted according to ASTM E1527-05, or such other environmental report as the County may reasonably deem necessary. Schuller shall be

responsible for any necessary clean-up, monitoring, testing or other remedial action connected to any such storage or discharge.

Schuller shall indemnify, defend, and hold harmless the County from and against any claims, including without limitation, third party claims for personal injury or property damage, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, taxes, assessments, liabilities, settlement amounts, interest or losses, including reasonable attorneys' fees and expenses, consultant fees, expert fees, and all other costs and expenses of any kind or nature that arise directly or indirectly in connection with the presence, release or threatened release of any hazardous substances by, through or at the direction of Schuller, its employees, officers, agents, contractors, sub-contractors, invitees or assignees including, but not limited to, known contaminants in or into the air, soil, groundwater, surface water or improvements at, on about, under or within the County Property, or any portion thereof, or elsewhere in connection with the transportation of hazardous substances to or from the County Property.

18. **Assignment.** Neither party may assign its rights hereunder, or as hereinafter granted pursuant to the provisions hereof, in whole or in part, without the prior written consent of the other party.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates below written.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

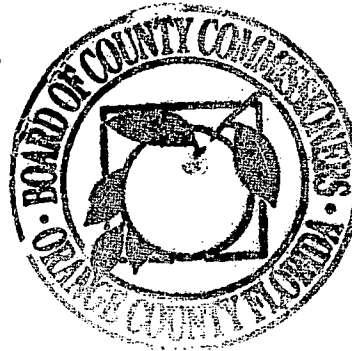
By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

Date: 2.21.17

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

By: *Craig A. Stopyra*
for Deputy Clerk

Printed Name: Craig A. Stopyra




Handwritten initials

WITNESSES:

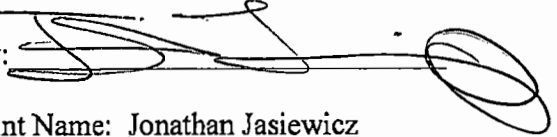


Print Name: Anyssa Smith



Print Name: Greg Schuller

**SCHULLER CONTRACTORS
INCORPORATED**, a Florida corporation

By: 

Print Name: Jonathan Jasiewicz

Title: President

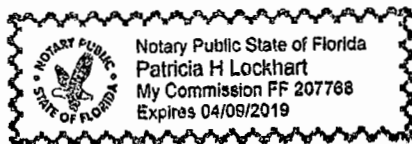
Date: January 13, 2017

STATE OF Florida

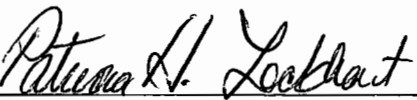
COUNTY OF Orange

BEFORE ME, a Notary Public in and for said County and State on the date below, personally appeared Jonathan Jasiewicz, as the President of Schuller Contractors Incorporated, a Florida corporation, and that he acknowledged executing the foregoing instrument on behalf of said corporation. Said person (X) is personally known to me or () provided a driver's license issued by Florida, a State of the United States which is either current or has been issued within the past five (5) years and bears a serial or other identification number.

IN WITNESS WHEREOF, I have affixed my notarial seal this 13th day of January 13, 2017.



(Notary Seal)


Signature of Notary Public

Patricia H. Lockhart
Printed or Typed Name of Notary Public

My Commission Expires: 4/9/2019

AD

EXHIBIT "A"

Legal Description of County Property

Parcel ID No.: 20-22-31-6694-01-020

Property Description: Lot 102, Park Manor Estates Section Six-Fifth Addition, according to the plat thereof, as recorded in Plat Book 2, page 109, Public Records of Orange County, Florida.