



COUNTY ATTORNEY'S OFFICE
JEFFREY J. NEWTON, County Attorney

201 South Rosalind Avenue ■ 3rd Floor
Reply To: Post Office Box 1393
Orlando, FL 32802-1393
407-836-7320 ■ Fax 407-836-5888
<http://www.ocfl.net>

MEMORANDUM

TO: Mayor Teresa Jacobs
and
County Commissioners

FROM: Jeffrey J. Newton, County Attorney
Joel D. Prinsell, Deputy County Attorney
Contact phone: 407-836-7329

DATE: June 23, 2017

RE: **Consent Agenda Item for Board Meeting on July 18, 2017 –**
Hold Harmless and Indemnification Agreement between the Orange
County Library District and Orange County, Florida

This Consent Agenda item requests authorization from the Board of County Commissioners ("BCC") for approval and execution of a Hold Harmless and Indemnification Agreement ("Agreement") between the Orange County Library District ("Library") and Orange County, Florida.

BACKGROUND:

The Library operates the Orange County Library System, with branches throughout Orange County, including a branch at 1211 East Semoran Boulevard in Apopka (the "North Orange Branch"). Two contiguous 20-foot-wide parcels of property abut the north property boundary of the North Orange Branch (the "Abutting Parcels") and the Library has wanted to purchase those parcels since about 2008 to provide for additional parking and a lift station to serve the North Orange Branch (the "Improvements"). The Library approached the County Building and Safety division to request permits to build the Improvements, but because the Property Appraiser does not reflect the Library as the owner of the Abutting Parcels, the permits were denied. The Library's position is that it has acquired the Abutting Parcels via adverse possession and requested that the County issue building permits based on its ownership via adverse possession.

The records of the Orange County Property Appraiser show the owner of the Abutting Parcels to be Ann Rogers. The Library has advised us that Ms. Rogers acquired the parcels in 1937 and died in 1964. Her will was probated in 1965, and the probate court dismissed the probate proceeding and closed the estate in 1973 for lack of active administration. The Abutting Parcels were not included in the inventory of Ms. Rogers' assets and were not sold in the administration of the estate. Ms. Rogers' will provided that the remaining property was to be distributed to the 12 beneficiaries,

Deputy County Attorney
Joel D. Prinsell

Senior Assistant County Attorneys
Elaine M. Asad
Lila McHenry

Assistant County Attorneys
Andrea A. Adibe
Roberta Alfonso
Cristina T. Berrios
Anthony Cotter
Whitney E. Evers
Wanzo Galloway, Jr.
Erin E. Hartigan
Georgiana Holmes
Katherine W. Latorre
Scott McHenry
Sawsan Mohiuddin
Scott Shevenell
William Turner

Legal Administrative Supervisor
Anna M. Caban

Senior Paralegal
Kimberly Cundiff

Paralegals
Melessia Lofgren
Maria Vargas, ACP

beneficiaries would be over 85 and several would be over 100 (some over 120 years of age). The Library has indicated the task of identifying and locating the beneficiaries of Ms. Rogers' will and the heirs of those beneficiaries now deceased, as well as the pursuit of a Quiet Title action to perfect title through the courts, would be at a cost and consumption of time far outweighing the value of the Abutting Parcels.

The Library has provided documentation to the County evidencing its compliance with the requirements of Section 95.18, Florida Statutes (Real Property Actions; Adverse Possession Without Color Of Title), and its attorneys have opined to the County that the effect of such documentation and the actions associated therewith have the effect of perfecting the Library District's title to the Abutting Properties pursuant to statutory adverse possession without color of title.

The Library District is willing and able, via the attached Hold Harmless and Indemnification Agreement, to indemnify Orange County and hold it harmless against future claims, if any, brought against the County after its issuance of a building permit in reliance on the Library District's claim of title to the Abutting Parcels pursuant to adverse possession without color of title. The Library Board of Trustees is scheduled to approve the Agreement at its July 12, 2017 meeting.

ACTION REQUESTED: Approval and execution of Orange County, Florida & Orange County Library District Hold Harmless and Indemnification Agreement, Parcel ID: 11-21-28-0000-00-043 (west 270 feet only) and Parcel ID: 11-21-28-0000-00-030 (west 270 feet only). District 2

Attachment

cc: Ajit Lalchandani, County Administrator
Christopher R. Testerman, Assistant County Administrator
Whitney E. Evers, Assistant County Attorney
Jon Weiss, P.E., Director, Orange County Community, Environmental and Development Services Department
Shane Gerwig, Building Official

Instrument prepared by and return to:
Phillip R. Finch
GrayRobinson, P.A.
P.O. Box 3068
Orlando, Florida 32802-3068

**Orange County, Florida
&
Orange County Library District**

**HOLD HARMLESS AND
INDEMNIFICATION AGREEMENT**

**Parcel ID: 11-21-28-0000-00-043 (west 270 feet only)
and
Parcel ID: 11-21-28-0000-00-030 (west 270 feet only)**

This Hold Harmless and Indemnification Agreement (the "Agreement") is made between the Orange County Library District, an independent special district, whose mailing address is c/o Library Comptroller, 101 East Central Boulevard, Orlando, Florida 32801 (the "Library District"), and Orange County, a charter county and political subdivision of the State of Florida, whose mailing address is c/o Orange County Administrator, P.O. Box 1393, Orlando, Florida 32802-1393 (the "County").

WITNESSETH:

WHEREAS, the Library District is an independent special district created by Chapter 80-555, Laws of Florida, as amended, as reenacted and codified by Chapter 99-486, Laws of Florida, and as codified at Chapter 31 of the Orange County Code; and

WHEREAS, the Library District operates the Orange County Library System, with branches throughout Orange County, including the branch at 1211 East Semoran Boulevard in Apopka ("North Orange Branch"); and

WHEREAS, two contiguous 20-foot-wide parcels of property abut the north property boundary of the North Orange Branch (the "Abutting Parcels"), and the Library District has wanted to purchase the parcels since at least 2008. The Abutting Parcels are more particularly described in **Exhibit A** to this Agreement, incorporated herein by reference, and, as of the date of this Agreement, were the parcels identified by the Orange County Property Appraiser by the Parcel ID Numbers above; and

WHEREAS, the records of the Orange County Property Appraiser show the owner of the Abutting Parcels to be one Ann Rogers, who acquired such parcels in 1937 as part of a larger tract; and

WHEREAS, Ms. Rogers died in 1964. Her will was probated in 1965, all known assets were sold or distributed to beneficiaries of her will, the final accounting was filed by the executor in 1967, and the probate court dismissed the probate proceeding and closed the estate in 1973 for lack of active administration; and

WHEREAS, the Abutting Parcels were not included in the inventory of Ms. Rogers' assets and were not sold in the administration of the estate; and

WHEREAS, the will provided that the remaining property was to be distributed to the beneficiaries in proportion to their respective bequests in the will. There were 12 beneficiaries, all but one of whom lived outside of Florida in 1967. If still alive, seven of the 12 beneficiaries would be over 85 and several would be over 100 (some over 120 years of age); and

WHEREAS, the task of identifying and locating the beneficiaries of Ms. Rogers' will and the heirs of those beneficiaries now deceased, as well as the pursuit of a Quiet Title action to perfect title through the courts, would be at a cost and consumption of time far outweighing the value of the Abutting Parcels; and

WHEREAS, the Abutting Parcels and their uncertainty of ownership are precisely the type of property to which the common-law principles and the statutory provisions of adverse possession are intended to apply; and

WHEREAS, the Library District has provided documentation to the County evidencing its compliance with the requirements of Section 95.18, Florida Statutes, and has opined to the County that the effect of such documentation and the actions associated therewith has the effect of perfecting the Library District's title to the Abutting Properties pursuant to statutory adverse possession without color of title; and

WHEREAS, the Library District now requests the County to issue a building permit to allow certain improvements to the Abutting Parcels in connection with the North Orange Branch; and

WHEREAS, the Library District is willing and able to indemnify Orange County and hold it harmless against future claims, if any, brought against the County after its issuance of a building permit in reliance on the Library District's claim of title to the Abutting Parcels pursuant to adverse possession without color of title.

NOW, THEREFORE, in consideration of these premises, the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Library District and the County hereby agree as follows:

1. **RECITALS.** The above recitals are true and correct and are hereby incorporated as a material part of this Agreement by this reference.

2. **HOLD HARMLESS AND INDEMNIFICATION.** The Library District hereby agrees to release, indemnify, defend (with legal counsel acceptable to the County), and hold

harmless the County, its Board members, officers, employees, contractors, agents, and elected and appointed officials from and against any and all claims, suits, judgments, demands, liabilities, damages, costs, and expenses (including but not limited to attorney(s) fees, paralegals fees, consultants fees and costs at all administrative, pretrial, trial, and appellate levels) of any kind or nature whatsoever, including without limitation damage to property, arising out of or related in any way to the County's issuance of a building permit for, and the Library District's activities and operations on, and use of, the Abutting Parcels after issuance by the County of a building permit therefor.

3. **COVENANTS RUNNING WITH THE LAND.** This Agreement shall run with the Abutting Parcels, and shall be binding on all parties having any right, title or interest in the Abutting Parcels, or any portion thereof, and their successors and assigns.

4. **AMENDMENT/TERMINATION.** This Agreement may be amended or terminated only by express written instrument approved by the Board and the Library District.

5. **APPLICABLE LAW.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

6. **RECORDATION.** An executed original of this Agreement shall be recorded, at the Library District's expense, in the Official Records of Orange County, Florida, within ten (10) days of the Effective Date.

7. **EFFECTIVE DATE.** This Agreement shall become effective on the date of execution by the County or the date of execution by the Library District, whichever is later.

8. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

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

[Signatures begin on following page]

“COUNTY”

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: _____
Teresa Jacobs
Orange County Mayor

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

By: _____
Deputy Clerk

Date: _____

"LIBRARY DISTRICT"

ORANGE COUNTY LIBRARY DISTRICT

By: Orange County Library Board of Trustees

By: *Lisa Franchina*
Chair

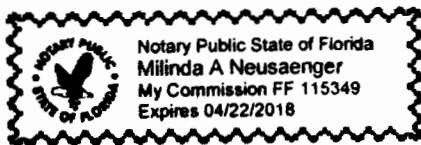
ATTEST:

By: *[Signature]*
Orange County Library Director

Date: July 12, 2017

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 12th day of July, 2017, by Lisa Franchina as Chair of the Orange County Library Board of Trustees for the Orange County Library District.



AFFIX NOTARY STAMP

Milinda Neusaenger
NOTARY PUBLIC

Print Name: Milinda A. Neusaenger
My Commission Expires: 4/22/2018
Commission No.: FF 115349

☒ Personally known, or
☐ Produced Identification
Type of Identification Produced _____

Exhibit A

LEGAL DESCRIPTION OF "ABUTTING PARCELS"

LEGAL DESCRIPTION:

COMMENCE AT A POINT 280 FEET NORTH OF THE SOUTHWEST CORNER OF THE NE1/4 OF THE SW1/4 OF SECTION 11, TOWNSHIP 21 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; THENCE RUN N89°42'18"E, A DISTANCE OF 30.00 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF THOMPSON ROAD, SAID POINT ALSO BEING THE NORTHWEST CORNER OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 5538, PAGE 1910, IN THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND THE POINT OF BEGINNING; THENCE N89°42'18"E, ALONG THE NORTH LINE OF AFORESAID LANDS, A DISTANCE OF 270.00 FEET TO THE NORTHEAST CORNER OF AFORESAID LANDS, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT 1, U-HAUL OF APOPKA FLORIDA, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 48, PAGE 47, IN THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE N02°49'35"W, A DISTANCE OF 40.23 FEET TO THE SOUTHWEST CORNER OF LOT 36, DOVE HILL, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 12. PAGES 91 AND 92, IN THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 6314, PAGE 2700, IN THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN S89°40'50"W, A DISTANCE OF 267.87 FEET MORE OR LESS ALONG THE SOUTH LINE OF AFORESAID LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 6314, PAGE 2700 AND THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 9364, PAGE 1836, IN THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA TO A POINT ON THE EAST RIGHT OF WAY LINE OF THOMPSON ROAD; THENCE S00°12'19"W, ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 40.08 FEET, MORE OR LESS TO THE POINT OF BEGINNING.