



Interoffice Memorandum

July 21, 2017

TO: Mayor Teresa Jacobs and Board of County Commissioners

FROM: Mark V. Massaro, P.E., Public Works Director

CONTACT PERSON: **Mark V. Massaro, P.E., Director**  
**Public Works Department**

PHONE NUMBER: **(407) 836-7970**

SUBJECT: **License Agreement for Potable Water Line- Parcel ID 22-21-28-0000-00-042 Retention Pond Area**

The City of Apopka desires to utilize 15 foot portion of a County retention pond property to construct a 6 inch potable water line which will serve nearby residence. The County property is located at 1952 Clarcona Road, Apopka, within unincorporated Orange County.

Staff has worked with the City of Apopka to prepare this license agreement to allow Apopka construction, repair, maintain and operate this potable water line. Staff recommends the approval of this license agreement.

The Orange County Attorney's Office and Risk Management Division have reviewed the resolution and found it acceptable.

**Action Requested: Approval and execution of License Agreement For Potable Water Line by and between Orange County and the City of Apopka. District 2.**

MVM/wsv

Attachment(s)

BCC Mtg. Date: Aug. 1, 2017

Stutzman Court Water Line

**LICENSE AGREEMENT  
For Potable Water Line**

THIS LICENSE AGREEMENT ("Agreement") is made by and between **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida ("County"), having an address at P.O. Box 1393, Orlando, Florida 32802, and the **CITY OF APOPKA**, a Florida municipal corporation ("Apopka"), having an address at 120 East Main Street, Apopka, Florida 32703.

**RECITALS**

**WHEREAS**, the County is the fee simple owner of certain real property on Clarcona Road, Apopka, in unincorporated Orange County, Florida, identified as Parcel ID 22-21-28-0000-00-042 ("County Property"), more particularly described herein; and

**WHEREAS**, Apopka desires to utilize a portion of the County Property to construct a potable water line to serve nearby residences ("Water Line Project"); and

**WHEREAS**, in furtherance of the Water Line Project, Apopka desires a license to use a 15-foot wide portion of the County Property; and

**WHEREAS**, the parties hereto desire to set forth their mutual understanding of the terms and conditions of their agreement herein.

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

1. **County Property.** The County Property is located at 1952 Clarcona Road, Apopka, in unincorporated Orange County, Florida and is also identified as Parcel ID 22-21-28-0000-00-042.

2. ***Creation of License.*** The County hereby grants to Apopka a license to use that portion of the County Property depicted and legally described in **Exhibit “A,”** attached hereto and incorporated herein by this reference (“License Area”), to install a six-inch (6”) potable water line. In furtherance of same, Apopka may enter upon the County Property, and excavate, construct, repair and maintain the water line within the License Area. Apopka shall ensure that its employees, agents, contractors, subcontractors, vendors, and suppliers (its “Agents”) comply with all the terms and provisions of this Agreement. Any unauthorized use of the County Property by Apopka or Apopka’s Agents shall be cause for termination of this Agreement pursuant to Paragraph 8 herein. This Agreement does not create an ownership or possessory interest in Apopka.

3. ***Term.*** The term of this Agreement shall commence upon full execution by both parties hereto and shall terminate seventy-five (75) years thereafter, unless sooner terminated pursuant to the provisions contained herein. The term of this Agreement may be extended for additional ten-year terms through written request by Apopka to the County Administrator no less than 90 days prior to the then-current termination date, with copies to the County’s Real Estate Management Division and the County’s Public Works Department, and upon written approval by the County Administrator.

4. ***Apopka’s Obligations & Restrictions.***

a. Apopka’s use of the County Property shall not interfere with, nor impede access to, the County Property and shall, at all times, be subordinate to the County’s access to and use of the County Property.

b. Apopka shall ensure that the License Area and the existing access

driveway located on the County Property are maintained free and clear of obstructions.

c. There shall be no water meters located on the County Property except as authorized by the County in advance of such installation.

d. Apopka shall be responsible, at its sole cost and expense, for the routine repair and maintenance of the water line, and for any emergency repairs that may be required to the water line ("Repair"). If Apopka fails to complete any Repair in accordance with this paragraph, the County may, at its own option, perform the Repair, and Apopka shall be immediately liable for, and shall immediately reimburse the County for, all costs and expenses incurred by the County in performing such Repair. Apopka shall notify the County (i) no less than five (5) business days prior to its performance of any routine repair or maintenance of the water line, and (ii) no more than two (2) business days following its performance of any emergency repair or maintenance of the water line.

e. Apopka shall be responsible for responding to any complaints regarding its use of the License Area and/or the County Property within a reasonable timeframe and shall be solely responsible for resolving any such complaints.

f. Following the initial installation of the water line, following each and every periodic Repair, following the Removal (as defined in Paragraph 10.c below), and following any other entry upon the License Area or the County Property by Apopka or its Agents pursuant to this Agreement, Apopka shall leave the License Area and the County Property, and the affected surface areas thereof, in a clean and neat condition, and, as necessary, restore such License Area and County Property to as near as practical the same condition that existed prior to such entry ("Restoration"). If Apopka fails to complete any Restoration in accordance with this

paragraph, the County may, at its own option, perform the Restoration and Apopka shall be immediately liable for, and shall immediately reimburse the County for, all costs and expenses incurred by the County in performing such Restoration.

g. Prior to commencing any work on the County Property, Apopka shall apply for and obtain an Orange County Right-of-Way Utilization permit and, if necessary, an Orange County Maintenance of Traffic permit.

5. ***Safety and Security Precautions.***

a. Apopka shall take all reasonable 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 Apopka's use of the License Area and County Property under this Agreement.

b. Apopka shall comply with all applicable safety 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 Apopka's use of the License Area and County Property under this Agreement.

c. Apopka 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 Apopka's use of the License Area and County Property under this Agreement.

6. ***Insurance.*** Without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, Apopka acknowledges to be self-insured for General Liability and Automobile Liability with coverage limits of as set forth in section 768.28, Florida Statutes.

Apopka agrees to maintain commercial insurance or to be self-insured for Workers' Compensation & Employers' Liability in accordance with Chapter 440, Florida Statutes. Upon request, Apopka shall provide an affidavit or Certificate of Insurance evidencing self-insurance or commercial insurance up to sovereign immunity limits, which the County agrees to find acceptable for the coverage mentioned above. The County's failure to request proof of insurance or to identify any deficiency in coverage or compliance with the foregoing requirements shall not relieve Apopka of its liability and obligations under this Agreement. Apopka shall require all contractors performing work within the County Property or License Area to procure and maintain workers' compensation, commercial general liability, business auto liability and contractor's pollution liability coverage. Each party shall be listed as an additional insured on all general liability policies.

7. ***Indemnification.*** Each party agrees to defend, indemnify and hold harmless the other party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorney's fees) attributable to its negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this Agreement. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability for the acts, omissions and/or negligence of the other party. This provision shall survive termination of this Agreement.

8. ***Breach of Agreement.*** The failure of Apopka to comply with any covenant or condition of this Agreement shall constitute a breach of this Agreement. If Apopka is in breach

of this Agreement in any manner, the County shall give Apopka written notice of any such breach. If Apopka (i) fails to cure such breach within 30 days after receiving such notice, or (ii) fails to commence such cure within 30 days after receiving such notice and to diligently prosecute such cure to completion if the nature of such breach is such that more time is reasonably required by Apopka in order to cure such breach, then the County may terminate this Agreement. The County expressly reserves any and all other legal remedies available at law and in equity. Damages, if any, shall be limited to actual, out-of-pocket expenses incurred to remedy a breach of this Agreement. Speculative, consequential, punitive or other non-actual damages are prohibited.

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. Either party may terminate this Agreement at any time by providing to the other party no less than 180 days advance, written notice of same.

c. Prior to termination or expiration of this Agreement, Apopka shall have completed removal of the water line and any other materials and improvements related thereto located in the License Area in a manner satisfactory to the Director of the County's Public Works Department ("Removal"). If Apopka fails to complete the Removal in accordance with this paragraph, the County may, at its own option, perform the Removal and Apopka shall be

immediately liable for, and shall immediately reimburse the County for, all costs and expenses incurred by the County in performing such Removal.

11. ***Compliance with Applicable Laws.*** Apopka shall observe and comply with all applicable federal, state, and local rules, orders, laws and regulations pertaining to the permitting, construction, operation, maintenance, and repair of the water line and/or to use of the License Area and County Property.

12. ***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.

13. ***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.

14. ***Notices.*** All notices to either party shall be given (i) by certified or registered mail, postage prepaid, return receipt requested, (ii) by nationally recognized overnight courier service providing proof of delivery, or (iii) by fax or email followed by confirmation under (i) or (ii).

As to County:           Orange County Administrator  
                                  P.O. Box 1393  
                                  Orlando, Florida 32802  
                                  Fax: (407) 836-7399

and

Orange County Public Works Department  
Development Engineering Division  
Attn: Manager  
4200 John Young Parkway  
Orlando, Florida 32839-9205  
Fax: (407) 836-7885



and

Orange County Administrative Services Department  
Real Estate Management Division  
Attn: Manager  
P.O. Box 1393  
Orlando, Florida 32802  
Fax: (407) 836-5969

As to Contractor: City of Apopka  
Attn: Public Services Director  
748 E. Cleveland Street  
Apopka, Florida 32703  
Phone: (407) 703-1731

The names, addresses and/or facsimile numbers may be changed by written notice as above provided. Notice shall be effective upon receipt. Notice will also be given simultaneously to any secured lenders whose addresses have been given to County.

15. ***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 to be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

16. ***Hazardous Waste and Materials.*** Apopka, its employees, agents, contractors, subcontractors, vendors and suppliers shall not discharge any hazardous or toxic materials or waste on the County Property. Apopka 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 attorney's 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 Apopka or its Agents, 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 by, through, or at the direction of Apopka or its agents. Provided however, Apopka shall not be required to indemnify, defend or hold harmless the County from any claims resulting from the negligent or willful misconduct of the County, or its employees, contractors, vendors, or other agents, or resulting from any environmental condition existing on the County Property or elsewhere which is not caused, disturbed or exacerbated by Apopka or its Agents. The indemnification provisions contained herein shall survive the termination of this Agreement.

17. **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.

18. **Sovereign Immunity.** Nothing herein shall constitute a waiver of either party's sovereign immunity under section 768.28, Florida Statutes, as may be amended.

19. **Recording.** Upon approval and execution of this Agreement by Apopka, Apopka shall deliver the Agreement to the County, along with funds sufficient to cover recording costs. Upon approval and execution of the Agreement by the County, the County shall record the Agreement in the Official Records of Orange County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the  
day(s) and year below written.



**ORANGE COUNTY, FLORIDA**

By: Board of County Commissioners

By: *Teresa Jacobs*

*Teresa Jacobs*  
Orange County Mayor

Date: 8.1.17

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

By: *Katie Smith*  
Deputy Clerk

**Katie Smith**

Printed Name

Date: **AUG 01 2017**


CITY OF APOPKA

Joe Kilsheimer, Mayor

Date:

7-6-17

ATTEST:

  
Linda F. Goff, CMC  
City Clerk

Date: 7/6/2017

# EXHIBIT "A"

## LEGAL DESCRIPTION


**Estate: Perpetual Easement**

**Purpose: Potable Water Easement**

The South 15.00 feet of Official Record Book 3944, Page 3067-3068 as recorded in the Public Records of Orange County, Florida and lying within the Northwest ¼ of Section 22, Township 21 South, Range 28 East, Orange County, Florida and being further described as follows:

Commence at the Southeast corner of the Southwest ¼ of the Northwest ¼ of Section 22; thence run North 26°33'42" West a distance of 133.40 feet to a point; thence run North 89° 56'40" West a distance of 48.86 feet to a point on the West Right-of-Way line of Apopka-Vineland Road, (a.k.a. Clarcona Road) as recorded in Official Record Book 3357, Page 888-890 and the Point of Beginning; thence departing said West Right-of-Way line run North 89°56'40 West a distance of 1214.09 feet to a point on the West line of the Southwest ¼, of the Northwest ¼ of said Section 22; thence run North 00°04'59" East along said West line a distance of 15.00 feet; thence departing said West line run South 89°56'40" East a distance of 1208.89 feet to a point on said West Right-of-Way line of Apopka-Vineland Road and a point of curvature concave Westerly having a radius of 1466.84 feet, central angle of 00°37'12", thence run along said curve and said West Right-of-Way line a distance of 15.87 feet to the Point of Beginning.

Containing 18,172.58 square feet or 0.42 acres more or less.

PREPARED FOR: Engineering Design Section		ORANGE COUNTY PUBLIC WORKS ENGINEERING DIVISION		
DRAWN BY: Washington	DATE: 7/17/17	SECTION: 22	<div>SURVEY SECTION</div> <div>4200 SOUTH JOHN YOUNG PARKWAY ORLANDO, FLORIDA 32839-9205 (407) 836-7940</div> <div> ORANGE COUNTY GOVERNMENT FLORIDA</div>	DRAWING SCALE: N/A
CHECKED BY: Muscatello	JOB No:8048	TOWNSHIP: 21		PROJECT NUMBER
APPROVED BY: Muscatello	DRAWING FILE:	RANGE: 28		8048
REVISION DATE:	8048 Stutzman Ct.	SHEET 2 OF 2		

HEREBY AFFIRM THAT THIS SKETCH OF DESCRIPTION REPRESENTED HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. IT HAS BEEN PREPARED IN ACCORDANCE WITH THE STANDARDS OF PRACTICE SET FORTH IN CHAPTER 17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 3172 OF THE FLORIDA STATUTES, AND UNLESS IT BEARS THE SIGNATURE AND THE ORIGINAL, UNLESSIT SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, THIS DRAFTING, SKETCH, PLAN, OR MAP IS FOR INFORMATIONAL PURPOSES ONLY AND NOT VALID.

17/17

*[Signature]*

William R. Muscatello, Jr.  
REGISTERED LAND SURVEYOR  
AND MAPPER  
STATE OF FLORIDA LICENSE NO. 49228

**William R. Muscatello, Jr.**  
REGISTERED LAND SURVEYOR  
AND MAPPER  
STATE OF FLORIDA LICENSE NO. 4928

21/21/2

**SKETCH AND DESCRIPTION**  
THIS IS NOT A SURVEY, NOR HAS FIELD  
WORK BEEN PERFORMED IN ACCORDANCE  
WITH 5J-17, FLORIDA ADMINISTRATIVE  
CODE FOR PREPARATION OF THIS DRAWING.

1. BEARINGS ARE BASED ON THE NORTH LINE OF THAT PARCEL OF LAND DESCRIBED IN OFFICIAL RECORD BOOK 3944, PAGES 3067-3068, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING N 89°56'40" W.
2. THIS SKETCH OF DESCRIPTION AND LEGAL DESCRIPTION WAS PREPARED BY ORANGE COUNTY ENGINEERING DIVISION, SURVEY SECTION.
3. THERE MAY BE OTHER RECORDS DOCUMENTS FOUND IN ORANGE COUNTY RECORDS AFFECTING THIS PROPERTY, A COMPLETE TITLE RECORD SEARCH WAS NOT PERFORMED.
4. NO IMPROVEMENTS ABOVE OR BELOW GROUND, OTHER THAN THOSE SHOWN, WERE LOCATED.

**NOTES:**

PREPARED FOR:  
Engineering -  
Survey Section

DRAWING SCALE:  
1"=200'

---

PROJECT NUMBER  
8048

Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C 1	15.87'	1486.84'	00° 37' 12"	S19° 02' 12"E	15.87'

OFFICIAL RECORD BOOK 3944, PAGES 3069-3070

N89° 56' 40"W

OFFICIAL RECORD BOOK 3944, PAGES 3067-3068

N00° 04' 59"E 15.00' S89° 56' 40"E 1208.89'

N89° 56' 40"W 1214.09'

N89-56 40 W 1214.09  
SOUTH LINE OF OFFICIAL RECORD BOOK 3944, PAGES 3067-3068

SOUTH LINE OF SW 1/4 OF NW 1/4 OF SECTION 22-21-28

**POINT OF BEGINNING -**  
**N89° 56' 40"W**

POINT OF COMMENCEMENT -  
SE CORNER OF SW 1/4  
OF NW 1/4 OF 22-21-28

26° 33' 42" W  
133.40'

APOPKA VINELAND ROAD (AKA CLARCONA ROAD)  
OFFICIAL RECORD BOOK 3357, PAGES 888-890 (RIGHT OF WAY VARIES)  
WEST RIGHT-OF-WAY LINE