



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 15

DATE: August 1, 2017

TO: Mayor Teresa Jacobs
and the
Board of County Commissioners

THROUGH: Paul Sladek, Manager *RS*
Real Estate Management Division

FROM: Elizabeth Price Jackson, Senior Title Examiner *ES for BJ*
Real Estate Management Division

CONTACT PERSON: Paul Sladek, Manager

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

ACTION REQUESTED: APPROVAL AND EXECUTION OF PERMISSION TO ENTER PROPERTY NON-SOURCE BETWEEN ORANGE COUNTY AND STATE OF FLORIDA, DEPARTMENT OF ENVIRONMENTAL PROTECTION BY ITS CONTRACTOR, APPLIED SCIENCE & ENGINEERING

PROJECT: 5505 E. Colonial Drive (Millennium Park Expansion)

District 5

PURPOSE: To provide access to County-owned property for assessment and any required remediation activities.

ITEM: Permission to Enter Property Non-Source
Revenue: None
Size: 1.56 acres
Term: Until entry of a site rehabilitation completion order or no further action order

APPROVALS: Real Estate Management Division
County Attorney's Office
Parks and Recreation Division
Risk Management Division

REMARKS:

On April 7, 2015, the Board of County Commissioners approved the Permission to Enter Property (Entry Agreement) (the "Entry Agreement") which allowed for assessment and remediation activities as directed by the State of Florida, Department of Environmental Protection ("FDEP"). The Entry Agreement was allowed to expire at the end of a one-year term.

The FDEP is monitoring groundwater contamination which may be flowing towards the County's property from an adjacent site and has again requested access to the County's property. This Permission to Enter Property Non-Source (this "Agreement") allows FDEP and its contractor to undertake certain activities related to the assessment, removal, and remediation of contamination, if necessary, on the County's property. This Agreement will remain in effect until FDEP entry of a site rehabilitation completion order pursuant to Rule 62-780.680, Florida Administrative Code, or low-scored site initiative no further action order pursuant to Section 376.3071(12)(b), Florida Statutes ("Order"). At such time the County shall be provided a copy of the Order and this Agreement shall automatically terminate.

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Project: 5505 E. Colonial Drive (Millennium Park Expansion)

PERMISSION TO ENTER PROPERTY
NON-SOURCE

1. The Parties. The undersigned real property owner, Orange County, a charter county and political subdivision of the state of Florida, ("Owner"), hereby gives permission to the State of Florida, Department of Environmental Protection ("Department") and its Contractor, subcontractors, and vendors ("Contractor") to enter the Owner's property ("the Property") (see next paragraph).

2. The Property. Owner owns the certain parcel 21-22-30-4828-00-210 of real property located at 5505 E Colonial Drive, Orlando, Florida (the "Property"), depicted on the attached legal description as "Exhibit A."

3. Permissible Activities. This Permission to Enter Property ("Permission") is limited to activities which may be performed by the Department or its Contractors pursuant to Chapter 62-780 or 62-730, Florida Administrative Code ("F.A.C."), without cost to the Owner (unless required in a separate agreement) to locate contamination, determine contamination levels and, when necessary, remove and remediate contamination which may be performed by the Department and its Contractor. The following activities are included in this Permission but are not limited to this list:

- conduct soil, surface, subsurface, and groundwater investigations, including but not limited to entry by a drill rig vehicle and/or support vehicles;
- install and remove groundwater monitoring wells;
- use geophysical equipment;
- use an auger for collecting soil and sediment samples;
- locate existing wells;
- collect waste, soil, and water samples;
- remove, treat and/or dispose of contaminated soils and water;
- remove contaminated soil by digging with backhoes, large diameter augers and similar equipment;
- install, operate, and remove remedial equipment;
- install and remove utility connections;
- trench for connection of remediation wells to equipment; and
- conduct surveys, prepare site sketches, and take photographs.

4. The Source: The suspected source of the contamination is located at:

5507 E Colonial Drive, Orlando, FL

parcel number # 21-22-30-4828-00-221

FDEP Facility/Project # 48/8944242

5. Duration and Termination of Access. This Permission is granted, without any fee or charge to the Department or Contractor, for so long as is necessary to assess, remove, monitor and remediate the contamination on the Property. Access shall be allowed for the Department and Contractor immediately upon the execution of this Agreement. This Permission shall continue until the Department's entry of a site rehabilitation completion order pursuant to Rule 62-780.680, Florida Administrative Code or low-scored site initiative no further action order pursuant to Section 376.3071(12)(b), Florida Statutes ("Order"). At which time the Owner shall be provided a copy of the Order and this Permission shall be automatically terminated.
6. Work Performed during Business Hours. The Department and Contractor may enter the Property between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday and may also make arrangements to enter the Property at other times after agreement from the Owner.
7. Activities Comply with Applicable Laws. The Department and Contractor agree that any and all work performed on the Property and in association with this Permission shall be done in a good, safe, workmanlike manner, and in accordance with applicable federal and state statutes, rules and regulations.
8. Proper Disposal of Contaminated Media. The Department and Contractor shall ensure that soil cuttings, any work materials, and water generated shall be disposed of in accordance with Environmental Laws. All soil cuttings, waste materials and development water generated shall be promptly removed from the Property.
9. Well Permits. The Owner authorizes the Department and its Contractor to act as its agent in signing all required forms and documents necessary for obtaining applicable permits related to well construction, repair, maintenance, modification, and abandonment pursuant to Chapter 373, Florida Statutes.
10. Equipment Ownership. The monitoring wells and remedial equipment installed pursuant to this agreement are the property of the Department. The Owner is responsible for replacing any Department property that may be damaged or lost due to any actions by the owner.
11. Owner's Non-Interference. The Owner shall not interfere with the Department or Contractor when performing the Permissible Activities. Owner shall not damage any equipment including wells, piping, and remediation system that may be located on the Property. Owner shall notify the Department 90 days prior to commencement of any construction, demolition or other work on the Property that may damage or destroy any part of the equipment installed under this Permission so that such equipment can be either properly removed, secured or abandoned.
12. Owner's Use of Property. The Owner retains the right to use the Property, and the Department and its Contractors will work with the Owner regarding minimizing activities that may interfere with the Owner's management and use of the Property. However, neither the Department nor the Contractor are responsible for any inconvenience, economic injury, or business damage that Owner may suffer due to the performance of any Permissible Activity. This agreement does not modify any legal right the parties may have regarding negligent acts. During the term of this Entry Agreement, Department shall provide and maintain such 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 Statute 440. All such insurance or self-insurance shall be primary to, and not contribute with,

any insurance or self-insurance maintained by County. In the event Department subcontracts any part or all of its operations as described in this or related in any way to this agreement, Department shall require its subcontractor(s) to acquire and maintain workers' compensation, automobile and general liability insurance coverage in such amounts as described in this agreement. Department shall include in its contract with subcontractor(s) a provision whereby the subcontractor agrees to defend, indemnify and hold harmless Orange County from all injury and property resulting from its operations and to include County as an additional insured on the subcontractor's general liability insurance policy.

13. Property Restoration. The Department shall pay the reasonable costs of restoring the Property as nearly as practicable to the conditions which existed before activities associated with contamination assessment or remedial action were taken.

14. No Admission. The granting of this Permission by the Owner is not intended, nor should it be construed, as an admission of liability on the part of the Owner for any contamination discovered on the Property.

15. Injury to Department. The Owner shall not be liable for any injury, damage or loss on the Property suffered by the Department, Department employees or Contractors not caused by the negligence or intentional acts of the Owner's agents or employees.

16. Sovereign Immunity. Department assumes any and all risk of injury and property damage attributable to the acts or omissions of its officers, employees and sub-contractor(s) and agrees to defend, indemnify and hold harmless Orange County and its officers, employees and agents from all claims, actions, losses, judgments, fines, liabilities, costs and expenses in connection therewith. More specifically, to the extent permitted by law, Department shall indemnify and hold Orange County, its officers, agents and employees harmless from and against any and all claims, liability, demands, damages, surcharges, expenses, fees, fines, penalties, suits, proceedings, actions and fees (including, without limitation, reasonable paralegal and attorney fees and expenses, whether in court, out of court, in administrative proceedings, or on appeal), including damage to property or property rights that may arise and which are proximately caused by the acts, errors, or omissions of Department, its agents, representatives and subcontractors, arising out of its activities related to the testing. In addition, without limiting the foregoing, in the event that any act or omission of Department, its agents, representatives and subcontractors, arising from or related to this Agreement results in any spill or release of hazardous materials or other pollutants, as those terms are defined in federal and state environmental laws and regulations, including, without limitation any petroleum-based substances, then, to the extent permitted by law, Department shall indemnify and hold Orange County, its officers, agents and employees harmless from and against any and all claims, liability, demands, damages, surcharges, expenses, fees, fines, penalties, suits, proceedings, actions, fees, including, without limitation, all reasonable, actual cleanup or remediation costs and expenses expended by Orange County at the direction of any federal or state agency having jurisdiction, and further including, without limitation, reasonable paralegal and attorney fees and expenses, whether in court, out of court, in administrative proceedings, or on appeal. Department shall be responsible for the immediate notification to the County of any environmental condition, spill, or release, or any other condition or occurrence of which it becomes aware that may result in a claim for damages, or that occurs as a result of Department activities related to this Agreement. Neither party to this agreement waives its right to sovereign immunity under the law.

17. Public Records. All documents created or received associated with the Permissible activities are a public record pursuant to Chapter 119, Florida Statutes. The Owner may retrieve any documents or other information related to the Permissible Activities online using the facility or project number referenced above in paragraph 4.

<http://depdms.dep.state.fl.us/Oculus/servlet/login?action=login>

18. Entire Agreement. This Permission shall constitute the entire agreement between the Department and the Owner regarding this grant of access to the Department as stated herein. No modification, amendment or waiver of the terms and conditions of this Permission shall be binding upon Department unless approved in writing by an authorized representative of Owner and Department.

19. Governing Law and Venue. This Permission shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any action or proceeding arising from or relating to this Permission shall be in the appropriate Florida court having jurisdiction located in Leon County, Florida.

20. Severability. Any provision of this Permission that is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

21. No Third-Party Beneficiaries. This Permission is solely for the benefit of the parties hereto and their respective successors and assigns and shall not be deemed to confer upon third parties any remedy, claim, liability, or reimbursement, claim of action or other right.

22. Contact. Any questions regarding this access agreement please contact the following:

For the Contractor: Katherine Buzby, kbuzby@apscieng.com, 813-384-2313

(Name, Email, Phone)

For the Department: Damon Taylor, Damon.Taylor@ocfl.net, 407-836-1480

(Name, Email, Phone)

For the Owner: Primary: Matt Suedmeyer, Parks & Recreation Division (407) 836-6202

Secondary: Steve Lorman, Real Estate Management (407) 836-7065

Are additional requirements attached to this agreement? Note: Additional requirements must be on a separate page titled "Exhibit B" and include the project number or facility ID# and owner signature on the page.

☐ YES

☒ NO

Project: 5505 E. Colonial Drive (Millennium Park Expansion)



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

Date: 8.22.17

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

By: *Katie Smith*
Deputy Clerk

Katie Smith

Printed Name

Accepted by Contractor on behalf of the State of Florida Department of Environmental
Protection:

Katherine Buzby
Signature of Contractor

Katherine Buzby 7/18/17
Print Name – Contractor Date

Stacy Schaible
Signature of Witness

Stacy Schaible 7/18/17
Print Name Date

Applied Science & Engineering
Contractor Company Name

550 N Reo Street, Suite 105
Contractor Mailing Address

Tampa, FL 33609
Contractor City, State, Zip Code

813-384-2313
Contractor Telephone or Cell Phone Number

kbuzby@apscieng.com
Contractor Contact Email Address

Attachments: Exhibit A- Legal description of the Property.
FDEP Coordinates (Degrees Minutes Seconds) for

Project # or Facility Id.#: 48/8944242

Latitude: 28° 33' 21.7908" N

Longitude: 81° 18' 49.6404" W

EC: OCULUS

Exhibit A- Legal Description

(per deed recorded in Official Records Book 10315, Page 6733, Public Records of Orange County, Florida)

That part of lots 21, 22 and 23, Lakeside Estates, as recorded in Plat Book "Q", page 95, Public Records of Orange County, Florida which is described as follows:

From the northeast corner of lot 23, of said Lakeside Estates, run west 224.47 feet along the north boundary of said Lot 23 for the Point of Beginning; thence run South 00°08' W, 142.43 feet to a point on the northerly right-of-way line of State Road 50; thence southwesterly 85.00 feet along said right-of-way line; thence N 00°8' E, 176.12 feet to a point on the north boundary of said Lot 23; thence east 76.85 feet to the Point of Beginning.

That part of Lots 21, 22 and 23, Lakeside Estates, as recorded in Plat Book "Q", page 95, of the Public Records of Orange County, Florida, and which is described follows:

From the northeast corner of Lot 23 of said Lakeside Estates, run west 301.33 feet along the north boundary of said lot 23 for the Point of Beginning; thence run S 00°08' West 176.12 feet to a point on the northerly right-of-way line of State Road 50; thence southwesterly 95.23 feet to a point on the south boundary of Lot 21; thence westerly 104.50 feet to the southwest corner of said Lot 21; thence northerly 219.00 feet to the northwest corner of Lot 23; thence east 192.56 feet to the Point of Beginning. Less road right-of-way.

Lot 24 (less the east 224.47 feet) as recorded in Plat Book "Q" page 95, Lakeside Estates, Range 30, Township 22, Section 21, Orange County, Florida.