



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 1

DATE: August 24, 2017

TO: Mayor Teresa Jacobs
and the
Board of County Commissioners

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

FROM: Virginia G. Williams, Senior Title Examiner *VGW*
Real Estate Management Division

CONTACT PERSON: Paul Sladek, Manager

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

ACTION REQUESTED: APPROVAL AND EXECUTION OF ENCROACHMENT AGREEMENT BETWEEN ORANGE COUNTY AND TOWN OF OAKLAND AND AUTHORIZATION TO DISBURSE FUNDS TO PAY RECORDING FEES AND TO RECORD INSTRUMENT

PROJECT: Town of Oakland Encroachment Agreement

District 1

PURPOSE: To provide for access, construction, operation, maintenance, replacement, and repair of a new City building and related facilities within County easement area.

ITEM: Encroachment Agreement
Revenue: None

BUDGET: Account No.: 1050-068-1801-6110

FUNDS: \$69.50 Payable to Orange County Comptroller
(recording fees)

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

REMARKS: The Town of Oakland ("Oakland") is developing, with a historical center/museum, certain property in Oakland that is subject, in part, to a Recreational Trail Easement (the "Easement") in favor of Orange County (the "County") for the West Orange Trail. Oakland has requested that County allow Oakland to construct and operate, within the easement area established by the Easement, certain improvements associated with the historical center/museum. Oakland's proposed encroachment affects approximately eight feet of the County's easement area and will not impair or impede the use of the West Orange Trail during or after construction of Oakland's improvements. A mutually agreed upon barrier will be in place during construction to insure the safety of the trail users.

REQUEST FOR FUNDS FOR LAND ACQUISITION

XX Under BCC Approval

Under Ordinance Approval

Date: August 23, 2017

Amount: \$69.50

Project: Town of Oakland Encroachment Agreement

Parcels: N/A

Charge to Account#: 1050-068-1801-6110

Approvals:

Controlling Agency Approval

Fiscal Approval

TYPE TRANSACTION (Check appropriate block{s})

XX Pre-Condensation XX Post-Condensation XX N/A District # 1

XX Acquisition at Approved Appraisal
XX Acquisition at Below Approved Appraisal
XX Acquisition at Above Approved Appraisal
XX Advance Payment Requested (recording fees)

Name: Orange County Comptroller
 \$69.50 (recording fees)

DOCUMENTATION ATTACHED (Check appropriate block{s})

XX Contract/Agreement
XX Copy of Instrument
XX Certificate of Value
XX Settlement Analysis

Payable to: Orange County Comptroller (recording fees)

 CHECKS ARE TO BE PICKED UP BY THE REAL ESTATE MANAGEMENT DIVISION (DO NOT MAIL)

Recommended by Virginia G. Williams
 Virginia G. Williams, Senior Title Examiner

August 24, 2017
 Date

Payment Approved Paul Sladek
 Paul Sladek, Manager

August 24, 2017
 Date

Under Ordinance
 Approved by Manager, Real Estate Management Division

Date

Certified Craig A. Stopynia
 Approved by BCC for Deputy Clerk to the Board

OCT 03 2017
 Date

Examined/Approved Comptroller/Government Grants

Check No. / Date

REMARKS:

APPROVED
 BY ORANGE COUNTY BOARD
 OF COUNTY COMMISSIONERS
 OCT 03 2017

REQUEST FOR FUNDS FOR LAND ACQUISITION

XX Under BCC Approval

Under Ordinance Approval

Date: August 23, 2017

Amount: \$69.50

Project: Town of Oakland Encroachment Agreement

Parcels: N/A

Charge to Account#: 1050-068-1801-6110

Approvals:

Matt Kelly
Controlling Agency Approval

Suburban
Fiscal Approval

TYPE TRANSACTION (Check appropriate block(s))

Pre-Condemnation

Post-Condemnation

XX

N/A

District # 1

Acquisition at Approved Appraisal

Acquisition at Below Approved Appraisal

Acquisition at Above Approved Appraisal

XX Advance Payment Requested (recording fees)

Name: Orange County Comptroller
\$69.50 (recording fees)

DOCUMENTATION ATTACHED (Check appropriate block(s))

Contract/Agreement

XX Copy of Instrument

Certificate of Value

Settlement Analysis

Payable to: Orange County Comptroller (recording fees)

CHECKS ARE TO BE PICKED UP BY THE REAL ESTATE MANAGEMENT DIVISION (DO NOT MAIL)

Recommended by

Virginia G. Williams, Senior Title Examiner

August 24, 2017

Date

Payment Approved

Paul Sladek, Manager

August 24, 2017

Date

Under Ordinance

Approved by

Manager, Real Estate Management Division

Date

Certified

Approved by BCC

Deputy Clerk to the Board

Date

Examined/Approved

Comptroller/Government Grants

Check No. / Date

REMARKS:

OCT 03 2017

This instrument was prepared by:
Cristina T. Berrios, Esq.
ORANGE COUNTY ATTORNEY'S OFFICE
201 S. Rosalind Ave., Third Floor
Orlando, FL 32801
(407) 836-7320

ENCROACHMENT AGREEMENT

THIS AGREEMENT is made by and between **ORANGE COUNTY, FLORIDA**, a charter county and a political subdivision of the State of Florida (the "County") whose address is Post Office Box 1393, Orlando, Florida 32802-1393 and the **TOWN OF OAKLAND, FLORIDA**, a municipal corporation created and existing under the laws of the State of Florida (the "Town") whose address is 200 Tubb Street, Oakland, Florida 34760-0098.

WITNESSETH:

WHEREAS, the County is the owner of the easement recorded in the Official Records of Orange County at **O.R. Book 4811, Page 977** (the "Easement") that encumbers property owned in fee by the Town, evidence of which is recorded in the Official Records of Orange County at **O.R. Book 3899, Page 2415**; and

WHEREAS, the stated purpose of the Easement was for the County to construct and maintain a multipurpose recreational trail and associated facilities ("West Orange Trail") for the benefit of the residents of, and visitors to, Orange County, Florida; and

WHEREAS, the Easement conveyance instrument expressly prohibits the Town from building, constructing, creating – or giving its consent to any other person or entity to build, construct or create – any permanent physical improvements upon the Easement; and

WHEREAS, the Town desires to construct, install, maintain, replace, and repair certain improvements associated with a new Historical Center/Museum ("Museum Improvements"), the footprint of which is shown in **Exhibit "A"** of this Agreement; and

WHEREAS, the footprint of those certain improvements that the Town intends to construct, install, maintain, replace, and repair, will encroach into the Easement; and

WHEREAS, the County consents to the Town's permanent construction and maintenance of the Museum Improvements to the extent that such improvements shall only encroach on the Easement as shown in **Exhibit "A."**

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other valuable consideration paid by the Town to the County, the parties hereto agree as follows:

1. **Authorization.** The Town is hereby permitted and authorized by the County to locate its Museum Improvements within the Easement as shown in **Exhibit “A,”** which is attached and incorporated herein (“Encroachment Area”).

2. **Public Access.** Public access to, and pedestrian and bicycle passage over and across, the 14 foot wide asphalt pathway of the West Orange Trail shall remain open and clear from any and all obstructions at all times. The Museum Improvements, and the Town’s construction and maintenance thereof, within the Encroachment Area shall not in any way hinder, or disrupt, the use of the above-stated asphalt pathway by the public.

3. **Construction Barrier.** Construction and maintenance within the Encroachment Area will be separated from the multi-use 14 foot wide asphalt pathway by an agreed upon barrier to be located approximately 10 feet back from the pavement to provide adequate protection to the trail users.

4. **Work Notification.** The Town shall notify the County’s Parks and Recreation Department at least seven (7) days prior to the start of any construction, or maintenance thereafter, of any Museum Improvements that are within the Encroachment Area.

5. **Liability for Damages by the Public.** The County shall in no way be liable for any damages that members of the public may cause to the Museum Improvements located within the Encroachment Area.

6. **Ingress and Egress Rights Reserved.** The County reserves the right of ingress and egress over and under the entire Easement Area at all reasonable times.

7. **County’s Option for Relocation of the Easement.** Should the County notify the Town in writing that due to the location of the Museum Improvements within the Encroachment Area, the County wishes to relocate the impacted portion of the Easement, the Town agrees to: (1) execute a modification to the Easement that relocates the impacted portion; and (2) compensate the County for its reasonable costs for relocating the impacted portion of the Easement.

8. **Restoration.** The Town shall restore the construction area – less the improved area – to the grade and condition that existed prior to the commencement of its construction.

9. **Compliance with Applicable Law and Requirements.**

a. The Town agrees to comply with any and all applicable laws, ordinances, standards, rules, regulations, orders, or permits imposed by any federal, state, or local governmental or administrative entity during construction, operation, maintenance, repair, and/or replacement of the Museum Improvements.

b. The Town will comply with all applicable environmental requirements with respect to the Encroachment Area.

10. Consistency with the Easement. The County and the Town hereby confirm that to the extent that the Town is in compliance with the foregoing, the Town's uses authorized herein shall not be considered inconsistent with the preexisting Easement rights.

11. 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.

12. Insurance.

a. Without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, the Town acknowledges that it is self-insured for General Liability and Automobile Liability with coverage limits of as set forth in Section 768.28, Florida Statutes.

b. The Town agrees to maintain commercial insurance or to be self-insured for Workers' Compensation & Employers' Liability in accordance with Florida Statute 440.

c. Upon request the Town 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.

d. 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 the Town of its liability and obligations under this agreement.

e. The Town shall require all contractors performing work within the County right-of-way or easement areas 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.

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

As to the County: Orange County Administrator
201 S. Rosalind Avenue
Orlando, Florida 32801
Fax: (407) 836-7399

and

Orange County Parks and Recreation Division
Attn: Manager
4801 W Colonial Drive
Orlando, FL 32808
Fax: (407) 296-5159

and

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

As to the City: Town of Oakland
Attn: Town Manager
200 Tubb Street
Oakland, Florida 34760-0098
Fax: (407) 656-2940

The names, addresses, and/or facsimile numbers may be changed by written notice as above provided. Notice shall be effective upon receipt.

14. Governing Law. This Agreement is governed by the laws of Florida and the venue for any claims that might arise here from will be in Orange County, Florida, with all rights to a jury hereby waived.

15. Complete Agreement. This Agreement constitutes the entire agreement between the parties. Any and all terms and/or discussions not hereby incorporated into this Agreement are invalid and unenforceable.

16. Modifications. Any modifications to this Agreement must be in writing and executed by both parties.

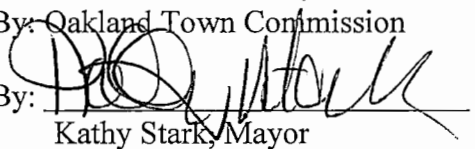
17. Severability. Should a term, or terms, of this Agreement be rendered unenforceable or invalid, the remainder of this Agreement will continue to be upheld in full force.

[SIGNATURES ON FOLLOWING PAGE]

TOWN OF OAKLAND, FLORIDA

By: Oakland Town Commission

By:


Kathy Stark, Mayor

ATTEST:

By:


Kimberly M. Gay, Town Clerk



ORANGE COUNTY, FLORIDA
By: Orange County Board of County
Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

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

By: *Katie Smith*
Deputy Clerk

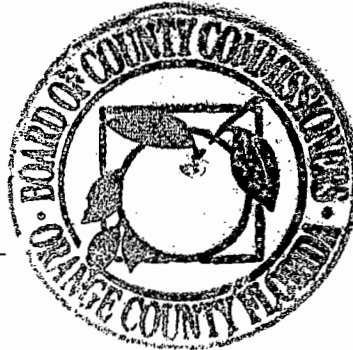
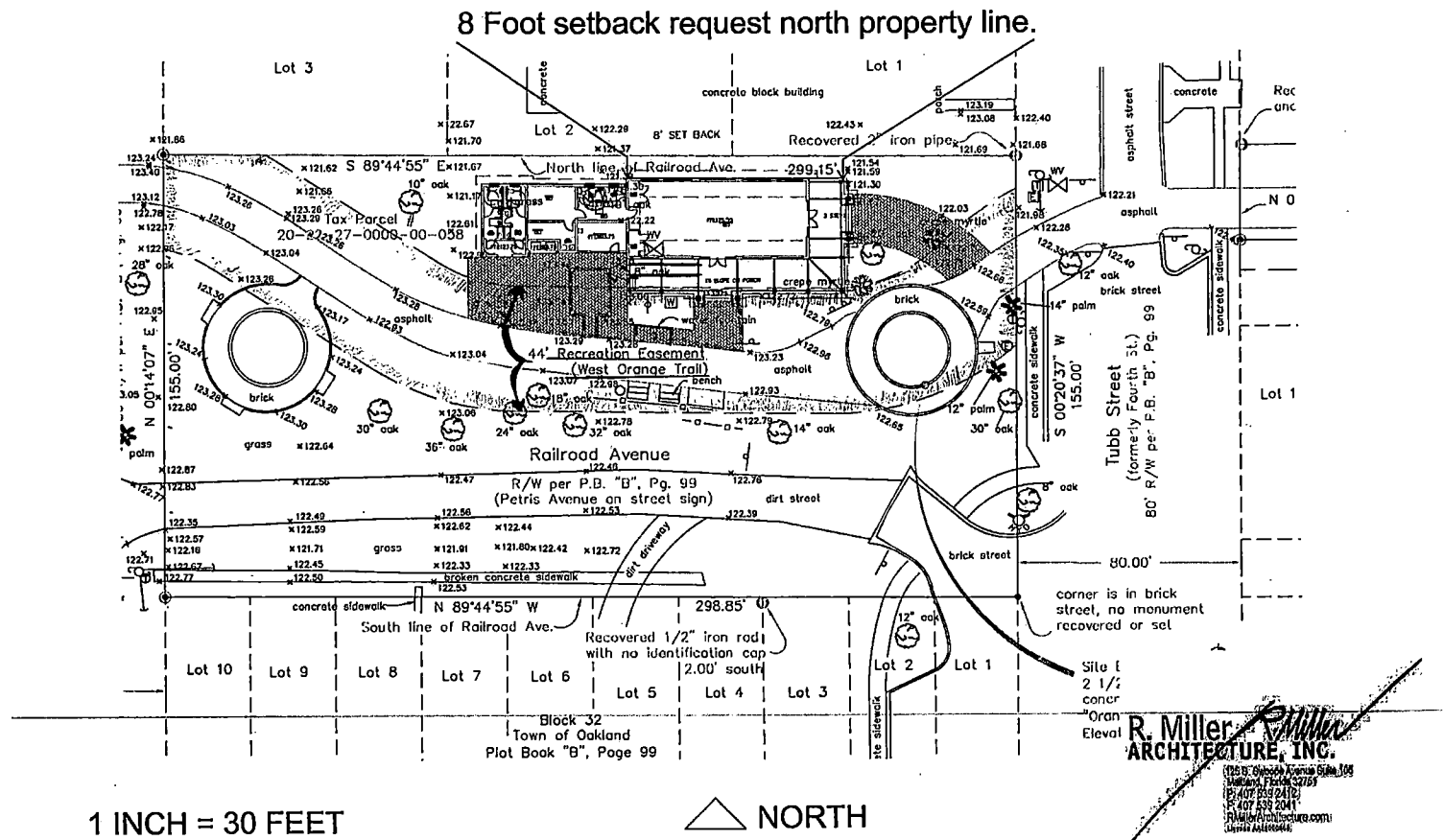


Exhibit "A" Forthcoming
(Legal and sketch of easement with improvements or survey)



BEGIN at the Southwest corner of Block 58, PLAT OF THE TOWN OF OAKLAND, as recorded in Plat Book B, Pages 99 and 100, Public Records of Orange County, Florida; thence run South 89 degrees 44 minutes 55 seconds East 36.21 feet along the South boundary of said Block 58; thence run South 57 degrees 49 minutes 45 seconds East 71.67 feet to the beginning of a tangent curve concave Northeasterly, having a radius of 53.00 feet and an intersection angle of 31 degrees 31 minutes 44 seconds; thence run Southeasterly 29.17 feet along the arc of said curve to the end of said curve; thence run South 89 degrees 21 minutes 29 seconds East 109.74 feet to the beginning of a tangent curve concave Northwesterly, having a radius of 53.00 feet, and an intersection angle of 44 degrees 53 minutes 50 seconds; thence run Northeasterly 41.53 feet along the arc of said curve to the beginning of a reverse curve concave Southeasterly, having a radius of 122.00 feet and an intersection angle of 16 degrees 23 minutes 28 seconds; thence run Northeasterly 34.90 feet along the arc of said curve to a point on the Southerly prolongation of the East boundary of the aforesaid Block 58; thence run South 00 degrees 20 minutes 37 seconds West 54.72 feet along said Southerly prolongation to a point on a nontangent curve concave Northwesterly and having a radius of 97.00 feet; thence from a tangent bearing of South 48 degrees 06 minutes 09 seconds West, run Southwesterly 72.02 feet along the arc of said curve through a central angle of 42 degrees 32 minutes 22 seconds to the end of said curve; thence run North 89 degrees 21 minutes 29 seconds West 109.74 feet to the beginning of a tangent curve concave Northeasterly, having a radius of 97.00 feet and an intersection angle of 31 degrees 31 minutes 44 seconds; thence run Northwesterly 53.38 feet along the arc of said curve to the end of said curve; thence run North 57 degrees 49 minutes 45 seconds West 66.63 feet to the beginning of a tangent curve concave

Southwesterly, having a radius of 53.00 feet and an intersection angle of 20 degrees 13 minutes 37 seconds; thence run Northwesterly 18.71 feet along the arc of said curve to a point on the Southerly prolongation of the West boundary of the aforesaid Block 58; thence run North 00 degrees 20 minutes 37 seconds East 33.10 feet to the Point of Beginning.