



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 1

DATE: October 2, 2017

TO: Mayor Teresa Jacobs
and the
Board of County Commissioners

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

FROM: Elizabeth Price Jackson, Senior Title Examiner *EPJ*
Real Estate Management Division

CONTACT PERSON: Paul Sladek, Manager

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

ACTION REQUESTED: APPROVAL AND EXECUTION OF LICENSE AGREEMENT FOR MONITORING WELL ACCESS BETWEEN ORANGE COUNTY AND SOUTH FLORIDA WATER MANAGEMENT DISTRICT AND DELEGATION OF AUTHORITY TO THE REAL ESTATE MANAGEMENT DIVISION TO EXERCISE RENEWAL OPTIONS, IF NECESSARY

PROJECT: R.D. Keene Park

District 1

PURPOSE: To provide for access, operation, maintenance, and data collection from existing monitoring wells.

ITEM: License Agreement for Monitoring Well Access
Term: 5 years
Option: 5-year renewals

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

REMARKS:

On January 7, 2003, the Board of County Commissioners approved a License Agreement between the South Florida Water Management District (the "SFWMD") and Orange County, Florida for Well Testing and Monitoring in R.D. Keene Park (the "Original Agreement"). The Original Agreement allowed for installation and monitoring of five wells at R.D. Keene Park (the "Park") in order to evaluate the regional aquifers for a period of five years, with renewal options. The wells were abandoned in place at the conclusion of the initial monitoring.

The SFWMD has requested this License Agreement for Monitoring Well Access to resume the water quality monitoring activities within the Park.

OCT 31 2017

**LICENSE AGREEMENT
For Monitoring Well Access**

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 **SOUTH FLORIDA WATER MANAGEMENT DISTRICT** ("Licensee"), a government entity created and existing under Chapter 373, Florida Statutes, having an address 3301 Gun Club Road, West Palm Beach, Florida 33406.

RECITALS

WHEREAS, the County is the owner of certain real property located in Orange County, Florida, called R.D. Keene Park, more particularly described herein and depicted in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("County Property"); and

WHEREAS, pursuant to prior license agreements between the County and Licensee, Licensee installed monitoring wells on the County Property in order to evaluate the regional aquifers; and

WHEREAS, Licensee seeks a new license to enter a portion of the County Property ("License Area"), legally described in **Exhibit "B,"** attached hereto and incorporated herein by reference, for the purposes of maintaining and operating the existing monitoring wells in order to continue to evaluate the regional aquifers; and

WHEREAS, the County agrees to authorize Licensee to enter the County Property pursuant to the terms and conditions stated herein; and

WHEREAS, the parties hereto desire to set forth their mutual understanding of the terms and conditions of their agreement contained 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 10900 Chase Road, Windermere, Florida, in unincorporated Orange County, Florida, commonly known as R.D. Keene Park, and identified as Parcel ID 20-23-28-0000-00-002 and Parcel ID 20-23-28-0000-00-003.

2. **Creation of License.** The County hereby grants to Licensee and its employees, agents, and contractors a non-exclusive license to enter onto a portion of the County Property from time to time during the term of this Agreement for the purpose of operating, maintaining, and collecting data from the existing monitoring wells ("the Project") located on the County Property. The license granted hereunder is limited solely to use of those areas of the County Property identified as the License Area in **Exhibit "B;"** however, Licensee and its employees,

agents and contractors shall be allowed pedestrian and vehicular ingress and egress over such portion of the County Property as is reasonably necessary to reach the License Area. Only Licensee and its employees, agents, and contractors will be permitted to enter and use the License Area. Licensee shall be solely responsible for the Project. Licensee and its employees, agents, and contractors may enter the County Property for operation, general maintenance and data collection activities on weekdays between the hours of 7:00 AM and 5:00 PM. In the event that Licensee or its employees, agents, or contractors enter the County Property on a weekday prior to 5:00 PM in accordance with this Agreement, they may stay beyond 5:00 PM to complete any activities initiated. In addition, Licensee may enter the County Property at any time in the event an emergency repair is needed with respect to the Project. Any unauthorized use of the County Property by Licensee or Licensee's employees, agents, or contractors shall be cause for termination of this Agreement. This Agreement does not create an ownership or possessory interest in Licensee.

3. ***Term.*** This Agreement shall become effective upon full execution by both parties hereto and shall have an initial term of five (5) years. This Agreement may be renewed for additional five (5) year terms upon written approval by both parties hereto. The Manager of the County's Real Estate Management Division shall have the authority to exercise and approve this renewal option.

4. ***Licensee's Obligations & Restrictions.***

a. Licensee shall give prior notification to the Manager of the Orange County Parks and Recreation Division or his or her designee ("County Official") of all activities that Licensee, and/or its employees, agents, and contractors, undertakes on the License Area and shall coordinate all such activities with the County Official. Licensee shall make available on URL http://my.sfwmd.gov/dbhydroplsql/show_dbkey_info.show_dbkeys_matched?v_js_flag=Y&v_category=GW&v_station_desc=%25Keene%25&v_dbkey_list_flag=Y&v_order_by=STATION menu all data recorded or developed by Licensee or its employees, agents, or contractors, which relates directly or indirectly to water quality or quantity or to aquifer conditions, within sixty (60) days of the recording of the data. Upon request of the County Official, Licensee shall cooperate in interpreting such data.

b. Licensee shall maintain the existing fencing surrounding the License Area and ensure the fence gate remains locked at all times when Licensee or its contractors are not physically present on the License Area. In the event there is a breach in the fence or gate, or the gate is not secured and locked, the County, at its sole discretion, may take whatever steps it reasonably deems necessary to secure the License Area at Licensee's expense.

c. Licensee, its employees, agents, or contractors, may bring necessary equipment onto the License Areas as needed for the purposes of this Agreement. Licensee shall promptly remove any equipment not in active use and no storage of any kind is permitted on the County Property.

d. Licensee shall, at its sole cost and expense, maintain the License Area in a good, safe, and clean condition.

5. ***Protection of Persons and Property.*** Licensee shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement.

a. Licensee shall take all reasonable precautions for the security, safety and protection of (i) all persons on the License Area and other persons who may be affected thereby; (ii) all property, materials, and equipment on the License Area under the care, custody, or control of the Licensee; and (iii) other property at or surrounding the License Area including trees, shrubs, lawn, walkways, pavement and roadways.

b. Licensee agrees that the County does not guarantee the security of any equipment or personal property brought by the Licensee, its employees, agents or contractors, onto the County Property and that the County shall in no way be liable for damage, destruction, theft, or loss of any equipment or personal property, including without limitation all tools, equipment, and appurtenances related to the wells, unless such damage, destruction, theft or loss is due to the intentional or negligent acts or omissions of the County or its employees.

c. Licensee shall comply with and shall ensure that its employees, agents, and contractors comply with all applicable safety laws, ordinances, rules, regulations, standards, and lawful orders from authority bearing on the safety of persons or property for their protection from damage, injury, or loss. In any emergency affecting the safety of persons or property, Licensee shall act with reasonable care and discretion to prevent any threatened damage, injury or loss.

6. ***Insurance.*** During the term of this Agreement, Licensee shall provide and maintain such general liability, automobile liability, and workers' compensation insurance or self-insurance as required by its current rules and regulations, within the limitations of Section 768.28, Florida Statutes. All such insurance or self-insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by the County, as it relates to Licensee's liability. In the event Licensee subcontracts any part or all of its operations hereunder, Licensee shall require its subcontractors to acquire and maintain workers' compensation, automobile and general liability insurance coverage in such amounts as may be reasonably necessary to protect Licensee, its subcontractors and the County from losses arising out of or related in any way to this Agreement. Licensee shall include in its contract with its subcontractors a provision whereby the subcontractor agrees to defend, indemnify and hold harmless the County from all injury and property resulting from its operations and to include the County as an additional insured on the subcontractor's general liability insurance policy.

7. ***Indemnification.*** Licensee does hereby agree to indemnify and hold harmless the County to the extent and within the limitations of Section 768.28, Florida Statutes, from any and all personal injury or property damage claims, liabilities, losses and causes of action which may

arise as a result of the negligence of the Licensee. However, nothing herein shall be deemed to indemnify the County from any liability or claim arising out of the negligent acts or omissions of the County or any unrelated third party.

8. ***Breach of Agreement.*** The failure of Licensee to comply with any covenant or condition of this Agreement shall constitute a breach of this Agreement. If Licensee is in breach of this Agreement in any manner, the County shall give Licensee written notice of any such breach. If (i) Licensee fails to cure such breach within 120 days after receiving such notice, or (ii) fails to commence such cure within 120 days after receiving such notice and to diligently prosecute such cure to completion should the nature of such breach is such that more time is reasonably required by Licensee 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.

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; Removal of Wells.***

a. This Agreement may be terminated at any time by mutual written consent of both parties hereto.

b. Either party may terminate this Agreement at any time by providing to the other party no less than one hundred twenty (120) days advance, written notice of same.

c. Prior to termination or expiration of this Agreement, Licensee shall have completed removal of all materials, including, without limitation, concrete pads and other fixtures, related to the purpose of this Agreement and have filled in and capped the wells in a manner and with materials satisfactory to the Manager of the Orange County Parks and Recreation Division ("Removal"); provided, however, in the event the County elects to terminate this Agreement prior to the expiration of the term of this Agreement, Licensee shall have one hundred twenty (120) days from the date of the notice of early termination to complete the Removal. Such Removal shall, at a minimum, include cutting off all well casings at least five (5) feet below land surface and backfilling and grading the spaces with natural materials. If the Licensee fails to complete the Removal prior to termination of this Agreement, the County may, at its own option, perform the Removal and the Licensee shall be immediately liable for, and shall immediately reimburse the County for, all costs and expense incurred by the County in performing such Removal.

d. Notwithstanding subsection c., at the termination of this Agreement, the County shall be entitled to assume ownership of the wells at no cost to the County by giving written notification to the Licensee no later than the date of termination. In the event the County exercises this right, the Licensee shall be relieved of the obligation to remove the wells and the County shall assume all rights, obligations, and liabilities associated with the wells that arise on

or after the date the County exercises this right.

11. **Restoration.** Licensee shall be responsible for the complete restoration of the License Area and any other portion of the County Property affected by Licensee pursuant to this Agreement to the same condition it was in immediately prior to Licensee's use. If Licensee fails to restore the County Property within one hundred twenty (120) days of the County's request, the County may restore it to its original condition and the Licensee shall be immediately liable for, and shall immediately reimburse the county for all costs and expenses incurred by the County in making such restoration. This provision shall survive the termination of this Agreement.

12. **Compliance with Applicable Laws.** Licensee shall observe and comply with all applicable federal, state, and local rules, orders, laws and regulations pertaining to the use of the County Property. Nothing herein shall be construed to relieve Licensee of its obligation to comply with all applicable provisions of the Orange County Code, or its obligation to obtain federal, state, county or other permits, as applicable.

13. **Amendments to Agreement.** Any amendment or modification to this Agreement shall be in writing and executed by both 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 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 Community, Environmental &
Development Services Department,
Parks & Recreation Division
Attn: Manager
4801 W. Colonial Drive
Orlando, Florida 32808

And

Orange County Utilities Department
Attn: Director
9150 Curry Ford Road
Orlando, Florida 32825

As to Licensee: South Florida Water Management District
Attn: Bureau Chief – Water Supply
3301 Gun Club Road
West Palm Beach, Florida 33406
Fax: (561) 682-5557

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

16. ***Interpretation; Severability.*** The validity, interpretation, construction and effect of this Agreement shall be in accordance with and 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.

17. ***Hazardous Waste and Materials.*** Licensee shall not release, spill, dump, dispose of, or in any way cause or allow to be deposited (“release”) onto the County Property any hazardous materials (as generally defined under applicable environmental laws), including without limitation fuel, lubricants, paints, or cleaning solutions. In the event of such a release, the Licensee shall immediately notify the County. The Licensee shall bear all liability and responsibility for all remediation and cleanup of materials released by Licensee and the restoration of the County Property to its condition prior to the release. Licensee, to the extent allowed by law 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 Licensee, its employees, or 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. Provided however, Licensee 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 Licensee or its employees or agents. The indemnification provisions contained herein shall survive the termination of this Agreement.

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 hereto.

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

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: 10.31.17

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

By: *Katie Smith*
Deputy Clerk

Date: OCT 31 2017

(Corporate Seal)



SFWMD:

**SOUTH FLORIDA WATER
MANAGEMENT DISTRICT**

ATTEST:

By: *Rosie Byrd*
Rosie Byrd, District Clerk/Secretary

By: *Dan O'Keefe*
Dan O'Keefe, Chairman

Legal Form Approved
Office of Counsel

By: *Andrew Ross* 9-19-2017
Andrew Ross

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 21st day of September, 2017, by Dan O'Keefe and Rosie Byrd, Governing Board Chairman and District Clerk/Secretary, respectively, of the South Florida Water Management District, a governmental entity created by Chapter 373, Florida Statutes, on behalf of the entity, who are personally known to me.

Juanita Bozeman
Notary Public
Print: Juanita Bozeman
My Commission Expires:

February 5, 2021

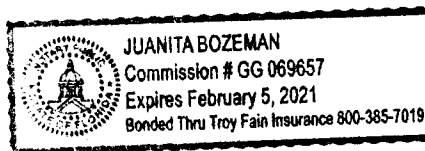


Exhibit "A"

LEGAL DESCRIPTION:

A PORTION OF SECTION 20, TOWNSHIP 23 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE WEST 1/4 CORNER OF SAID SECTION 20, AS A POINT OF REFERENCE; THENCE RUN S 89°27'54"E, ALONG THE AGREEMENT LINE AS RECORDED IN OFFICIAL RECORDS BOOK 3554, PAGE 2741 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, 29.21 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S 89°07'54"E, ALONG SAID AGREEMENT LINE, 2152.21 FEET TO THE SOUTHWEST CORNER OF THE WEST 40 ACRES OF GOVERNMENT LOT 1; THENCE RUN N 00°53'31"E, ALONG THE EAST LINE THEREOF, 528.53 FEET TO A POINT HEREINAFTER REFERED TO AS POINT "A"; THENCE RUN S 75°13'01"E, ALONG SAID AGREEMENT LINE, 72.63 FEET TO THE APPROXIMATE SOVEREIGN LIMITS OF LAKE ISLEWORTH; THENCE, DEPARTING SAID AGREEMENT LINE, RUN SOUTHERLY AND EASTERLY ALONG SAID LIMITS TO A POINT THAT LIES S 48°58'32"E, 1445.09 FEET FROM AFORESAID POINT "A"; THENCE RUN S 00°16'53"W, 346.12 FEET TO THE NORTH LINE OF THE FLORIDA POWER CORPORATION EASEMENT RECORDED IN OFFICIAL RECORDS BOOK 1563, PAGE 742 OF THE PUBLIC RECORDS OF ORANGE COUNTY; THENCE RUN N 89°49'25"W, ALONG SAID NORTH LINE, 3251.81 FEET TO THE EAST RIGHT OF WAY LINE OF CHASE ROAD (A 60' R/W); THENCE RUN N 00°16'53"E, ALONG SAID EAST RIGHT OF WAY LINE, 779.55 FEET TO A CURVE CONCAVE TO THE SOUTHWEST; THENCE RUN NORTHWESTERLY ALONG SAID CURVE HAVING A RADIUS OF 1495.82 FEET, A CENTRAL ANGLE OF 00°21'20", AN ARC LENGTH OF 9.28 FEET, A CHORD DISTANCE OF 9.28 FEET AND A CHORD BEARING OF N 04°34'50"W TO THE POINT OF BEGINNING.

The above described property contains 53.00 acres more or less above the 99.5 foot contour line at Lake Isleworth.

AND

A parcel of land lying in Section 20, Township 23 South, Range 28 East and being a portion of those lands described in Official Records Book 6179 at page 3481 of the Public Records of Orange County, Florida and being more particularly described as follows:

Commence at the West 1/4 corner of said Section 20 as a Point of Reference; thence run S89°07'54"E, along the north line of those lands described in Official Records Book 4536 at Page 3260 of said Public Records, said north line being originally described in Boundary Line Agreement as recorded in Official Records Book 3554 at page 2741 of said Public Records as the common boundary line, a distance of 2181.42 feet to the southeast corner of the west 40 acres of Government Lot 1 of said Section 20; thence run N00°53'31"E, along the east boundary of said west 40 acres and said common boundary line, a distance of 528.53 feet to a point hereinafter called Point "A"; thence run S75°13'01"E, along said common boundary line, a distance of 72.63 feet to the approximate sovereign limits of Lake Isleworth and the POINT OF BEGINNING; thence continue S75°13'01"E, along said common boundary line, a distance of 1058.26 feet to the northerly prolongation of the east line of those lands described in said Official Records Book 4536 at page 3260, said east line also being the west boundary of Lot 584, Keene's Point Unit 3, per the plat thereof recorded in Plat Book 46 at Page 104 of said Public Records; thence departing said common boundary line, run S00°16'53"W, along said northerly projection and said west line, a distance of 659.98 feet to a certain point on said approximate sovereign limits of Lake Isleworth that lies S48°58'32"E, a distance of 1445.09 feet from the aforesaid Point "A"; thence departing said east line run westerly and northerly along said approximate sovereign limits of Lake Isleworth the following 33 courses and distances: run N81°59'41"W, a distance of 70.00 feet; thence S57°07'44"W, a distance of 87.48 feet; thence S61°45'47"W, a distance of 78.80 feet; thence S46°42'28"W, a distance of 42.59 feet; thence S33°02'59"W, a distance of 46.72 feet; thence S65°40'25"W, a distance of 62.28 feet; thence S75°12'10"W, a distance of 59.46 feet; thence S87°10'31"W, a distance of 66.99 feet; thence N74°05'22"W, a distance of 72.55 feet; thence N46°50'25"W, a distance of 53.03 feet; thence N51°32'37"W, a distance of 34.16 feet; thence N16°08'35"W, a distance of 39.57 feet; thence N10°12'38"W, a distance of 38.13 feet; thence N07°21'39"W, a distance of 46.87 feet; thence N05°34'16"W, a distance of 60.77 feet; thence N02°46'27"W, a distance of 88.58 feet; thence N15°39'41"W, a distance of 71.69 feet; thence N25°47'39"W, a distance of 74.69 feet; thence N26°21'05"W, a distance of 38.97 feet; thence N40°59'56"W, a distance of 71.71 feet; thence N52°58'38"W, a distance of 48.01 feet; thence N23°54'31"W, a distance of 50.41 feet; thence N55°46'30"W, a distance of 55.89 feet; thence N57°50'29"W, a distance of 55.86 feet; thence N47°54'08"W, a distance of 44.76 feet; thence N39°53'08"W, a distance of 49.67 feet; thence N55°57'39"W, 48.95 feet; thence N10°57'07"W, a distance of 37.76 feet; thence N18°31'05"W, a distance of 79.83 feet; thence N09°09'29"W, a distance of 47.43 feet; thence N04°38'25"E, a distance of 35.97 feet; thence N11°00'42"E, a distance of 54.84 feet; N00°11'46"W, a distance of 62.83 feet, more or less, to the POINT OF BEGINNING.

Containing approximately 15.931 acres, more or less.

Exhibit B

Legal Description R.D. Keene Park Access

A parcel of land lying within Section 20, Township 23 South, Range 28 East, Orange County, Florida being described as follows:

Commence at said Southeast corner of the West 40 acres of Government Lot 1 of said Section 20, thence, N 89°07'54"W along the North line of the Southwest quarter of said Section 20 a distance of 90.00 feet; thence departing said North line of the Southwest quarter S 00°52'06"W along a line perpendicular to said North line of the Southwest quarter a distance of 10.00 feet to the Point of Beginning; thence continue S 00°52'06"W along said perpendicular line a distance of 30.00 feet; thence N 89°07'54"W, along a line 40.00 feet South of and parallel with said North line of the Southwest quarter a distance of 120.00 feet; thence N 00°52'06"E, along a line perpendicular to the previously described line, a distance of 30.00 feet; thence S 89°07'54"E, along a line 10.00 feet South of and parallel with said North line of the Southwest quarter a distance of 120.00 feet to the Point of Beginning.

Containing 0.0826 acre more or less.