Interoffice Memorandum



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REAL ESTATE MANAGEMENT ITEM 2

DATE:	March 23, 2018			
то:	Mayor Teresa Jacobs and the Board of County Commissioners			
THROUGH:	Paul Sladek, Manager Abb Real Estate Management Division			
FROM:	Elizabeth Price Jackson, Senior Title Examiner			
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 MANAGER TO EXECUTE RENEWAL OPTIONS, IF NEEDED			
PROJECT:	Moss Park (Monitoring Well Access)			
	District 4			
PURPOSE:	To provide for access, operation, maintenance, and data collection from existing monitoring wells.			
ITEM:	License Agreement for Monitoring Well Access Revenue: None Size: 1,306.8 square feet Term: 10 years Option: Unlimited 5-year renewals			
APPROVALS:	Real Estate Management Division County Attorney's Office Parks and Recreation Division Risk Management Division			

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 Statues, 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 Moss Park, more particularly described herein and depicted in Exhibit "A," attached hereto and incorporated herein by this reference ("County Property"); and

WHEREAS, Licensee seeks a 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 12901 Moss Park Road, Orlando, Florida, 32832 in unincorporated Orange County, Florida, commonly known as Moss Park, and identified as Parcel ID 23-24-31-0000-00-005.

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

License Agreement - For Monitoring Well Access – Moss Park Orange County and the South Florida Water Management District

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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 ten (10) 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 <u>http://my.sfwmd.gov/dbhydroplsql/show_wilma_info.report_process?v_output_format=summary&v_station=MOSS</u> <u>PK_D</u>

http://my.sfwmd.gov/dbhydroplsql/show_wilma_info.report_process?v_output_format=summary&v_station=MOSS <u>PK_S</u> 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 contracts any part or all of its operations hereunder, Licensee shall require its contractors to acquire and maintain workers' compensation, automobile, and general liability insurance coverage in such amounts as may be reasonably necessary to protect Licensee, its contractors, and the County from losses arising out of or related in any way to this Agreement. Licensee shall include in its contract with its contractors a provision whereby the contractor 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 contractor'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 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.

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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.

Hazardous Waste and Materials. Licensee shall not release, spill, dump, dispose 17. 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

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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.

Assignment. Neither party may assign its rights hereunder, or as hereinafter 18. granted pursuant to the provisions hereof, in whole or in part, without the prior written consent of the other party hereto.

Sovereign Immunity. Nothing herein shall require a waiver of either party's 19. 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.

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"County"

ORANGE COUNTY, FLORIDA

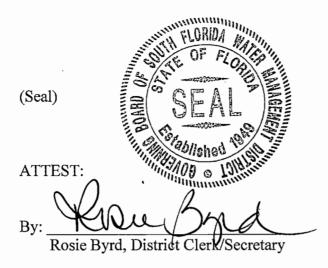
By: Board of County Commissioners

By: Mr dalabanda. Feresa Jacobs Morange County Mayor Date: <u>4.10.18</u>

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

By: Deput Clerk

APR 1 0 2018 Date:



Legal Form Approved Office of Counsel

3-6-2018 By: Andrew Ross

"Licensee"

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

By: L Dan O'Keefe, Chairman

STATE OF FLORIDA COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this day of day of 2018, 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.

18,2020 My Commission Expires: REGINA M. KAMAK Notary Public - State of Flot Commission # GG 055° Tomm Expires Dec:18 uph National Not REGINA M. KAMAK 8 Notary Public - State of Florida

Commission # GG 055862 My Comm. Expires Dec 18, 2020

Bonded through National Notary Assn

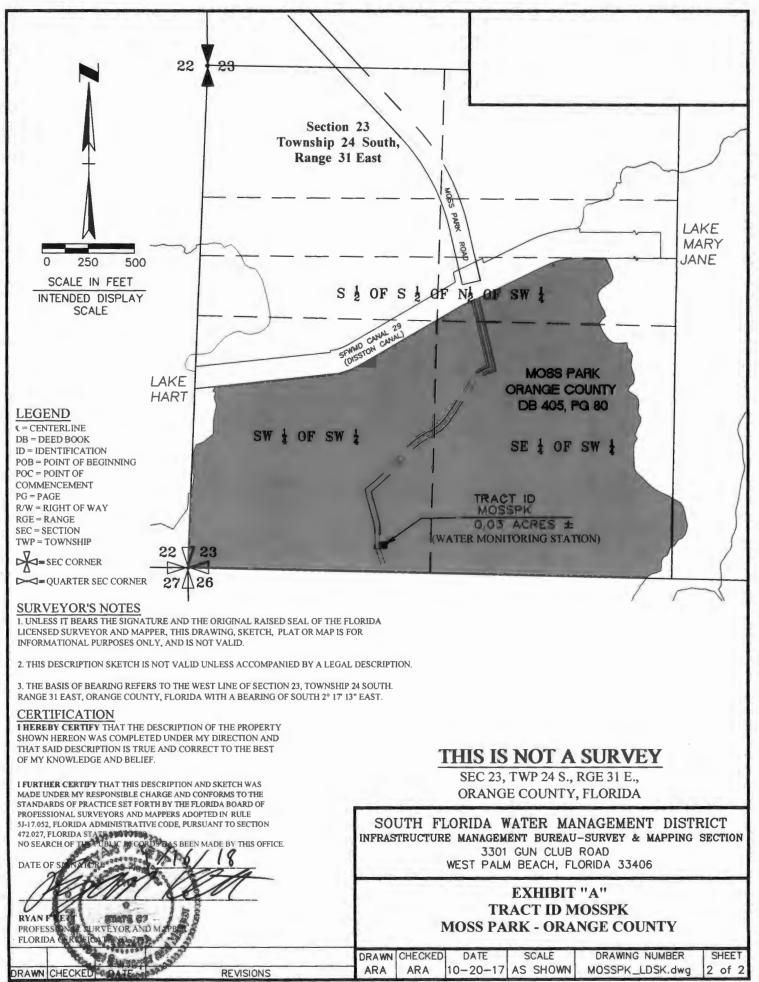
EXHIBIT "A" MOSS PARK SFWMD WATER MONITORING STATION TRACT ID MOSSPK

That part of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 23, Township 24 South, Range 31 East, and lying West of Lake Mary Jane at low water. Also, that part of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ lying South of the Disston Canal and being East and South of Lake Hart at low water. Also, that part of the S $\frac{1}{2}$ of the S $\frac{1}{2}$ of the S $\frac{1}{2}$ of the SW $\frac{1}{4}$ lying South of the Disston Canal and all being in the SW $\frac{1}{4}$ of Section 23, Township 24 South, Range 31 East.

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EXHIBIT "B" MOSS PARK SFWMD WATER MONITORING STATION TRACT ID MOSSPK

A parcel of land in Moss Park, Section 23, Township 24 South, Range 31 East, Orange County, Florida, more particularly described as follows:

Commence at the West Quarter Corner of said Section 23, Township 24 South, Range 31 East; Thence, run South 02° 17' 13" West along the West line of the Southwest Quadrant of said Section 23, a distance of 1,739.55 feet to a point in the South Right of Way line of South Florida Water Management District Canal 29;

Thence, continue along said South Right of Way line for the following four:

Thence, run North 84° 00' 00" East, a distance of 748.26 feet to a point in a curve concave North with a Radius of 360.00 feet;

Thence, run Northeasterly along the arc of the curve a distance of 152.16 feet through a delta angle of 24° 13' 00";

Thence, run North 59° 47' 00" East, a distance of 637.46 feet;

Thence, run North 64° 06' 00" East, a distance of 83.12 feet to the approximate centerline of Moss Park existing access road;

Thence, depart said South Right of Way line along said centerline of Moss Park existing access road through the following calls:

Thence, South 11° 54' 51" East, a distance of 40.40 feet;

Thence, South 14° 08' 39" East, a distance of 63.18 feet;

Thence, South 12° 42' 53" East, a distance of 109.70 feet;

Thence, South 13° 07' 17" East, a distance of 168.47 feet;

Thence, South 75° 27' 27" West, a distance of 14.45 feet to a point in a curve concave Southeast with a Radius of 185.61 feet;

Thence, run Southwesterly along the arc of the curve a distance of 161.51 feet through a delta angle of 49° 51' 18";

Thence, South 33° 05' 22" West, a distance of 75.19 feet;

Thence, South 34° 12' 15" West, a distance of 132.71 feet;

Thence, South 44° 03' 53" West, a distance of 51.21 feet;

Thence, South 56° 17' 25" West, a distance of 52.30 feet to a point in a curve concave Southeast with a Radius of 511.20 feet;

Thence, run Southwesterly along the arc of the curve a distance of 269.06 feet through a delta angle of 30° 09' 25";

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Thence, through a reverse curve concave Northwest with a Radius of 1485.32 feet;

Thence, run Southwesterly along the arc of the curve a distance of 193.85 feet through a delta angle of 07° 28' 40";

Thence, run South 11° 42' 43" East, a distance of 32.83 feet;

Thence, run South 15° 06' 22" East, a distance of 56.04 feet;

Thence, South 15° 18' 49" East, a distance of 66.61 feet to a point in a curve concave West with a Radius of 282.81 feet;

Thence, run Southerly along the arc of the curve a distance of 110.05 feet through a delta angle of 22° 17' 46";

Thence, run South 01° 42' 43" East, a distance of 39.98 feet;

Thence, run North 88° 25' 29" East departing said centerline, a distance of 15.47 feet to the **Point** of Beginning of the Water Monitoring Station;

Thence, run North 00° 00' 00" East, a distance of 15.00 feet;

Thence, run North 88° 25' 29" East, a distance of 40.02 feet;

Thence, run South 00° 00' 00" East, a distance of 30.00 feet;

Thence, run South 88° 25' 29" West, a distance of 40.02 feet;

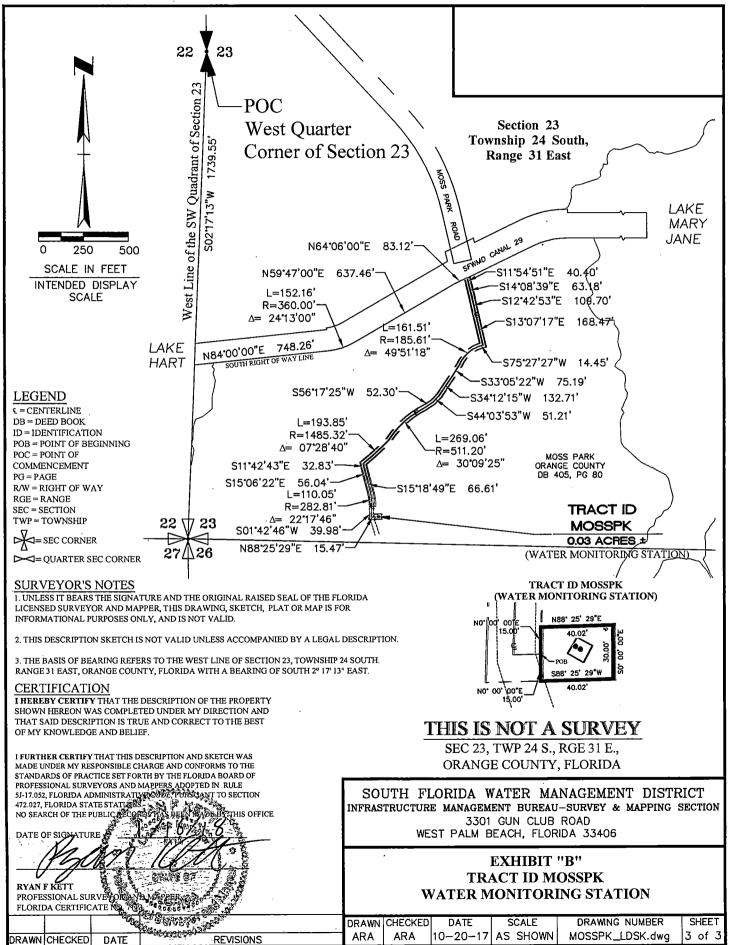
Thence, run North 00° 00' 00" East, a distance of 15.00 feet to the **Point of Beginning**.

Containing 0.03 acres more or less.

This Legal Description is not valid unless accompanied by a Description Sketch.

			• • •	SOUTH FLORIDA WATER MANAGEMENT DISTRICT INFRASTRUCTURE MANAGEMENT BUREAU - SURVEY & MAPPING SECTION 3301 GUN CLUB ROAD WEST PALM BEACH, FLORIDA 33406
	· · · · ·		· · ·	EXHIBIT "B" TRACT ID MOSSPK WATER MONITORING STATION
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FREEHCUS/Venuel Descriptions/2017

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