




Interoffice Memorandum

March 19, 2018

TO: Mayor Teresa Jacobs
and Board of County Commissioners

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

CONTACT PERSON: Michael J. Drozeck, P.E., CFM, Manager, 
Stormwater Management Division

PHONE NUMBER: (407) 836-7919

SUBJ: Temporary License Agreement between City of Orlando and Orange County

The City of Orlando is proposing to install a cured in place pipe lining system within a 48" reinforced concrete wastewater pipe from Kirkman Road to the Conserv II Water Reclamation Facility and within a 36" wastewater pipe from President Barak Obama Parkway to the Conserv II Water reclamation Facility, including a temporary by-pass line. The City must utilize a County drainage easement to access the pipe to complete the project.

The City desires to obtain the County's authorization, by means of this Agreement, to temporarily utilize the License Area to access the pipe and construct the project and anticipates that the duration of the Project will be no more than 90 days.

The County requires that the City be solely responsible for the fulfillment of certain commitments and covenants to assure the perpetual and continuous maintenance of the County easements for the duration of the project.

The County Attorney's office has reviewed the agreement and finds it acceptable.

Action Requested: Approve the Temporary License Agreement by and between the City of Orlando and Orange County.
District 6.

BCC Mtg. Date: April 10, 2018

Prepared by and return to:
Roy K. Payne, Esq.
Chief Assistant City Attorney
400 S. Orange Avenue
Orlando, FL 32802
(407) 246-3483

TEMPORARY LICENSE AGREEMENT BETWEEN
CITY OF ORLANDO AND ORANGE COUNTY

THIS TEMPORARY LICENSE AGREEMENT (the "Agreement"), is entered into by and between the **CITY OF ORLANDO**, a municipality duly enacted under the laws of the State of Florida ("City"), with a mailing address at 400 S. Orange Avenue, Orlando, FL 32801 and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida ("County"), with a mailing address at P.O. Box 1393, Orlando, FL 32802-1393.

RECITALS

WHEREAS, City is proposing to install a cured in place, "CIPP," pipe lining system within a 48" RCP wastewater pipe, from Kirkman Road to the Conserv II Water Reclamation Facility, and within a 36" wastewater pipe, from President Barak Obama Parkway to the Conserv II Water Reclamation Facility, including a temporary by-pass line, collectively referred to as the "Project", and must utilize certain County drainage easements, "the County Easements," to access the Pipe and conduct the Project, as shown in **Exhibit "A"** attached hereto and by this reference made a part hereof;

WHEREAS, the area of County Easements shown in Exhibit "A" that are necessary to provide access for the Project is hereinafter referred to as "**License Area**," and

WHEREAS, City desires to obtain County's authorization, by means of this Agreement, to temporarily utilize the License Area to access the Pipe and construct the Project; and

WHEREAS, City anticipates that the duration of the Project will be no more than ninety days (90); and

WHEREAS, County requires that City be solely responsible for the fulfillment of certain commitments and covenants to assure the perpetual and continuous maintenance of the County Easements for the duration of the Project, which commitments and covenants are more particularly set forth herein.

WHEREAS, this License does not relieve the City from obtaining any other approvals

City Council Meeting: 2-26-18
Item: I-3 Documentary: 180226T03

necessary to access the areas subject to the County Easements.

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set forth herein, the parties agree as follows:

1. RECITALS. The foregoing recitals are true and correct and form a material part of this Agreement.
2. LICENSE. To the extent County controls access to the area under the County Easements, County hereby grants the City a license, "License," to access the License Area in order to construct the Project. County does not warrant the License Area as suitable for the Project and the City, its officials, employees, contractors, and subcontractors access the License area at their sole risk. City shall not, while constructing the Project, significantly damage or disturb any portion of the County Easements without prior written approval by County. City shall be solely responsible for restoration of any damage to the County Easements. Nothing contained herein shall give or grant City any ownership rights or other property interest to any portion of the County Easements.
3. LICENSED ACTIVITY. Any activity under the terms of this Agreement that, in County's sole opinion, impede the functional operation of infrastructure within the County Easements shall not be permitted. Utilization of the License Area by the City shall occur in such a manner as will neither interfere with the use of the County Easements nor create a safety hazard on such County Easements. County determines, in its sole discretion, that City's use of the License Area presents a safety hazard, then City, at its sole expense and at no cost to County, shall eliminate the hazard to the satisfaction of County.
4. RESTORATION/INTERFERENCE. Upon completion of the Project the City shall restore the County Easements to a condition equal to or better than the condition prior to the City's activities. Restoration includes the removal of all temporary structures. If, in the sole opinion of County, the City's use of the License Area interferes with any construction, reconstruction, alteration, improvement, or maintenance which County desires to perform on, around, or under the County Easements, then City, upon receipt of a written notice from County, shall cease such activity to the extent necessary to alleviate the interference as requested by County, and to County's satisfaction, within thirty (30) days of receipt of said notice. Any such modification of activity shall be at the sole expense of City.

5. ENVIRONMENTAL CONDITIONS. City agrees that it shall require its Contractor(s) to defend, indemnify and hold harmless County from any and all damages, cost, claims, expenses, suits, losses, liabilities, or obligations of any kind including without limitation, environmental assessments, evaluations, remediation, fines, penalties and clean-up cost which may be asserted against or imposed upon or incurred by County arising from Contractor's discharge or disposal of any hazardous or toxic materials, trash, debris, refuse, waste or other materials ("Materials") related in any way to Contractor's operations herein. Contractor agrees that it shall dispose of all Materials in strict compliance with local, County, state and federal statutes, laws, ordinances, codes, rules, regulations, orders or decrees. In the event of Contractor's failure to comply with the paragraph, Contractor shall, at its sole cost and expense, promptly commence and diligently pursue any required investigation, assessment, cleanup, remediation, restoration, and monitoring of any waters and lands affected by Contractor's failure to comply and to restore the damaged water and/or land to the condition existing immediately prior to the occurrence which caused the damage. Upon discovery of a failure or violation related to its disposal operations, Contractor shall immediately notify such failure or violation to all applicable governmental agencies having jurisdiction and to the County. The provisions of this paragraph shall survive the termination or expiration of the contract.
6. 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 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 either party's 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. Notwithstanding the provisions of this Section 5, City agrees that it will be solely responsible for any adverse environmental condition that results directly or indirectly from City's, its officials, employees, contractors, and subcontractors, acts or omissions in pursuit or performance of the Project.
7. INSURANCE. Without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, City acknowledges to be self-insured for General Liability and Automobile Liability with coverage limits of as set forth in Section 768.28, Florida Statutes. City agrees to maintain commercial insurance or to be

self-insured for Workers' Compensation & Employers' Liability in accordance with Florida Statute 440. Upon request City shall provide an affidavit or Certificate of Insurance evidencing self-insurance or commercial insurance up to sovereign immunity limits, which County agrees to find acceptable for the coverage mentioned above. County's failure to request proof of insurance or to identify any deficiency in coverage or compliance with the foregoing requirements shall not relieve City of its liability and obligations under this Agreement. City shall require all contractors performing work within the County rights 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.

8. DURATION. Upon the completion of the Project, and County inspection and approval of restoration of the County Easements ("Project Completion"), the parties shall execute a document terminating this Agreement. Accordingly, the provisions, restrictions, and covenants of this Agreement shall bind the parties for the lesser of the time required for such Completion or one hundred twenty (120) days from the Effective Date, defined in Section 12 below, plus an additional sixty (60) days for approval of the termination. County shall have the right to cancel this Agreement upon thirty (30) days prior written notice to City. The document terminating this Agreement shall be executed by the County's Public Works Director. The County's Notice of Cancellation shall be effective five (5) business days after City's receipt of said Notice signed by the County's Public Works Director.
9. AMENDMENT. The provisions, restrictions, and covenants of this Agreement shall not be modified or amended except in a written instrument approved by a majority of the Board of County Commissioners and the City Council.
10. COMPLIANCE WITH APPLICABLE LAWS. City shall comply with all applicable federal, state, and county, laws, rules, regulations, and ordinances, including the Orange County Right-of-Way Utilization Regulations.
11. DISCLAIMER OF COUNTY RESPONSIBILITY. Nothing contained herein shall create any obligation on the part of County to maintain or participate in the maintenance of the Improvements.
12. EFFECTIVE DATE. This Agreement shall become effective on the date of

execution by the County or the date of execution by the City, whichever last occurs.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives on the dates set forth below.

ATTEST:

By: Denise Aldridge
Denise Aldridge, City Clerk

CITY OF ORLANDO, FLORIDA, a municipal corporation, organized and existing under the laws of State of Florida (SEAL)

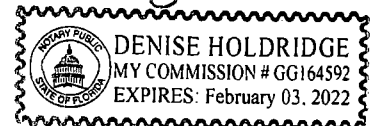
By: Patty Sheehan
Mayor / Mayor Pro Tem

Date: FEB. 27, 2018

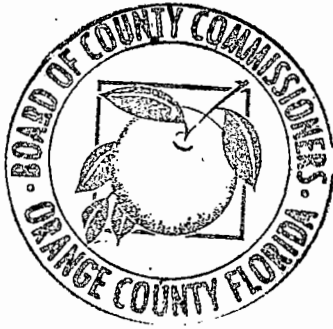
STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this 27 day of FEBRUARY, 2018 by PATTY SHEEHAN, Mayor / Pro Tem and DENISE ALDRIDGE, City Clerk, who is personally known to me who did (did not) take an oath.

Denise Holdridge
Name
Notary Public



Signatures Continue Next Page



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

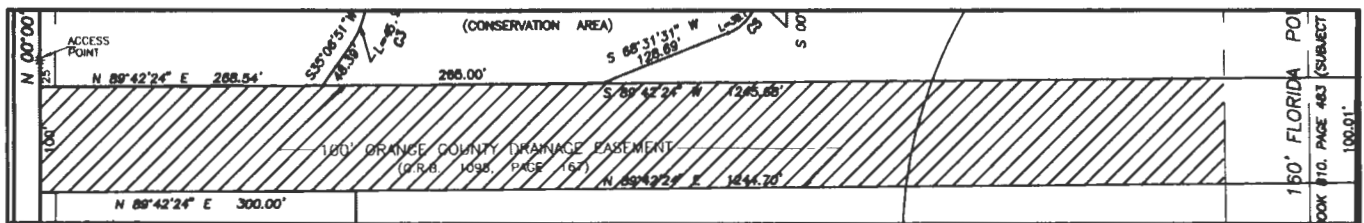
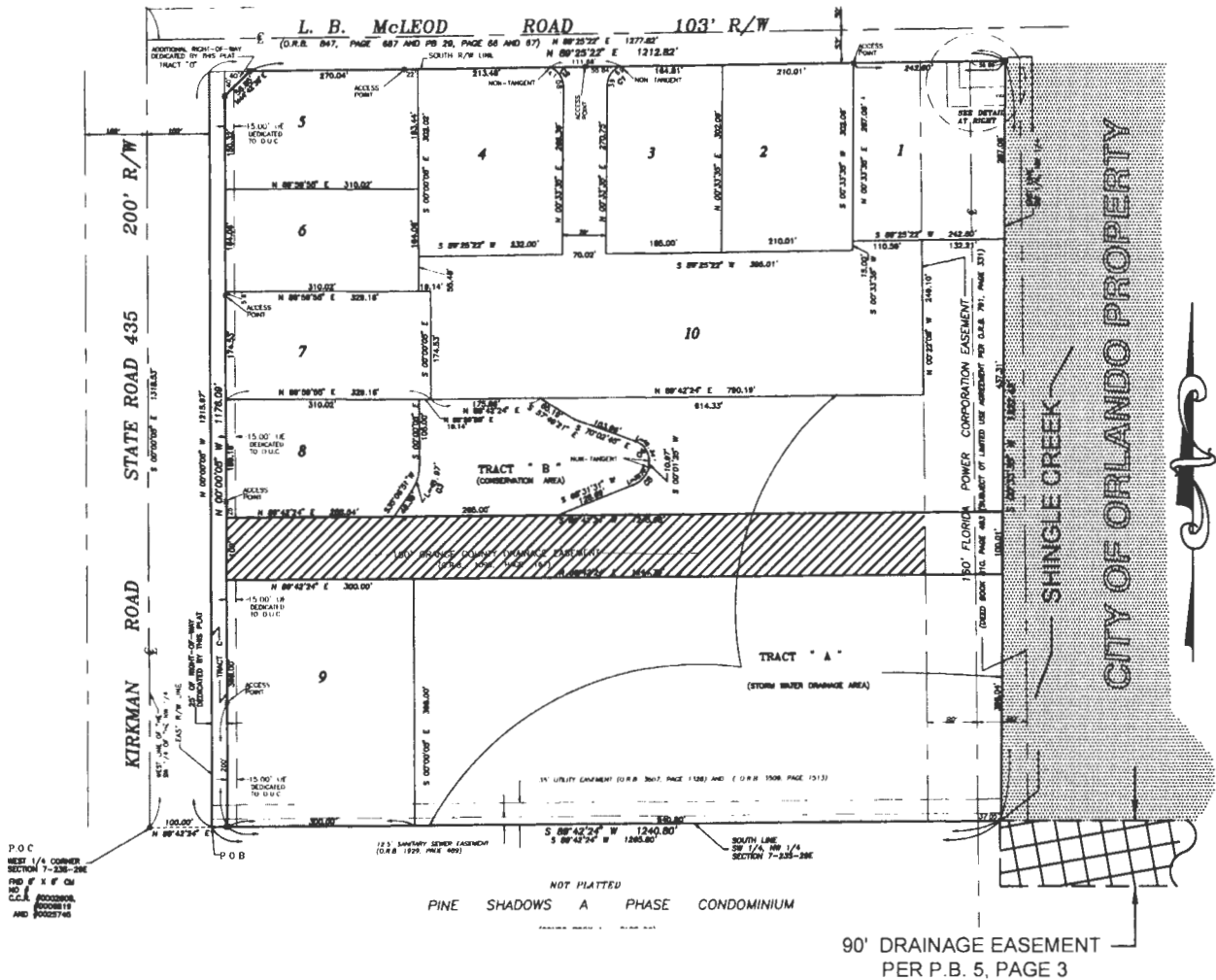
By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

Date: 4.10.18

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

By: *Katie Smith*
Deputy Clerk

EXHIBIT A



NOT TO SCALE



CITY OF ORLANDO

Survey Services Section
400 South Orange Avenue, 8th Floor
Orlando, Florida 32802
p. 407.246.3319 f. 407.246.2892

Project Number: 18-038

Requested By: C CONKLIN

Date of Survey: NA

Approved By: RDA

Drafted By: RDA

Checked By:

Date Drawn: 2/16/2018

Scale: 1" = NA

Sheet:

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of

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