



**Petroleum Restoration Program and City of Orlando  
RIGHT OF WAY SITE ACCESS AGREEMENT**

1. **The Parties.** The undersigned City of Orlando, a municipal corporation, whose address is 400 S. Orange Avenue, Orlando, FL, 32801 ("Owner"), hereby give(s) permission to the State of Florida Department of Environmental Protection, whose address is 2600 Blair Stone Road, MS# 4580, Tallahassee, Florida 32399-2400 ("FDEP" or "Department"), and its contractor, subcontractors, and vendors ("Contractor"), to enter the Owner's right of way (ROW) after the Contractor has completed a City of Orlando Right-of-Way Permit Application ("ROW Application") and received a City of Orlando Right of Way Permit ("ROW permit").

2. **The Property.** Owner owns that certain real property and right of way (the "Property"), as more particularly described in the legal description or address within a valid ROW permit issued by the Owner.

3. **Permissible Activities.** This Site Access Agreement ("Agreement") is limited to activities which may be performed by the Department or the Contractors pursuant to Chapter 62-780, 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. If the contamination is eligible for state funding, nothing herein is intended to modify the requirements and limitations of the eligibility program or order. The following activities are included in this Agreement 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 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;
- trenching for connection of remediation wells to equipment; and
- conduct surveys, prepare site sketches, and take photographs.

4. **Duration and Termination of Access.**

- a. This Agreement is granted, for so long as is necessary to assess, remove, monitor, and remediate the contamination on the Property or surrounding properties.

- b. Permission is granted without any fee or charge to the Department or Contractor for the installation, monitoring, and abandonment of monitoring wells or remediation wells.
- c. Permission is also granted to the Department or Contractor for the removal of contaminated soil and the construction, installation, monitoring and abandonment of trenching and related remediation systems (jointly referred to as "construction"). If such construction is performed over more than one calendar day or involves leaving open cuts in the sidewalk the Owner reserves the right to conduct OT inspections. Owner will endeavor to inform Department and Contractor if the scope of work provided in the ROW permit indicates the need for such OT inspections.
- d. Notwithstanding the foregoing, either party may terminate this Agreement for convenience upon the provision of 90 days' notice to the non-terminating party.
- e. Access shall be allowed for the Department (including its employees and Department contracted site managers with Teams 5 and 6 or local government, if applicable) immediately upon the execution of this Agreement.
- f. Department site rehabilitation contractors must have the ROW permit before accessing Owner's Property and close out the permit when the project is complete.

**5. Public Works Manager/Administrator.** The Public Works Department Director is authorized to exercise the Owner's rights and obligations under this Agreement, including, but not limited to, giving written consent to the Department's requests when necessary, approving any amendment or waiver of the terms and conditions of this Agreement, and terminating the Agreement. The Public Works Department Director is defined as the administrative head of the City of Orlando Public Works Department pursuant to the policies and procedures of the City of Orlando.

**6. Work Performed during Business Hours.** The Department and Contractor may enter the Property upon reasonable notice, during normal Business Hours, and may also make arrangements to enter the Property at other times with the Owner's prior written consent. "Business Hours" is defined as 7 A.M. to 7 P.M. (Eastern Time) during the weekdays.

**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 Agreement shall be done in a good, safe, workmanlike manner, and in accordance with applicable federal and state laws, and, if applicable, local laws.

**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. 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. The Department shall ensure the proper abandonment, plugging, and removal of all subterranean wells or borings of any kind in accordance with all then applicable laws, rules, and regulations governing the abandonment of wells and borings.

10. 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 at least thirty (30) 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 Agreement. Notwithstanding this notice limitation, Owner may conduct any and all necessary emergency activities that are urgent and time sensitive to assure safety in its ROW and will provide the Department with notice as soon as possible.

11. Relocation. The Owner reserves the right to require relocation of any boring, monitoring well, device, instrument, or other improvement placed by Department or Contractor on the Property. In order to minimize interference with activities occurring on the Property related to the current use of the Property, the Department will cooperate with Owner and work in good faith to relocate equipment or improvements, as requested by the Owner, if reasonably practicable. The Owner shall not be responsible for any costs to relocate wells installed under this Agreement. Further, the Owner shall in no way be responsible for any re-installation costs of wells that are damaged within the normal course of business by the Owner.

12. No Admission. The granting of this Agreement by the Owner is not intended, nor should it be construed, as an admission of liability on the part of the Owner, its successors or assigns, for any contamination discovered on the Property.

13. 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.

14. Owner's Release of Claim. If Owner selected a qualified contractor (not an agency term contractor), the Owner hereby releases the Department from any and all claims against the Department performed by the Owner's selected contractor arising from or by virtue of, the Permissible Activities.

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

16. Sovereign Immunity. Regardless of any terms in the ROW application or ROW permit, to the extent permitted by law, and without either party waiving its sovereign immunity or waiving any limits established by Section 768.28, Florida Statutes, the Department acknowledges and accepts its responsibility and liability for torts under applicable law (Section 768.28, Florida Statutes) for damages caused by the acts of their respective employees while on the Property. Nothing herein alters, waives or extends the liability of either party beyond the limits established in section 768.28, Florida Statutes.

17. **Insured Contractors.** The Department shall require its Contractors, while performing services on the Property, to maintain commercial general liability insurance, automobile liability insurance, and workers' compensation insurance as required by Section 376.3071(6), F.S., and approved by the Department or as specified in applicable Department contracts.

18. **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 number reference above. <https://depdms.dep.state.fl.us/Oculus/servlet/login>

19. **Entire Agreement.** This Agreement along with the ROW Permit shall constitute the entire agreement between the Department and the Owner regarding this grant of access to Property by the Department and its Contractors as stated herein. No modification, amendment or waiver of the terms and conditions of this Agreement shall be binding upon Department unless approved in writing by an authorized representative of the Owner and the Department.

20. **Governing Law and Venue.** This Agreement 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 Agreement shall be in the appropriate Florida court having jurisdiction located in Orange County, Florida.

21. **Severability.** In the event that any part of this Agreement is found to be invalid by a court of competent jurisdiction, that part shall be severed from this Agreement, and the balance of this Agreement shall remain in full force.

22. **Notices.** For a notice to a party to be effective under this Agreement, notice must be sent via e-mail to the addresses listed below and shall be effective upon e-mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with this section.

#### NOTICE TO OWNER

If to the City:

Director of Public Works  
City of Orlando  
400 South Orange Avenue  
Orlando, Florida 32801  
(407) 246-3222

and

City Attorney  
City of Orlando  
400 South Orange Avenue  
Orlando, Florida 32801  
(407) 246-3564

**NOTICE TO DEPARTMENT:**

The Department's site manager assigned to the Property is on the Purchase Order (PO) that the Department's Contractor would have when applying for the ROW permit. Please see the PO for the name of the best contact.

**23. No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the parties hereto and their respective Contractors, 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.

**24. Environmental Infrastructure and Well Permits.** To the extent that the Owner's authorization is required and to the extent that Department is operating pursuant to a ROW permit, the Owner authorizes the Department and the Contractor to act as its authorized representative in signing all required forms and documents necessary for obtaining applicable permits related to environmental infrastructure improvements including well construction, repair, maintenance, modification, and abandonment pursuant to Chapter 373, F.S. Pursuant to the terms of this Agreement, the Owner is not responsible for the application, issuance, and completion of any governmental permits and associated work applied for or issued under this provision.

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IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement:

ATTEST:

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

By: SHH  
Stephanie Herdocia, City Clerk

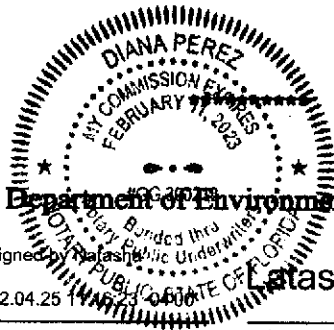
By: [Signature]  
Mayor / Mayor Pro Tem

Date: April 4, 2022

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing was acknowledged before me by  physical presence or  online notarization, this 4th day of April, 2022, by Mayor/Mayor Pro Tem and Stephanie Herdocia, City Clerk of the City of Orlando, Florida, who are both personally known to me.

[Signature]  
Notary Public Name



Accepted by the State of Florida Department of Environmental Protection:

Natasha Lampkin  
DEP PRP Program Administrator

Digitally signed by Natasha Lampkin  
Date: 2022.04.25 11:19:47 -0400

[Signature]  
Signature of Witness

Latasha McGriff  
Print Name

Digitally signed by Latasha McGriff  
Date: 2022.04.25 11:19:47 -0400