



Interoffice Memorandum

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

SEP 15 2015 *JLBS*

REAL ESTATE MANAGEMENT ITEM 2

DATE: August 24, 2015

TO: Mayor Teresa Jacobs
and the
Board of County Commissioners

THROUGH: Ann Caswell, Manager *AC*
Real Estate Management Division

FROM: Monica L. Hand, Sr. Title Examiner *MH*
Real Estate Management Division

CONTACT PERSON: Ann Caswell, Manager

DIVISION: Real Estate Management
Phone: 836-7082

ACTION REQUESTED: APPROVAL AND EXECUTION OF LICENSE AGREEMENT FOR LAY DOWN AREA AT SEA SPLASH WAY BETWEEN HUBBARD CONSTRUCTION COMPANY AND ORANGE COUNTY

PROJECT: International Drive Improvement Project
(Westwood Boulevard south to Westwood Boulevard north)

District 1

PURPOSE: To provide for the temporary use of County property as a construction storage area.

ITEM: License Agreement For Lay Down Area at Sea Splash Way
Revenue: None
Term: 2 years

APPROVALS: Real Estate Management Division
County Attorney's Office
Public Works Department
Risk Management Division

REMARKS:

Hubbard was awarded a contract pursuant to Invitation for Bid Y15-750-CH for the International Drive Improvement Project (from Westwood Boulevard south to Westwood Boulevard north) (“the Project”). This License Agreement (Agreement) will grant Hubbard Construction Company (Hubbard) the right to enter upon and use the County property located at the corner of International Drive and Sea Splash Way as a lay down area for the limited purpose of storing construction-related equipment, materials, and supplies, and other related activities in support of the construction of the Project. This Agreement shall take effect upon County’s execution and shall terminate two years thereafter. This Agreement may be extended upon the written request by Hubbard and approval by the County Administrator, no less than 30 days prior to initial termination date.

A file labeled “BCC Agenda Backup” containing a copy of this agenda item and all supporting documentation is in the top drawer of the BCC file cabinet in the supply room adjacent to Commissioner Thompson’s office.

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

SEP 15 2015 *JLBS*

Project: International Drive Improvement Project (Westwood Boulevard south to Westwood Boulevard north)

LICENSE AGREEMENT
For Lay Down Area at
Sea Splash Way

THIS LICENSE AGREEMENT ("Agreement") is made by and between **HUBBARD CONSTRUCTION COMPANY**, a Florida corporation ("Hubbard"), having an address at 1936 Lee Road, Suite 300, Winter Park, Florida 32789 and **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.

RECITALS

WHEREAS, Hubbard was awarded a contract pursuant to Invitation for Bid Y15-750-CH ("Contract") for the International Drive Improvement Project (from Westwood Boulevard South to Westwood Boulevard North) ("the Project"); and

WHEREAS, the County owns vacant property on Sea Splash Way near the location of the Project, more particularly depicted in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("County Property"); and

WHEREAS, Hubbard desires to use the County Property as a lay down area in connection with Hubbard's construction of the Project; and

WHEREAS, the parties hereto desire to work together for their mutual benefit, as contemplated in the Contract.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the parties agree as follows:

1. **Creation of License.** The County hereby grants to Hubbard the right to enter upon and use the County Property during the term of this Agreement, as may be extended. Hubbard's use of the County Property shall be for the limited purpose of storing construction-related equipment, materials and supplies and other related activities in support of Hubbard's construction of the Project, subject to the terms and conditions herein. No storage of materials other than those specified herein and no structures shall be permitted on the County Property. Hubbard shall ensure that its employees, agents, contractors, subcontractors, vendors and suppliers comply with all the terms and provisions of this Agreement. Use of the County Property for any other purpose by Hubbard shall be cause for termination of this Agreement pursuant to Paragraph 8, herein. This Agreement does not create an ownership or possessory interest in Hubbard.

2. **Term.** The term of this Agreement shall commence upon full execution by both parties hereto and shall terminate two (2) years thereafter, unless sooner terminated pursuant to the provisions contained herein. The term of this Agreement may be extended through written request by Hubbard to the County Administrator with copies to the Real Estate Management Division and the Public Works Department, and upon written approval by the County Administrator no less than thirty (30) days prior to the initial termination date.

3. **Site Preparation and Maintenance.** Hubbard shall bear all costs of site preparation necessary for its use of the County Property. All such site preparation shall conform in all respects to all applicable statutes, ordinances, codes, and governmental rules and regulations including, but not limited to, environmental regulations. Hubbard shall be fully and solely responsible for maintaining the County Property during the term of this Agreement in

clean and safe condition (e.g. no trash and debris on premises, grass mowed). Trees may not be removed from County Property without the advanced written consent of the County.

4. **Access.** Hubbard shall access the County Property only by way of International Drive.

5. **Safety and Security Precautions.** During the term of this Agreement,

a. Hubbard shall take all reasonable precautions for, and will be responsible for initiating, maintaining and supervising all activities relating to the safety and security of all persons and property affected by or involved in Hubbard's use of the County Property under this Agreement.

b. Hubbard shall take all reasonable precautions for the safety and security of, and will provide all reasonable protection to prevent damage, injury or loss to:

1) all persons who may be affected by Hubbard's use of the County Property, including Hubbard's employees;

2) all materials and equipment located on the County Property; and

3) the County Property.

c. Hubbard shall comply with all applicable safety and security laws, ordinances, rules, regulations, standards and lawful orders of any public authority bearing on the safety and security of persons or property or their protection, damage, injury or loss affected by Hubbard's use of the County Property under this Agreement.

d. Hubbard shall act with reasonable care and discretion to prevent any threatened damage, injury or loss in any emergency affecting the safety and security of persons or property affected by Hubbard's use of the County Property under this Agreement.

6. **Insurance.** Hubbard shall procure and maintain, for the duration of this Agreement, insurance of the types and limits specified below and in the Contract. Insurance carriers furnishing these coverages must be authorized to do business in the State of Florida, and **must possess a minimum, current rating of A-Class VIII in the most recent edition of “Best's Key Rating Guide.”**

a. Workers' Compensation - covering its employees with statutory workers' compensation limits, and no less than \$500,000 for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the County and its agents, employees and officials.

b. Commercial General Liability - covering all operations including, but not limited to, Contractual, Products and Completed Operations and Personal Injury. The limits shall be not less than \$1,000,000, per occurrence, Combined Single Limits (CSL) or its equivalent. The General Aggregate limit shall either apply separately to the Contract or shall be at least twice the required occurrence limit. The County shall be specifically named as an additional insured.

c. Business Automobile Liability - covering all owned, non-owned and hired vehicles with limits of not less than \$1,000,000 per occurrence, Combined Single Limits (CSL) or its equivalent.

d. Pollution Legal Liability – Pollution Legal Liability with a limit of not less than one million dollars (\$1,000,000) per occurrence on a per-project basis.

e. “All-risk” property insurance, including equipment, for the full replacement value of such property.

Prior to entering upon the County Property, and during the duration of the Agreement, Hubbard shall file with the County current certificates of all required insurance on forms

acceptable to the County, which shall include the Contract number and project title and thirty (30) days prior written notice of cancellation or reduction in coverage, except ten (10) days prior written notice is allowed for cancellation due to non-payment of premium.

Failure of the County to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the County to identify a deficiency from evidence provided will not be construed as a waiver of Hubbard's obligation to maintain such insurance.

Failure of Hubbard to maintain adequate insurance coverage for itself or for any other persons or entities for which it is responsible shall not relieve Hubbard of any contractual responsibility or obligation.

It shall be the responsibility of Hubbard to ensure that all its subcontractors maintain adequate insurance until the completion of the work under the Contract. Hubbard shall obtain certificates evidencing such insurance from its subcontractors, and shall promptly furnish copies of certificates of insurance evidencing coverage for each subcontractor when requested by the County. Failure of Hubbard to maintain adequate insurance coverage for itself or for any other persons or entities for whom it is responsible, or to ensure that its subcontractors maintain adequate coverage, shall not relieve Hubbard of any contractual responsibility or obligation or liability.

7. ***Indemnification.*** Hubbard shall indemnify, defend, and hold harmless the County from and against any and all liabilities, claims, losses, costs, damages, fees, fines, suits or expenses of any kind and nature (including without limitation, attorneys' fees), for injury or death to persons or damage to property or property rights arising out of Hubbard's use of the County Property, or the use of the County Property by Hubbard's employees, agents, contractors, subcontractors, vendors and suppliers.

Hubbard assumes all risk of damage to property owned by Hubbard, its employees, agents, contractors, subcontractors, vendors and suppliers that may occur while on or about the County Property for any reason whatsoever.

The indemnification provisions contained herein shall survive the termination of this Agreement.

8. ***Breach of Agreement.*** The failure of Hubbard to comply with any covenant or condition of this Agreement shall constitute a breach of this Agreement. If Hubbard is in breach of this Agreement in any manner, the County shall give Hubbard 30 days written notice and an opportunity to cure the breach before terminating the Agreement.

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.***

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

b. The County may terminate this Agreement upon the breach of this Agreement by Hubbard pursuant to the terms of Paragraph 8 herein.

11. ***Restoration.***

a. Hubbard shall restore the County Property to the condition it was prior to Hubbard's use. The entire County Property shall be graded and level at the time it is returned to the County.

b. If Hubbard fails to restore the County Property as provided in

subparagraph a. above, the County may restore the County Property to such condition, and Hubbard shall reimburse the County for all expenses thereby incurred for such restoration.

12. **Compliance with Applicable Laws.** Hubbard shall observe and comply with all applicable federal, state, and local rules, orders, laws and regulations pertaining to the use of the County Property.

13. **Amendments to Agreement.** The conditions and covenants of this Agreement shall not be amended or modified other than in writing signed by the 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 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 Public Works
Highway Construction Division
Attn: Manager
4200 South John Young Parkway
Orlando, Florida 32839
Fax: (407) 836-7714

and

Orange County Administrative Services Department
Real Estate Management Division

Attn: Manager
P.O. Box 1393
Orlando, Florida 32802
Fax: (407) 836-5969

As to Hubbard: Hubbard Construction Company
1936 Lee Road, Suite 300
Winter Park, Florida 32789
Fax: (407) 623-3952

The names, addresses and/or facsimile numbers may be changed by written notice as above provided. Notice shall be effective upon receipt. Notice will also be given simultaneously to any secured lenders whose addresses have been given to County.

Hubbard shall notify the County of any changes to its ownership or mailing address.

16. **Validity.** The validity, interpretation, construction and effect of this Agreement shall be in accordance with and be 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.** Hubbard, its employees, agents, contractors, subcontractors, vendors and suppliers shall not discharge any hazardous or toxic materials or waste on the County Property. The storage and containment of any hazardous or flammable materials shall be in accordance with all OSHA requirements and in compliance with all state and local laws, regulations and ordinances. Furthermore, the County may, within 30 days of termination of this Agreement, request, and Hubbard shall promptly cause to be prepared, at its sole expense, and provide to the County, a Phase I Environmental Site Assessment for the County Property conducted according to ASTM E1527-05, or such other environmental report as

the County may reasonably deem necessary. Hubbard shall be responsible for any necessary clean-up, monitoring, testing or other remedial action connected to any such storage or discharge.

Hubbard 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 Hubbard, its employees, officers, agents, contractors, subcontractors, invitees or assignees 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, or elsewhere in connection with the transportation of hazardous substances to or from the County Property.

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.

[SIGNATURES ON FOLLOWING PAGES]

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: 9.15.15

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: *Noelia Perez*
for Deputy Clerk

Printed Name: Noelia Perez



WITNESSES:

Victoria Clark
Print Name: Victoria Clark

William Dumas
Print Name: William Dumas

STATE OF Florida

COUNTY OF Orange

HUBBARD CONSTRUCTION COMPANY, a Florida corporation

By: P. Frederick O'Dea, Jr.
Print Name: P. Frederick O'Dea, Jr.
Title: Vice President & Secretary
Date: 8/11/15

BEFORE ME, a Notary Public in and for said County and State on the date below, personally appeared P. Frederick O'Dea, Jr., as the V.P. & Secretary of Hubbard Construction Company, a Florida corporation, and that he/~~she~~ acknowledged executing the foregoing instrument on behalf of said corporation. Said person () is personally known to me or () produced a driver's license issued by Florida, a State of the United States which is either current or has been issued within the past five (5) years and bears a serial or other identification number.

IN WITNESS WHEREOF, I have affixed my notarial seal this 11th day of August, 2015.

Victoria L. Clark
Signature of Notary Public

Printed Name of Notary Public: VICTORIA L. CLARK
Notary Public - State of Florida
My Comm. Expires Jul 25, 2017
Commission # FF 29524
Bonded Through National Notary Assn.

[NOTARY SEAL]

Proposed site for Hubbard Laydown yard.



Tax I.D. #07-24-29-3847-00-010

EXHIBIT "A"