

**LICENSE AGREEMENT**

*between*

**EQUAL JUSTICE INSTITUTE**

*and*

**ORANGE COUNTY, FLORIDA**

*and*

**CITY OF ORLANDO, FLORIDA**

*regarding*

**PLACEMENT OF HISTORICAL MARKER ON  
ORANGE COUNTY, FLORIDA'S PROPERTY**

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**THIS LICENSE AGREEMENT** (the “**License Agreement**”) is entered into by and between **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida, located at 201 South Rosalind Avenue, Orlando, Florida 32801 (the “**County**”), the **EQUAL JUSTICE INITIATIVE**, an Alabama non-profit corporation with its principal address located is 122 Commerce Street, Montgomery, Alabama 36014 (“**EJI**”), and the **CITY OF ORLANDO, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, located at 400 South Orange Avenue, Orlando, Florida 32801 (the “**City**”). EJI, City and County shall be individually referred to as “**Party**” and collectively as “**Parties.**”

**RECITALS**

**WHEREAS**, the Parties share an interest and goal of preserving and displaying the Central Florida area's rich history; and

**WHEREAS**, the EJI has researched the November 1920 Ocoee Massacre concluding that somewhere between six to over thirty African Americans were killed; twenty-five black homes, two black churches, and a masonic lodge were burned; and an African American man named July Perry was beaten, shot, and lynched in Orlando; and

**WHEREAS**, the County owns the land in fee simple adjacent to the Orange County Regional History Center (“**History Center**”) known as Heritage Square, located northwest of the intersection of Central Boulevard and Magnolia Avenue in downtown Orlando (the “**Site**”); and

**WHEREAS**, Heritage Square is a recreational facility that is operated and controlled by the City; and

**WHEREAS**, EJI has requested that it be allowed to install a historical marker in Heritage Square memorializing July Perry and the 1920 Ocoee Massacre (the “**Marker**”); and

**WHEREAS**, EJI has submitted a monument application with the Director of Families, Parks and Recreation, and the District Commissioner for review in accordance with City’s Policies and Procedures §211.4 and such application was considered by the appropriate City Divisions and the Families, Parks and Recreation Advisory Board which recommended approval; and

**WHEREAS**, the County, as the land owner, and the City as the operator of the recreational facility, both agree to permit the installation of the Marker on the Site; and

**WHEREAS**, EJI agreed to organize and coordinate the design, placement, and maintenance of the Marker in accordance with the terms and conditions as set forth in this License Agreement; and

**WHEREAS**, the Parties desire to set forth the terms and conditions under which the Marker shall be allowed to be installed at the Site and maintained by EJI.

**NOW THEREFORE**, in consideration of the promises and covenants in this License Agreement, the Parties agree as follows:

**Section 1.**     **Purpose of License.** The purpose of this License Agreement shall be to allow EJI, through its authorized agents, to enter the Site for the purposes of installing and maintaining the Marker in accordance with the terms and conditions set forth in this License Agreement.

**Section 2.**     **Creation of the License.** The Site shall not be utilized by EJI for any purpose other than that agreed upon in this License Agreement. The EJI and its authorized agents shall be allowed ingress and egress over such portion of the Site, as is reasonably necessary, for the installation, maintenance, and removal of the Marker, provided specifically, however, that access to the site by motor vehicles or equipment used by EJI for the installation, maintenance, relocation, re-installation, and removal shall only be authorized or permitted with the prior written permission of the County from the Authorized Agent designated in **Section 12** or the County Administrator or their designee. Such access shall be during normal business hours or as otherwise authorized by the County. EJI expressly acknowledges and agrees that neither this License Agreement nor EJI’s activities creates an ownership or possessory interest in the Site or any portion of the County’s property. The County and EJI agree and acknowledge that the placement of the Marker on the Site does not provide any ownership or possessory interest to the County of the Marker.

**Section 3.**     **Marker.** The design of the Marker to be installed at the Site is more particularly described and depicted on “**Attachment A**” to this License Agreement, which is attached and incorporated herein by this reference. EJI shall not make any material change to the design of the Marker without the prior approval of: (1) the County Administrator, their designee, or other authorized person as the County may designate from time to time pursuant to **Section 12**,

and (2) the City's Families, Parks and Recreation Department Director, their designee, or such other authorized person as the City may designate from time to time pursuant to **Section 12**.

**Section 4.**     **Term.** The term of this License Agreement shall be for a period of twenty-five (25) years from the effective date unless otherwise terminated in accordance with the terms of this License Agreement. The effective date of this License Agreement shall be the date upon which it is executed by the last party executing the document ("**Effective Date**"). This License Agreement may be renewed for three additional five (5) year intervals upon written approval of the County and the City. County's Administrator or their designee is hereby authorized to renew this License Agreement on behalf of County. City's Families, Parks and Recreation Department Director or their designee is hereby authorized to renew this License Agreement on behalf of City.

**Section 5.**     **Maintenance and Security.** Throughout the term of this License Agreement, EJI shall be solely responsible for the maintenance of the Marker at no cost to the County or City. EJI shall maintain the Marker and Site in a good, safe, and clean condition. In the event EJI fails to maintain the Marker and the Site in a good, safe, and clean condition, as reasonably determined by City or County, City or County may maintain the Marker or Site. In the event City or County maintain the Marker or Site, City or County may charge EJI any applicable charge or fees assessed for the maintenance of such Marker or Site.

**Section 6.**     **Location of Marker.**

(a)     The location of the Marker shall be as shown on the attached site map of the History Center property, which map is marked "**Attachment B.**" The Parties agree that the site for the Marker shall be on an area not to exceed a base ground area of 3.5 feet by 3.5 feet and a height of 8 feet (the "**License Area**").

(b)     Notwithstanding any provision to the contrary, in the event that the County or City elects to erect any structure, as that termed is defined in Section 66.200 of the Orlando City Code, excluding fences and signs, or perform other significant work in the License Area, the County, at its election and upon ninety (90) days prior written notice to EJI, shall have the right to either require EJI to relocate the Marker to another location within the Site at EJI's own expense or, if reasonably necessary, to terminate this License Agreement and require EJI to remove the Marker from the License Area and restore the License Area in the manner described in **Section 7** below.

**Section 7.**     **Restoration of Site.** In the event of removal or relocation of the Marker, EJI shall be solely responsible for restoring the Site to its prior condition. Such restoration shall be at the sole cost of EJI and to the reasonable satisfaction of the County and City.

**Section 8.**     **Termination.**

(a)     This License Agreement may be terminated at any time by any party upon ninety (90) days written notice to the other parties.

(b) This License Agreement may be terminated by any party for a breach of any covenant or condition of this License Agreement. Any party may put another party on notice of a violation of any provision of this License Agreement in writing directed to the persons designated in **Section 13** of this License Agreement. The entity put on notice of a violation of this License Agreement shall have a forty-five (45) day period to cure any alleged breach of a condition of this License Agreement, except and unless the alleged breach presents an imminent threat to the public health and safety of History Center users, County on-site History Center personnel, or the public. Such a breach relating to an imminent threat or danger, as defined by the County, must be cured within five (5) days. In the event of a breach of this License Agreement that is not timely cured, the sole legal remedies of the parties to this License Agreement are: (i) specific performance of this License Agreement, or (ii) termination of the License Agreement.

**Section 9.**     **Insurance.** EJI agrees to maintain general liability insurance and Workers' Compensation in accordance with Chapter 440, Florida Statutes. Upon request, EJI shall provide an affidavit or Certificate of Insurance evidencing such insurance. The City or County's failure to request proof of insurance or to identify any deficiency in coverage or compliance with the foregoing requirements shall not relieve EJI of its liability and obligations under this License Agreement. EJI shall require all contractors performing work on the Site on behalf of EJI to procure and maintain workers' compensation, commercial general liability, business auto liability and contractor's pollution liability insurance coverage. The County and City shall be identified as additional insureds on all general liability policies.

**Section 10.**     **Indemnification.** EJI agrees to defend, indemnify and hold harmless the City and County, their officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorney's 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 License Agreement. The foregoing shall not constitute an agreement by any party to assume any liability for the acts, omissions, or negligence of the other party. Additionally, nothing in this License Agreement shall in any way constitute, or shall in any way be construed to be, a waiver of either the County's or the City's sovereign immunity or the protections granted to the County and the City pursuant to Section 768.28, Florida Statutes.

**Section 11.**     **Assignments and Successors.** The parties deem this License Agreement to be personal in nature. As such, no party shall assign, convey, or transfer its interest in this License Agreement without the written consent of the others, which consent shall be in the sole determination of the parties with the right to consent. Each party binds itself and its partners, successors, executors, administrators, and assigns to the other parties of this License Agreement and to the partners, successors, executors, administrators, and assigns of such other parties, in respect to all covenants of this License Agreement.

**Section 12.**     **Authorized Agent.** For purposes of **Sections 2 and 3**, the Authorized County Agent shall be:

Michael Perkins

Orange County Regional History Center Historical Marker  
County Lease File #10045

Manager, Historical Museum  
Orange County Regional History Center  
65 E. Central Boulevard  
Orlando, FL 32801

In the absence of the County Authorized Agent, the County Administrator or their designee may serve in this capacity.

For purposes of **Sections 2 and 3**, the Authorized City Agent shall be:

Lisa Early  
Director, Families, Parks and Recreation Department  
595 North Primrose Drive  
Orlando, FL 32803

In the absence of the Authorized City Agency, the Chief Administrative Officer or his or her designee may serve in this capacity.

**Section 13.** **Notices.** Any notice required or permitted hereunder shall be delivered by hand delivery, express courier, or certified mail, return receipt requested, and shall be effective upon receipt of the same. Notices shall be delivered to each of the parties at the following addresses or at such other addresses as specified by written notice in compliance with the terms of this paragraph. Either party may change the person or address for notices under this License Agreement by providing the other party notice of the change, in writing, at least five (5) days prior to such change.

**County:** County Administrator  
Orange County Administration Building  
201 S. Rosalind Avenue, 5<sup>th</sup> Floor  
Orlando, FL 32801

**With a copy to:** Orange County Real Estate Management  
Attn: Manager  
400 E. South Street, 5<sup>th</sup> Floor  
Orlando, FL 32802

**City:** City of Orlando  
Attn: Lisa Early, Director of Families, Parks and Recreation  
Department  
595 North Primrose Drive  
Orlando, FL 32803

**EJI:** Equal Justice Initiative  
Attn: President  
122 Commerce Street

Montgomery, Alabama 36014

**Section 14.**    **Venue.** For any legal proceeding arising out of or relating to this License Agreement, each party hereby submits to the exclusive jurisdiction of, and waives any venue or other objection against the Ninth Circuit Court in and for Orange County, Florida. Should any federal claims arise for which the courts of the State of Florida lack jurisdiction, venue for those actions shall be in the Orlando Division of the U.S. Middle District of Florida.

**Section 15.**    **Attorney's Fees.** In the event legal action is required under this License Agreement, each party and those acknowledging this License Agreement shall be responsible for their own attorney's fees and costs at trial and on appeal.

**Section 16.**    **Severability.** The provisions of this License Agreement are declared by the parties to be severable. However, the material provisions of this License Agreement are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this License Agreement. Therefore, should any material term, provision, covenant or condition of this License Agreement be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from holding.

**Section 17.**    **Applicable Law.** This License Agreement, and any and all actions directly or indirectly associated with this License Agreement, will be governed by and construed in accordance with the internal laws of the state of Florida, without reference to any conflicts of law provisions.

**Section 18.**    **Third Parties.** Nothing in this License Agreement, express or implied, is intended to, or shall confer, upon any person, other than the parties and their respective successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature under or by reason of this License Agreement.

**Section 19.**    **Authority of Signatory.** Each signatory below represents and warrants that he or she has full power and is duly authorized by their respective party to enter into and perform this License Agreement. Such signatory also represents that he or she has fully reviewed and understands the above conditions and intends to fully abide by the conditions and terms of this License Agreement as stated.

**Section 20.**    **Counterparts.** This License Agreement may be executed in two or more counterparts, each of which shall be fully effective as an original, and all of which together shall constitute on and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

**Section 21.**    **Entire Agreement.** This written License Agreement constitutes the entire agreement between the parties and shall supersede and replace all prior agreements or

Orange County Regional History Center Historical Marker  
County Lease File #10045

understandings, written or oral, relating to the matters set forth herein. Any changes to this License Agreement shall be made in writing and approved by all parties.

**[ SIGNATURE PAGES FOLLOW ]**

**IN WITNESS WHEREOF**, the Parties have caused this "License Agreement between Equal Justice Institute and Orange County, Florida and City of Orlando, Florida for Placement of Historical Marker on Orange County, Florida's Property" to be executed by their respective officers and parties thereunto duly authorized to be effective as of the Effective Date.

**“County”**  
**ORANGE COUNTY, FLORIDA**

**By: Board of County Commissioners**

By: \_\_\_\_\_  
Jerry L. Demings  
Orange County Mayor

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Deputy Clerk

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_



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**“City”**  
**CITY OF ORLANDO**

By: \_\_\_\_\_  
Buddy Dyer  
Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Denise Aldridge, City Clerk

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

For the use and reliance of the City of Orlando, Florida only.

\_\_\_\_\_  
Assistant City Attorney

Date: \_\_\_\_\_

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Signed, sealed and delivered  
in the presence of:

**“EJI”**  
**Equal Justice Initiative**

Witness: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Witness: \_\_\_\_\_

Title: President

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

State of \_\_\_\_\_  
County of \_\_\_\_\_

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_ by \_\_\_\_\_, who is personally known to me or who has produced  
\_\_\_\_\_, as identification.

(Seal)

By: \_\_\_\_\_  
Notary Public  
Date: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**Exhibit “A”**

**Design of Historical Marker**

**Exhibit “B”**

**Location of the Historical Marker on the Site**