

SITE ACCESS AGREEMENT

THIS SITE ACCESS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2022, by and between **DBHH Properties, LC ("Owner")** and the **City of Orlando ("City")**.

RECITALS

WHEREAS, Owner is the owner of certain real property located at 727 & 731 Brookhaven Drive, Orlando, Florida, which have Parcel IDs identified as 13-22-29-0928-04-210 and 13-22-29-0928-04-200 by the Orange County Property Appraiser, more particularly described in **Exhibit "A"** attached hereto and incorporated into this Agreement by this reference (the "Property"); and

WHEREAS, the City has agreed to conduct certain remedial activity ("Remedial Activity") for the Former Spellman Engineering Superfund Site ("Site") pursuant to agreements with the United States Environmental Protection Agency ("EPA") and the Florida Department of Environmental Protection ("FDEP"); and

WHEREAS, in connection with City's actions to implement the Remedial Activity for the Site, City will require access to the Property; and

NOW THEREFORE, for and in consideration of the mutual promises and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Permitted Activities. Owner gives its permission to City to undertake the activities necessary to complete the Work activities detailed in the scope of work attached hereto as **Exhibit "B"** ("Permitted Activities"). The Permitted Activities shall not unreasonably interfere with Owner's operations and business activities conducted on the Property. The Permitted Activities are limited to the collection of groundwater samples, including the installation of two monitoring wells, subject to the following:
 - a. The monitoring wells installed on the Property shall be completed within 8-inch flush-mounted traffic bearing manholes and secured in a 2 ft. x 2 ft. concrete pad.
 - b. The Remedial Activity shall be performed in compliance with all applicable laws, rules and regulations, and City shall obtain all permits necessary for the conduct of the Remedial Activity.
 - c. The two monitoring wells authorized for installation on the Property shall be installed after 6 pm and before 7 am during Monday-Friday, or during the weekend at any time. The remaining Remedial Activity shall be performed during normal business hours.
 - d. City shall deliver to Owner a written request to enter the Property at least two days prior to the intended time for entry ("Request for Entry"). Owner hereby consents to notification solely by electronic mail sent to: Billy Bishop at Billy@BBDRE.com. Each Request for Entry shall specify the intended date(s) of entry and shall provide an estimated timeframe with which to complete the Remedial Activity, a description of the proposed Remedial Activity, including, without limitation, the location of the proposed

Remedial Activity on the Property, restrictions on access during the performance of the proposed Remedial Activity, the equipment and other machinery that will be utilized for the proposed Remedial Activity, and a list of contractors who will be performing the proposed Remedial Activity, and such other information as Owner reasonably requires in connection with such proposed Remedial Activity.

- e. City shall be solely responsible for the location of all aboveground and belowground utilities on the Property that may be impacted by the Remedial Activity and shall take no action that will result in any impairment to said utilities.
2. Permitted Parties. Owner hereby gives its permission to City and its authorized agents and representatives (collectively, the “Entrants”) to enter the Property for the sole purpose of completing and overseeing the completion of the Permitted Activities, subject to the provisions of this Agreement.
3. City’s Obligations.
- a. Upon Owner’s request in conjunction with any planned redevelopment of the Property, City will relocate or remove the wells from the Property within a reasonable time.
 - b. Simultaneously upon submittal to EPA and/or FDEP, City shall provide Owner with a copy of any correspondence or report submitted by City to EPA and/or FDEP regarding the Remedial Activity performed on the Property.
 - c. City shall pay for the Remedial Activity at City’s sole cost and expense. Owner shall have no liability for payment for any Remedial Activity performed on the Property.
 - d. City shall not take any action in connection with the Remedial Activity that may result in a lien or encumbrance against the Property. Without limiting the foregoing, however, City agrees to promptly pay when due all costs associated with the Permitted Activities and not to cause, permit or suffer any lien or encumbrance to be asserted against the Property or Owner related to the Permitted Activities.
 - e. City shall restore the Property as near as possible to its pre-entrant condition. City shall remove from the Property any materials generated while completing the activities that comprise the Permitted Activities including, for example, all drill cuttings and/or development or purge water (investigative derived waste, or investigative derived waste (“IDW”)). City shall be responsible for the proper staging and disposal of all IDW in accordance with applicable laws and regulations. No IDW shall remain on the Property for a period in excess of twenty-four (24) hours.
 - f. City shall cause the Entrants, as appropriate, to provide the following insurance coverage (“Required Insurance Policies”) for the Permitted Activities:
 - i. commercial general liability insurance covering its activities at the Property (“CGL Insurance”), with limits in the following amounts for
 - 1. bodily injury at \$1,000,000 per occurrence and \$2,000,000 general aggregate,

- 2. property damage at \$1,000,000 per occurrence and \$2,000,000 general aggregate;
 - ii. workers' compensation insurance (or the equivalent) ("WC Insurance"), with limits to satisfy all statutory requirements; and
 - iii. employers' liability insurance ("EL Insurance"), with limits of not less than \$500,000 per occurrence (collectively, "Required Insurance Policies").
 - g. City shall ensure that the following requirements apply to relevant Required Insurance policies:
 - i. *Additional Insured.* The CGL Insurance shall name Owner as an additional insured.
 - ii. *Primary.* The CGL Insurance shall be primary as regards to the insurance of the additional insured.
 - iii. *Waiver of Subrogation.* The CGL Insurance, the WC Insurance, and the EL Insurance shall contain waiver of subrogation endorsements in favor of Owner.
 - iv. *Insurance Certificates.* Certificates evidencing the Required Insurance Policies shall be furnished to Owner prior to entry onto the Property and shall provide that such insurance shall not be cancelled or materially changed with fewer than thirty (30) days' notice to Owner.
4. Owner's Obligations and Covenants. Owner agrees not to interfere with the Remedial Activity or authorize any activity on the part of Owner's contractors, subcontractors, agents, assigns, guests or invitees that interferes with the Remedial Activity, and Owner agrees not to conduct or authorize any activity that damages or destroys any wells, points or other equipment related to the Remedial Activity on the Property.
 5. Term. This Agreement will commence upon the execution hereof and will remain in effect for a period of two (2) years, or until EPA and FDEP have provided written notification to City that the Work is completed, whichever is sooner.
 6. Indemnification. To the extent provided by law and without waiving its sovereign immunity, City agrees to indemnify, and hold harmless Owner, and its officers, directors, members and employees, from and against all claims, suits, damages, liabilities, judgments, fines, attorneys' fees, penalties, losses, costs or expenses arising out of or caused by the negligence or willful misconduct of City, in connection with the performance of the Permitted Activities, or as a result of the negligence or willful misconduct of City, in connection with the access provided to Consultant under this Agreement, or as a result of any breach of this Agreement by the City; provided, however, City shall have no obligation to indemnify or hold harmless Owner, or its officers, directors members and employees, against that portion of any liability to the extent caused by, resulting from, or arising out of the negligence or willful misconduct of Owner, or its officers, directors, members or employees. The indemnity provided for above shall include, but not be limited to, liability for damages resulting from the personal injury or death of an employee of City, regardless of whether City has paid the respective employee under the Workers' Compensation Law of the State of Florida or other similar federal or state laws for the protection

of employees. City's indemnity obligations hereunder are limited to the financial limitations provided in FS 768.28, whether said claims, suits, damages, liabilities, judgments, fines, attorneys' fees, penalties, losses, costs or expenses arise from tort, contract or any other theory of law. The indemnities provided for in this Paragraph shall survive the termination or expiration of this Agreement.

7. Notices. Any notice, request, direction, instruction, payment or other communication required or permitted to be made or given by any party hereto will be in writing to the addresses set forth below or to such other address as the recipient may designate in writing to all parties and will be (i) delivered in person, (ii) sent registered or certified mail, return receipt requested, (iii) sent Federal Express, USPS Express Mail, UPS or other express delivery service with delivery confirmation, or (iv) sent by email, in which case notice will be deemed complete upon receipt of an electronic "read receipt" or a response from the intended recipient.

If to Owner: DBHH Properties, LC
Attn: Billy Bishop
250 North Orange Avenue
Suite 1500
Orlando, FL 32801-1818
Tel: 407-468-6507
Email: Billy@DBHH.com

If to City: Real Estate Manager
Attn: Laurie Botts
400 S. Orange Avenue
Orlando, FL 32801
Tel: 407-246-2653
Email: laurie.botts@orlando.gov

8. Electronic Mail as Writing. The parties expressly acknowledge and agree that the receipt of electronic mail will be deemed to be "written" and a "writing" for all purposes of this Agreement.
9. General Terms. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof. This Agreement will not be modified or amended in any respect except by written agreement by the parties in the same manner as this Agreement is executed. This Agreement will be governed by, construed under, and interpreted and enforced in accordance with the laws of the State of Florida. Any action brought to enforce the terms and conditions of this Agreement shall be brought only in the state or federal courts in and for Orange County, Florida. Electronic signatures, including signature pages transmitted via email, are deemed as originals.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed as of the day and year first written above.

Owner:

DBHH Properties, LC

Signature: _____

Print Name: _____

Title: _____

Date: _____

City of Orlando, Florida:

BY THE MAYOR OF THE CITY OF
ORLANDO, FLORIDA:

Mayor

Date

ATTEST, BY THE CLERK OF THE
CITY COUNCIL OF THE CITY OF
ORLANDO, FLORIDA:

City Clerk

Print Name

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
CITY OF ORLANDO, FLORIDA:

Assistant City Attorney

Print Name

EXHIBIT A
PROPERTY

EXHIBIT B

PERMITTED ACTIVITIES

The proposed monitoring well will be installed with a DPT drill rig and will be constructed of 1.5-inch diameter PVC well casing and 1.5-inch diameter, 0.010-inch PVC well screen. The screened interval of the well will include a prepacked 20/30 sand filter. The screened interval of the well will be 5 feet in length and installed across a 2 to 3 ft thick weathered lime rock layer that is typically encountered between 45 and 55 ft bls. Prior to installing the well, DPT soil cores will be collected continuously from approximately 30 to 60 ft BLS. The soil cores will be screened with a Photo Ionization Detector (PID) and visually classified by Geosyntec personnel. Based on the visual soil classification, the screened interval of the proposed monitoring wells will be installed across the weathered lime rock layer. A 2-foot pre-packed bentonite seal will be installed above the prepack filter sand. The remainder of the annular space will be filled with a cement seal to the surface. The wells will be completed in an 8-inch diameter steel vault that is embedded in a 24-inch by 24-inch by 4-inch thick concrete pad. After installation, traffic cones will be placed over the well pad for 24 hours to allow the concrete to cure. A typical well construction detail is attached.

The follow list presents the general drilling procedures that will be used for installing the proposed monitoring well:

- Prior to commencing drilling activities at the site, Geosyntec and the Driller will locate and mark out the proposed well location.
- Underground utilities will be located using the services of both Sunshine 811 and a private utility locator.
- Prior to installing the monitoring well, the borehole will be hand cleared to a depth of 5 ft BLS using a hand auger.
- The proposed location of the well will be moved as necessary to avoid underground and aboveground utilities.
- The drilling equipment will be decontaminated on the Orlando Utilities Commission (OUC) property.
- Upon completion of well installation, an 8-inch diameter steel manhole and concrete pad will be installed at the surface.
- The monitoring well will be developed by pumping groundwater from the well for up to 1 hour.
- IDW soil and groundwater will be containerized in 55-gallon drums.
- The IDW soil and water drums will be placed on the OUC property.

A groundwater sample will be collected from the well in accordance with FDEP SOPs within one week of installing the monitoring well. In addition, groundwater samples will be collected from this well either semiannually or annually. A land surveyor will survey the top of casing elevation and the horizontal location the well.