

**PROPERTY ACCESS AGREEMENT**

**THIS AGREEMENT** is entered into, as of the Effective Date indicated below, between **THE CITY OF LEESBURG, FLORIDA** (hereafter referred to as the “City”), whose address is 501 West Meadow Street, Leesburg, Florida 34748, and **WILLIAM D. McKNIGHT & KATHRYN A. McKNIGHT**, as co – trustees of the **William D. McKnight Revocable Trust Agreement of 1997 dated June 24, 1997**, and as co – trustees of the **Kathryn A. McKnight Revocable Trust Agreement of 1997 dated June 24, 1997** (hereafter referred to as “Owners”),

**WITNESSETH:**

**THAT** owners own the real property located at 2101 West Main Street in Leesburg, Florida (the “Property”), formerly and currently used as a gasoline filling station. Owners have informed the City that groundwater contamination exists on the Property. The Florida Department of Environmental Protection (“FDEP”) has approved a Remedial Action Plan (the “Plan”) which, among other responsibilities, requires Owners to construct and monitor groundwater monitoring and recovery wells, some of which the Plan requires to be located on City owned right of way. The City has agreed to permit those wells to be built on its right of way, and to allow access to the wells for monitoring purposes, subject to all terms and conditions of this Agreement.

**NOW THEREFORE**, for and in consideration of the mutual covenants and promises contained in this Agreement, the benefit to the public of remediation of the contamination on the Property, and other good and valuable considerations, the parties hereby agree as follows:

1. The City grants to Owners access to its right of way for 11 air sparge wells, 11 vapor extraction wells and 6 monitoring wells, to be located where shown on Exhibit “A” attached hereto and incorporated herein by reference. Owners’ access is nonexclusive, subordinate to the rights of the City and the public to utilize the road right of way, and limited to the express purposes stated in this Agreement, which are to install the monitoring wells, and conduct groundwater monitoring activities in strict accordance with FDEP’s letter dated September 6, 2013, approving the Plan. Owners shall make no other use of the City’s right of way without a written amendment to this Agreement, approved by the Leesburg City Commission and executed by the Mayor.

2. The initial term of this Agreement shall be one year from its Effective Date (the date on which the Leesburg City Commission approves execution of this Agreement by the Mayor). This Agreement shall renew thereafter automatically on an annual basis, under the same terms and conditions, until the end of the third full calendar year after the Effective Date, when this Agreement shall expire unless the parties enter into a written extension approved by the City Commission and signed by the Mayor. Furthermore, the City may terminate this Agreement at any time by giving written notice to Owners, not less than 45 days prior to the date termination is to take effect, if Owners breach any term, condition or covenant of this Agreement, or if the City requires use of its right of way for roadway or utility purposes. Owners shall then remove all wells and other items from the City’s right of way, in compliance with all legal requirements applicable to removal and capping such wells.

3. For so long as this Agreement remains in effect, including any extensions, Owners shall provide to the City copies of each and every status report or other items submitted by Owners to FDEP.

4. Owners shall be responsible for maintaining the wells and any other equipment or improvements associated with the wells and located on the City right of way. Failure to maintain the wells and associated improvements shall be grounds for immediate termination of this Agreement by the City.

5. Owners shall indemnify the City and hold it harmless against any loss, damage, claim, or cause of action whatsoever, arising out of or in any way related to the use by or entry onto the City right of way Owners, their employees, licensees, invitees, and independent contractors, and any others present on the City right of way in connection with Owners' activities, along with all costs and legal fees associated with any such loss, damage, claim or cause of action. As further protection for the City, Owners shall obtain and keep in force throughout the time this Agreement is in effect, a policy of public liability insurance, designating the City as an additional insured party, with limits of not less than \$1,000,000.00 per person, \$2,000,000.00 per incident, and \$500,000.00 for property damage, covering any claim or cause of action for which Owners are required to indemnify the City under this Paragraph. Proof of such insurance shall be provided prior to approval of this Agreement by the City Commission, and annually thereafter. Failure to maintain continuously this insurance coverage shall be a material breach of this Agreement. The policy must be obtained from an insurer licensed to conduct business in Florida, having an "A" or better rating from A.M. Best.

6. Upon expiration or earlier termination of this Agreement, Owners must remove all wells and associated improvements from the City's right of way, properly abandon the wells in accordance with all legal requirements then applicable, and restore the right of way to its original condition, all at Owners' expense. Removal must be completed no later than 60 days after the date of expiration or termination of this Agreement.

7. Owners acknowledge this Agreement does not grant them any easement, lease, or other permanent interest in the City's right of way.

8. The City has entered into this Agreement at the request of Owners, to facilitate their remediation efforts. Owners are deriving the primary benefit from this Agreement, as a result of which this Agreement shall be construed most strongly in favor of the City, for the protection of the City and the public, and any ambiguity shall be resolved in favor of the City. This Agreement shall be construed under the laws of Florida. Venue for any action or proceeding arising out of this Agreement shall be in Lake County, Florida. In the event of any litigation arising from this Agreement or Owners' activities hereunder, the prevailing party shall be entitled to recover its reasonable attorneys' fees in addition to any other relief granted, whether at trial, on appeal, in any proceedings in bankruptcy or insolvency, and in any proceedings to collect or enforce a judgment obtained, monetary or nonmonetary.

9. All notices under this Agreement shall be sent either by United States First Class Mail, postage prepaid, by widely recognized overnight courier such as UPS or FedEx, or by hand delivery. Notices sent by mail shall be effective three business days after posting. Notice by

courier shall be effective on the next business date after the notice is placed into the hands of the courier service, properly addressed with fees prepaid. Notice delivered by hand shall be effective as of the date of actual delivery. Notices shall be sent to the following addresses, or such other places as either party may designate in writing after the Effective Date:

TO THE CITY:

City of Leesburg  
Attention: City Manager  
501 West Meadow Street  
Leesburg, Florida 34748

TO OWNERS:

William D. McKnight & Kathryn A. McKnight  
Post Office Box 1110  
Brandon, Florida 33509 – 1110

10. This Agreement sets forth the entire understanding of the parties with regard to its subject matter. It supersedes and takes precedence over any and all prior negotiations, representations and agreements, oral or written, all of which are deemed to have merged into this Agreement and to have been extinguished except to the extent specifically set forth herein. This Agreement may not be amended orally, by implication, by course of conduct, or in any other manner whatsoever than by way of a written instrument signed by both parties hereto or their lawful successors. This Agreement shall be binding on the parties hereto, as well as on their lawful successors and assigns. Each party represents for the benefit of the other that it has not entered into this Agreement in reliance on, or on the basis of, any promise, negotiation, representation, undertaking or agreement of the other party, oral or written, which is not specifically set forth within this Agreement.

11. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute the same Agreement. Signatures affixed or transmitted by electronic mail, telefax or other electronic means, shall be as valid and effective as an original signature to bind the party so signing to the terms of this Agreement.

**IN WITNESS WHEREOF**, the parties have entered into this Agreement on the dates shown below.

THE CITY OF LEESBURG, FLORIDA

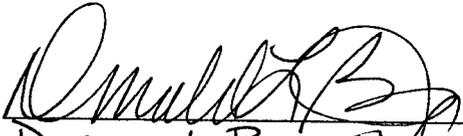
BY: \_\_\_\_\_  
JOHN CHRISTIAN, Mayor

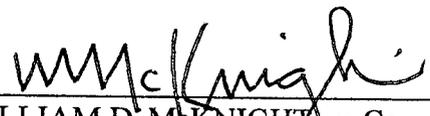
Attest: \_\_\_\_\_  
BETTY RICHARDSON, City Clerk

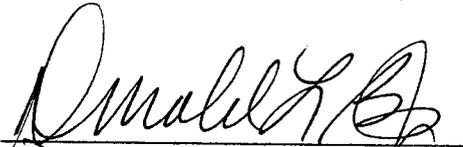
APPROVED AS TO FORM AND CONTENT:

\_\_\_\_\_  
CITY ATTORNEY

OWNERS:

  
\_\_\_\_\_  
DONALD L. BODIE JR.  
\_\_\_\_\_  
(Type or print name of witness)

  
\_\_\_\_\_  
WILLIAM D. McKNIGHT, as Co - Trustee

  
\_\_\_\_\_  
DONALD L. BODIE JR.  
\_\_\_\_\_  
Trustee  
(Type or print name of witness)

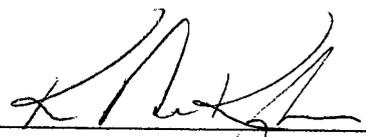
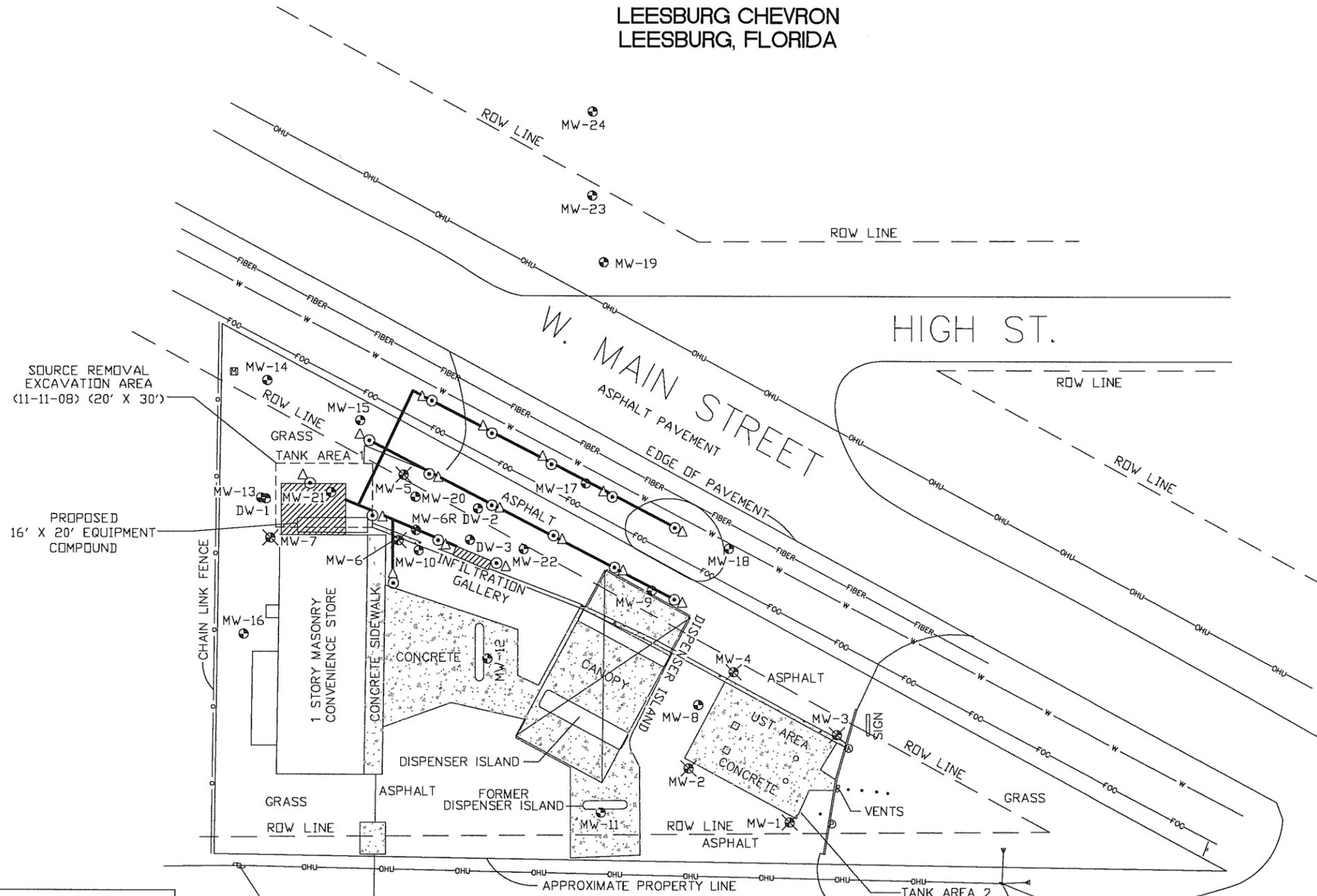
  
\_\_\_\_\_  
KATHRYN A. McKNIGHT, as Co -

FIGURE 8  
 REMEDIATION SYSTEM LAYOUT  
 LEESBURG CHEVRON  
 LEESBURG, FLORIDA



LEGEND:

- ⊕ UTILITY POLE
- MW-1 ⊕ MONITOR WELL & IDENTIFICATION
- ⊗ DESTROYED MONITOR WELL
- ⊕(A) AIR/VACUUM
- ⊕(P) PAY PHONE
- BOLLARD
- W — WATER LINE
- FOC — FIBER OPTIC CABLE
- OHU — OVERHEAD UTILITY
- ⊙ PROPOSED AIR SPARGE WELL LOCATION
- △ PROPOSED SOIL VAPOR EXTRACTION WELL LOCATION
- — PROPOSED TRENCHING

