



Interoffice Memorandum

February 9, 2018

TO: Mayor Teresa Jacobs
and Board of County Commissioners

FROM: Mark V. Massaro, P.E., Director, Public Works Department

**CONTACT PERSON: Mark V. Massaro, P.E., Director
Public Works Department**

PHONE NUMBER: (407) 836-7970

**SUBJ: Hamlin Groves Trail Extension – Right of Entry for Jr. Davis
Construction Company, Inc.**

The Road Network Agreement for the northerly extension of Hamlin Groves Trail from New Independence Parkway to Tiny Road was approved by the Board on February 24, 2015 and recorded at OR Book/Page 10881/2327. In addition, a First Amendment was approved by the Board on April 25, 2017, which revised the construction cost payment procedure and extended the time frame for construction. As a part of the above agreements, a series of future agreements are required to be executed to formally transfer the right of way required for construction of the roadway. These agreements cannot be executed until the contractor for the project has completed certain construction elements, and to do so, he will require a right of entry to access the Southwest Water Reclamation Facility property.

This right of entry gives the road contractor, Jr. Davis Construction Company, Inc., the right to access the SWWRF property to construct the roadway project within the future right of way for the roadway, to construct embankment of the road project just outside the right of way and to construct new utility facilities all in accordance with the approved construction plans.

Orange County Attorney's Office staff, Utilities Department and Risk Management Division have reviewed the agreement and find it acceptable.

Action Requested: Approval and execution of Right of Entry Agreement between Orange County and Jr. Davis Construction Company, Inc. to allow temporary construction access for the extension of the Hamlin Groves Trail. District 1.

MVM/JN/wsv

Attachment(s)

BCC Mtg. Date: February 20, 2018

**Project: Hamlin Trail Extension Phase II,
Right of Entry to Southwest Water Reclamation Facility**

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT ("Agreement") is made and entered as of the date of the last execution below, between **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida (the "County"), whose principal address is P.O. Box 1393, Orlando, Florida 32802-1393, and **JR. DAVIS CONSTRUCTION COMPANY, INC.**, a Florida corporation, whose principal address is 210 S. Hoagland Boulevard, Kissimmee, Florida 34741 ("Licensee").

RECITALS:

A. The County owns certain real property located in Orange County, Florida, as more particularly described on **Exhibit "A"** attached hereto and by this reference made a part hereof (the "SWWRF Property") on which the County intends to construct and operate water reclamation facilities known as Southwest Water Reclamation Facility.

B. Licensee is under contract to construct a roadway project known as Hamlin Groves Trail Extension, Phase II (the "Roadway Project") in western Orange County. The Roadway Project includes the construction of the Hamlin Groves Trail Extension roadway with drainage facilities, stormwater treatment ponds and other utilities. The Roadway Project is situated over the properties of three governmental entities: property currently owned by the Central Florida Expressway ("CFX"); property currently jointly owned by the City of Orlando and the County as the Water Conserv II Partners; and property solely owned by the County (the SWWRF Property).

C. Licensee has requested a right of entry license for access to the SWWRF Property in order to construct the Roadway Project on a portion of the SWWRF Property in accordance with the plans for the Roadway Project prepared by KCG Kelley, Collins, and Gentry, Inc., signed and sealed by Steven Martin Kreidt on January 16, 2018 (the "Construction Plans"), and by this reference are made a part hereof. A copy of the Construction Plans is available for review at the Office of the County Engineer, Orange County Public Works Department.

D. The parties desire to enter into this Agreement for the purpose of evidencing their respective rights and obligations in connection with Licensee's request as described above.

NOW, THEREFORE, in consideration of ten dollars (\$10.00) paid in hand by Licensee to the Water Conserv II Partners, the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.

2. **License; No Grant of Easement.** The County hereby grants unto Licensee a non-exclusive License over, upon and across the SWWRF Property for the purposes hereinafter stated, all subject to the terms, conditions and limitations set forth herein. It is expressly stipulated that this License is for permissive use only and that the placing of utilities, wires, cables, pipes, or other structures or alterations within the SWWRF Property pursuant to this License shall not operate to create or vest any easement or other property right in the Licensee or anyone else.

3. **Purposes of License.** The purpose of the License is to permit Licensee, through itself, its employees, subcontractors, consultants, and agents, to enter upon the SWWRF Property (a) to construct the Roadway Project within the boundaries of the right-of-way of the Roadway Project (b) to enter the area outside the right-of-way but within the Roadway Project to construct the embankment of the Roadway Project (including without limitation, altering the grade of the SWWRF Property by cutting and filling, as necessary); and (c) to construct new utility facilities, and adjust the existing improvements to the new grade. All construction activities described in this section shall be performed in accordance with the Construction Plans referenced in Recital C above. The foregoing described activities located outside of the right-of-way, including grading and slope activities and other improvements, are collectively hereinafter referred to as the "**Grading Improvements**". This License does not permit Licensee to conduct any activity, including the Grading Improvements on the SWWRF Property outside the limits of the Roadway Project.

4. **Access to Areas Outside of the Roadway Project.** This License does not authorize Licensee, its employees, subcontractors, consultants, or agents to conduct any construction activities outside of limits of the Roadway Project as depicted on the Construction Plans.

5. **No Interference With County Operations Permitted.** Under no circumstances may Licensee block any SWWRF roadway or operation or impede or restrict the normal operation of the County without the prior written consent and approval from the County. Any interference with the County's operations as determined by the County in its sole discretion may result in immediate suspension or termination of this License. If the County determines that Licensee's activities, in whole or in part, unreasonably interferes in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion of the SWWRF Property, Licensee shall, upon receipt of notice, immediately alleviate the interference at no cost to the County.

6. **Inspections.** All work, materials, and equipment shall be subject to inspection and approval by the County at any time.

7. **Presence of Abnormal Conditions.** In the event Licensee, its employees, subcontractors, or agents encounter any abnormal condition which may indicate the presence of a hazardous substance, toxic waste, or pollutants, Licensee shall immediately cease all work within the SWWRF Property and immediately contact the County. Abnormal conditions may include

discolored earth or groundwater, visible fumes or smoke, abnormal odors, excessively hot soil or water, tanks or barrels, or other conditions which appear abnormal. The County shall notify Licensee of any suspension or revocation of the License to allow for contamination assessment and remediation. The suspension or revocation shall remain in effect until otherwise notified by the County.

8. **Term; Termination of License.** The term of this Agreement shall commence upon its Effective Date (as defined in this Agreement). **This License is terminable at will by the County.** Unless terminated sooner, this License and the rights granted herein with respect to the same expires upon the earlier of (a) at such time as the Grading Improvements have been completed, including all restoration activity; (b) expiration of the required insurance; (c) after three years from the Effective Date; or (d) written notice by the County. After the expiration of the term of this License, any entry onto SWWRF Property requires a new agreement.

9. **Fill Dirt.** The parties acknowledge that Licensee intends to utilize the fill that is cut as part of the Licensee's grading activities on SWWRF Property. Any fill dirt excavated from the SWWRF Property shall remain on the SWWRF Property, either for use in the grading of the SWWRF Property or stockpiled at a site designated by the County, at no cost to the County.

10. **Fence.** Contemporaneous with the construction of the Grading Improvements, Licensee shall have the right to remove the existing fence along boundary of the Roadway Project and the SWWRF Property. Licensee must install a temporary fence at the boundary of the Roadway Project or at such other locations as approved by the County prior to removal the existing fence. Upon completion of the Grading Improvements, Licensee shall reestablish the permanent fence in accordance with the Construction Plans.

11. **Restoration of Conserv II Property.** Licensee will restore the SWWRF Property to as good as, or better than, its original condition prior to or at termination of the License.

12. **Compliance with Applicable Law; Permits and Approvals.** Licensee, its employees, subcontractors, consultants, and agents shall comply with all applicable federal, state, and local laws and regulations relating to the construction of the Grading Improvements, use of the SWWRF Property, and in performance of the obligations set forth in this Agreement. Licensee shall be responsible for obtaining all governmental permits, approvals and licenses necessary to undertake the making of the Grading Improvements within the SWWRF Property as contemplated by this Agreement.

13. **Non-Exclusive License.** This License is non-exclusive, and the County reserves unto itself, its successors and assigns, the right to use, pass, and repass over and upon the SWWRF Property in any manner whatsoever.

14. **Indemnity.** Licensee agrees to defend, indemnify and hold harmless the County from and against any and all claims, actions, causes of action, loss, damage, injury, liability, fines, cost or expense, including without limitation, attorneys' fees and paralegal fees (whether incurred before, during or after trial, or upon any appellate level), arising from Licensee's use of

the SWWRF Property or from the exercise by Licensee of any rights granted by this Agreement; excepting, however, that the County shall not be indemnified, saved, defended or kept free and harmless from any loss or liability resulting from its own negligence or the negligence of its contractors, employees or agents.

15. **Insurance.** Licensee shall ensure that each of its subcontractors, consultants or agents performing work on behalf of the Licensee to procure and maintain insurance coverage sufficient to protect the interests of the County. The County shall be listed as additional insured on all liability policies. Prior to beginning any work on the SWWRF, and throughout the course of construction of the Roadway Project, Licensee shall procure and maintain insurance limits and terms as follows:

(i) Workers' compensation insurance with statutory workers' compensation limits and no less than One Million and 00/100 Dollars (\$1,000,000.00) for Employer's Liability with a waiver of subrogation in favor of the County, and its consultants, agents, employees and officials.

(ii) Commercial general liability insurance for all operations including, but not limited to contractual, products and completed operations and personal injury with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and an aggregate limit of at least twice the per occurrence limit.

(iii) Business automobile liability insurance for all owned, hired, or non-owned vehicles with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.

(iv) Professional Liability (errors and omissions) for engineering design in amounts not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.

Licensee shall be responsible for ensuring that each of its contractors and subcontractors of every tier procure and maintain the insurance specified above and shall furnish to the County evidence of such insurance including endorsements prior to commencement of construction of the Roadway Project. The County shall be specifically named (scheduled) as an additional insured on all policies except for workers' compensation coverage.

All coverage shall be primary and not contributory with any insurance or self-insurance maintained by the County. Licensee shall provide the County notice of any material change, cancellation, non-renewal of any policy required herein at least thirty days prior to the occurrence thereof.

16. **No Liens.** Licensee shall keep the SWWRF Property free and clear of all liens and encumbrances arising from the exercise by Licensee of its rights under this Agreement.

17. **Amendment.** This Agreement may be modified or amended in writing in equal dignity with this Agreement, and only upon the mutual consent of the parties hereto, or their respected legal representatives, successors or assigns.

18. **Notices.** Any notice to be given to or served upon any party hereto, in connection herewith, must be in writing, and may be given by hand delivery, certified mail or guaranteed overnight delivery service, return receipt requested, and shall be deemed to have been given and received when a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States Mail or when delivered into the custody of the overnight

delivery service. Notices shall be given to the parties at the address set forth opposite the party's name below. Any party hereto may, at any time by giving five days written notice to the other parties hereto, designate any other address in substitution of the foregoing address to which notice shall be given and other parties to whom copies of all notices hereunder shall be sent.

ORANGE COUNTY:

Director,
Orange County Utilities
9150 Curry Ford Road
Orlando, Florida 32825

With a copy to:

County Engineer
Orange County Public
Works Department
4200 South John Young
Parkway
Orlando, Florida 32839

LICENSEE

James B. Davis, Jr. President
Jr. Davis Construction
Company, Inc.
210 S. Hoagland Boulevard
Kissimmee, Florida 34741

19. **Governing Law; Venue.** The parties acknowledge that this Agreement was entered into in the State of Florida. This Agreement shall be construed and governed in accordance with the laws of the State of Florida without giving effect to any choice of laws or rules thereof that may direct the application of laws of another jurisdiction. Venue for any legal action that arises under this Agreement shall be in state court in Orange County, Florida.

20. **Paragraph Headings and Severability of Terms.** The paragraph and subparagraph captions included herein are for reference only and shall not amend, modify or be used to interpret or construe the meaning or intent of the parties as to any of the terms and provisions hereof. If any provisions of this Agreement or the application thereof shall be held to be invalid or unenforceable in a court of law, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall otherwise remain valid and enforceable to the fullest extent permitted by law.

21. **Attorneys' Fees.** The parties expressly agree that each shall bear the cost of its own attorney fees, paralegal fees, and other professional fees, and costs incurred incidental thereto, for any action (including those incurred before or at trial or any re-hearing or appeal) arising out of or in connection with this Agreement.

22. **Enforcement.** If any party hereto fails to perform or breaches any obligation, requirement, duty or covenant contained herein, the other non-defaulting parties shall have the right, at their option, in addition to any of its other rights, privileges or remedies otherwise stated elsewhere herein to bring an action for specific performance in a court of competent jurisdiction.

The failure to enforce any other terms or provisions of this Agreement, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation occurring prior to or subsequent thereto.

23. **Entire Agreement.** This instrument constitutes the entire Agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement.

24. **Effective Date.** The Effective Date of this Agreement is the last date this Agreement is executed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives on the dates set forth below.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners



By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor
Date: 2.20.18

Attest: Phil Diamond, CPA, Orange County
Comptroller as Clerk of the Board of County
Commissioners

By: *Katie Smith*
Deputy Clerk

LICENSEE'S EXECUTION ON NEXT PAGE

Signed and sealed in the presence of:

"LICENSEE"
JR. DAVIS CONSTRUCTION COMPANY,
INC., a Florida corporation

Amber Miranda
Print: Amber Miranda

Kim Buccellato
Print: Kim Buccellato

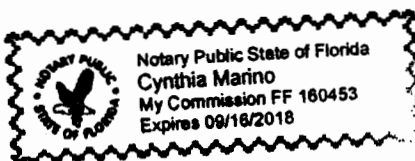
By: [Signature]
James B. Davis, Jr.
President

STATE OF FLORIDA

COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me this 12 day of February, 2018 by James B. Davis, Jr., as President, of JR. DAVIS CONSTRUCTION COMPANY, INC., a Florida corporation, on behalf of said entity, who ☒ is personally known to me or ☐ produced _____ as identification.

Notary Stamp



Cynthia Marino
Print Name: Cynthia Marino
Notary Public, State of Florida
Commission No.: FF 160453
My commission expires: 09/16/18

EXHIBIT "A"
 OCU/SWWRF Property

