



Interoffice Memorandum

February 7, 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 Bio-Tech Consulting, 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. 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 environmental consultant for the project has completed certain construction elements, and to do so, he will require a right of entry to access the Water Conserv II property.

This right of entry gives the environmental consultant, Bio-Tech Consulting, Inc., the right to access Water Conserv II property to perform the gopher tortoise survey and relocation efforts within the project limits.

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 City of Orlando, Orange County and Bio-Tech Consulting, 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 Water Conserv II
For Gopher Tortoise Relocation**

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT (“**Agreement**”) is made and entered into as of the date of the last execution below, between **CITY OF ORLANDO**, a municipal corporation organized and existing under the laws of the State of Florida (the “**City**”) whose principal address is 400 South Orange Avenue, Orlando, Florida 32801, and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida (the “**County**”), whose principal address is 201 South Rosalind Avenue, Orlando, Florida 32802 (the **City** and the **County** are hereinafter collectively referred to as the “**Conserv II Partners**”), and **BIO-TECH CONSULTING, INC.**, a Florida corporation, whose principal address is 3025 East South Street, Orlando, Florida 32803 (“**Licensee**”).

RECITALS:

A. The Conserv II Partners each own a fifty percent undivided interest in that certain real property located in Orange County, Florida, as more particularly described on **Exhibit “A”** attached hereto and by reference made a part hereof (the “**Conserv II Property**”) on which the Conserv II Partners operate reclaimed water distribution facilities known as Water Conserv II.

B. Licensee is under contract with SLF IV Boyd Horizon West JV, LLC, to locate, remove, and relocate gopher tortoises found in burrows within the boundaries of a roadway project known as the Hamlin Groves Trail Extension, Phase II (the “**Roadway Project**”) to a gopher tortoise recipient site approved by the Florida Fish and Wildlife Conservation Commission (the “**FWC**”) in accordance with the terms of a FWC-issued Gopher Tortoise Conservation Permit (the “**Permit**”).

C. 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 Authority (“**CFX**”); property currently owned by the Conserv II Partners; and property solely owned by the County. The approximate locations of the gopher tortoise burrows within the Roadway Project are identified on the aerial map attached hereto and by reference made a part hereof as **Exhibit “B.”**

D. Licensee has requested a right of entry license for access to the Conserv II Property in order to locate and remove gopher tortoises from the Roadway Project and relocate the gopher tortoises to a FWC-approved recipient site.

E. 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 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 Conserv II Partners hereby grant and convey unto Licensee a non-exclusive License over, upon and across the Conserv II 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 any activity conducted by Licensee or its subcontractors or agents within the Conserv II 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 sole purpose of the License is to permit Licensee, through itself, its employees, subcontractors, consultants, and agents, to enter upon the Conserv II Property to locate and remove gopher tortoises within the boundaries of the Roadway Project, and to relocate the gopher tortoises to a FWC-approved recipient site, with all activities performed in accordance with the "Permit". This License does not permit Licensee to conduct any activity, including the removal of gopher tortoises from the Conserv II Property, outside the limits of the Roadway Project as that project is defined in Exhibit "B."

4. **Gopher Tortoise Conservation Permit.** Prior to initiation of any activity on the Conserv II Property, Licensee must deliver to the City and to the County a copy of the FWC-issued Permit. Licensee shall be in compliance with the terms and conditions of the Permit at all times while on the Conserv II Property and while conducting any activity related to the relocation of gopher tortoises from the Roadway Project to the FWC-approved recipient site. Licensee shall be solely responsible for any non-compliance with the terms and conditions of the Permit, including fines and penalties related thereto.

5. **No Interference With Water Conserv II Operations Permitted.** Under no circumstances may Licensee block any Water Conserv II roadway or operation or impede or restrict the normal operation of Water Conserv II without the prior written consent and approval from the Conserv II Partners. Any interference with Water Conserv II operations as determined by the Conserv II Partners in their sole discretion may result in immediate suspension or termination of this License. If the Conserv II Partners 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 Water Conserv II, Licensee shall, upon receipt of notice, immediately alleviate the interference at no cost to the Conserv II Partners.

6. **Inspections.** All work, materials, and equipment shall be subject to inspection and approval by the Conserv II Partners 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 Conserv II Property and immediately contact the Conserv II Partners. Abnormal conditions may include, but are not limited to, 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 Conserv II Partners 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 Conserv II Partners.

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 Conserv II Partners.** Unless terminated sooner, this License and the rights granted herein with respect to the same expires upon the earliest of (a) at such time as the relocation of the gopher tortoises from the Roadway Project to the FWC-approved recipient site has been completed, including any restoration activity; (b) expiration of the required insurance; (c) the one year anniversary of the Effective Date; or (d) written notice by the Conserv II Partners. After the expiration of the term of this License, any entry onto Conserv II Property requires a new agreement.

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

10. **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 use of the Conserv II Property; the removal and relocation of gopher tortoises from the Roadway Project; 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 activities related to the removal and relocation of gopher tortoises from the Roadway Project within the Conserv II Property as contemplated by this Agreement.

11. **Non-Exclusive License.** This License is non-exclusive, and Conserv II Partners reserve unto themselves, their successors and assigns, the right to use, pass, and repass over and upon the Conserv II Property in any manner whatsoever.

12. **Indemnity.** Licensee agrees to defend, indemnify, and hold harmless the Conserv II Partners 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 Conserv II Property or from the exercise by Licensee of any rights granted by this Agreement; excepting, however, that the Conserv II Partners shall not be indemnified, saved, defended or kept free and harmless from any loss or liability resulting from their own negligence or the negligence of the Conserv II Partners' contractors, employees or agents.

13. **Insurance.** Licensee shall ensure that each of its subcontractors, consultants, and/or agents performing work on behalf of the Licensee procures and maintains insurance coverage sufficient to protect the interests of the Conserv II Partners. The City and the County shall be listed as additional insureds on all liability policies. Prior to beginning any work on the Conserv II Property, and throughout the course of removal and relocation of the gopher tortoises, including restoration of the Conserv II Property, 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 City and the County, and their respective 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 Water Conserv II Partners evidence of such insurance including endorsements prior to commencement of construction of the Roadway Project. The City and 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 City and the County. Licensee shall provide the Water Conserv II Partners notice of any material change, cancellation, non-renewal of any policy required herein at least thirty days prior to the occurrence thereof.

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

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

16. **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.

CITY OF ORLANDO:

Director,
Public Works Department
400 S. Orange Avenue
Orlando, Florida 32802-4990

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

Jay E. Baker,
Project Manager
Bio-Tech Consulting, Inc.
3025 E. South Street
Orlando, Florida 32803

17. **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.

18. **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.

19. **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.

20. **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.

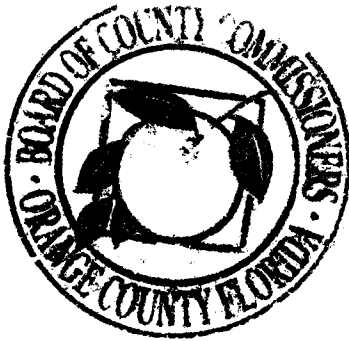
21. **Entire Agreement.** This instrument constitutes the entire Agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement.

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

IN WITNESS WHEREOF, the parties by their authorized representatives have executed this Agreement on the date and year written below their signatures..

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners



By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

Date: 2.28.18

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

By: *Katell Smith*
Deputy Clerk

[CITY'S EXECUTION ON NEXT PAGE]

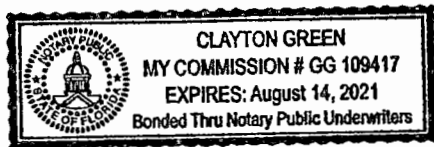
CITY OF ORLANDO, FLORIDA, a municipal corporation, organized and existing under the laws of the State of Florida (SEAL)

By: Laurie Botts
Laurie Botts
Real Estate Manager

Date: 3/2/18

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this 2 day of MARCH, 2018
by **Laurie Botts** who is personally known to me who did (did not) take an oath.



Clayton Green
Name
Notary Public
Serial Number: GG 109417
My Commission Expires: 8/14/2021

FOR THE USE AND RELIANCE OF
CITY OF ORLANDO ONLY.

Approved as to form and legality,

Roy K. Payne, Esq.
Roy K. Payne, Esq.
Chief Assistant City Attorney
City of Orlando, Florida

LICENSEE'S EXECUTION ON NEXT PAGE

Signed and sealed in the
presence of:

"LICENSEE"
BIO-TECH CONSULTING, INC.
a Florida corporation

Francisco Torregrosa
Print: Francisco Torregrosa

Marcy Drew
Print: Marcy Drew

By: [Signature]
John A. Miklos
President

STATE OF FLORIDA

COUNTY OF Orange

The foregoing instrument was acknowledged before me this 13 day of February, 2018 by John A. Miklos, as President, of BIO-TECH CONSULTING, INC., a Florida corporation, on behalf of said entity, who ☒ is personally known to me or ☐ produced as identification.

Notary Stamp



DALIA CABANI
MY COMMISSION # FF 232606
EXPIRES: June 9, 2019
Bonded Thru Budget Notary Services

[Signature]
Print Name: Dalia Cabani
Notary Public, State of Florida
Commission No.: FF 232606
My commission expires: 6/9/19

EXHIBIT "A"
Water Conserv II Property



REVISIONS				 KELLY, COLLINS & GENTRY, INC. <small>ENGINEERING & PLANNING 1100 N. ORANGE AVE., SUITE 402 ORLANDO, FL 32804 407-266-1100 FAX: 407-266-1101 STEVEN M. ARNDT, P.E. LICENSE NO. 10640</small>	HAMLIN GROVES TRAIL EXTENSION PHASE II	EXHIBIT A	SHEET NO. 1
DATE	DESCRIPTION	DATE	DESCRIPTION				

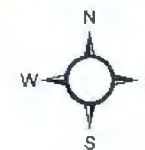
EXHIBIT "B"

Gopher Tortoise Burrow Map



Bio-Tech Consulting Inc.
Environmental and Permitting Services
3025 E. South Street Orlando, FL 32803
Ph: 407-894-5868 Fax: 407-894-5870
www.bio-techconsulting.com

Hamlin Groves Trail Extension (OC)
Orange County, Florida
Figure 5
GT Burrow Map



Legend
 Hamlin Trail Extension_OC
 brady_25ft
 GT_burrows_Clip (45)
 800 Feet
 Project #: 325-27
 Produced By: BMM
 Date: 2/5/2018