



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 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 Water Conserv II property.

This right of entry gives the road contractor, Jr. Davis Construction Company, Inc., the right to access the Water Conserv II 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. The right of entry will also allow the contractor to temporarily enter Water Conserv II property to transport excess material for deposit at a designated Water Conserv II stockpile site.

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 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 Water Conserv II**

**RIGHT OF ENTRY AGREEMENT**

**THIS RIGHT OF ENTRY AGREEMENT ("Agreement")** is made and entered 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 P.O. Box 1393, Orlando, Florida 32802-1393 (City and County are hereinafter collectively referred to as the "Water Conserv II Partners"), and **JR. DAVIS CONSTRUCTION COMPANY, INC.**, a Florida corporation, whose principal address is 210 S. Hoagland Boulevard, Kissimmee, Florida 34741 ("Licensee").

**RECITALS:**

A. The Water 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 this 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 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 owned by the Water Conserv II Partners; and property solely owned by the County.

C. The Roadway Project was designed and engineered such that a portion of the embankment of the roadway extends beyond the right-of-way onto the Conserv II Property such that the design requires the cutting and filling of approximately 1.42 acres of Conserv II Property adjacent to the right-of-way.

D. Licensee has requested a right of entry license for access to the Conserv II Property in order to construct the Roadway, including transporting fill material excavated from the property owned by CFX to areas within the Conserv II Property for use during the construction of the Roadway Project, as well as to deposit excavated material not needed for the Roadway Project (as described in Section 9 of this Agreement) at a stockpile site on the Conserv II Property designated for such material by the Water Conserv II Partners. Furthermore, Licensee has requested a license to establish a grade on the Conserv II Property by cutting and filling 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.

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 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 Water 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 the placing of utilities, wires, cables, pipes, or other structures or alterations 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 purpose of the License is to permit Licensee, through itself, its employees, subcontractors, consultants, and agents, to enter upon the Conserv II 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 Road Project to construct the embankment of the Roadway Project (including without limitation, altering the grade of the Conserv II 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 D 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 Conserv II Property outside the limits of the Roadway Project except as permitted by Paragraph 4 below.

4. **Access to Areas Outside of the Roadway Project.** The purpose of the License shall also include the right in favor of Licensee, its employees, subcontractors, consultants, and agents to temporarily enter upon certain areas within the Conserv II Property outside the limits of the Roadway Project on established roadways to transport material and equipment from one area of the Roadway Project to other areas of the Roadway Project or to transport excavated material for deposit at the designated Water Conserv II stockpile site, as more particularly described on **Exhibit "B"** attached hereto and by this reference made a part hereof. **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 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 Water Conserv II Partners. Any interference with Water Conserv II operations as determined by the Water Conserv II Partners in their sole discretion may result in immediate suspension or termination of this License. If the Water 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 the Water Conserv II, Licensee shall, upon receipt of notice, immediately alleviate the interference at no cost to the Water Conserv II Partners.

6. **Inspections.** All work, materials, and equipment shall be subject to inspection and approval by Water 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 Water Conserv II Partners. 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 Water 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 Water 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 Water Conserv II Partners.** 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 Water Conserv II Partners. After the expiration of the term of this License, any entry onto Conserv II 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 Conserv II Property. Any fill dirt excavated from the Conserv II Property shall remain on the Conserv II Property, either for use in the grading of the Conserv II Property or stockpiled at a site designated by the Water Conserv II Partners, at no cost to the Water Conserv II Partners. As consideration for this License, excavated material suitable for use as fill from the CFX Property that is not used as fill for the Roadway Project and is not claimed by CFX, shall be deposited and stabilized at the Water Conserv II fill dirt stockpile site at no cost to the Water Conserv II Partners. Any unused fill dirt excavated as part of the Roadway Project in excess of 30,000 cubic yards shall not be deposited on the Conserv II Property without prior approval of the Water Conserv II Partners.

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 Conserv II Property. Licensee must install a temporary fence at the boundary of the Roadway Project or at such other locations as approved by the Water Conserv II Partners 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 Conserv II 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 Conserv II 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 Conserv II Property as contemplated by this Agreement.

13. **Non-Exclusive License.** This License is non-exclusive, and Water 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.

14. **Indemnity.** Licensee agrees to defend, indemnify and hold harmless the Water 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 Water 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 Water Conserv II Partners' 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 Water 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 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 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.

16. **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.

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.

**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**

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

[CITY OF ORLANDO EXECUTION ON  
NEXT PAGE]



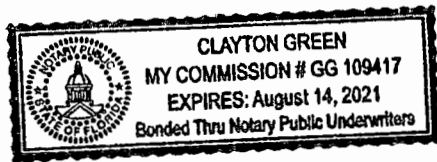
CITY OF ORLANDO, FLORIDA, a municipal corporation, organized and existing under the laws of the State of Florida (SEAL)

By: Laurie Botts  
Laurie Botts  
Real Estate Manager

Date: 2/25/18

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.



[Signature]  
Name  
Notary Public  
Serial Number: 66109417  
My Commission Expires: 8/14/2021

FOR THE USE AND RELIANCE OF  
CITY OF ORLANDO ONLY.

Approved as to form and legality,

[Signature]  
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"  
JR. DAVIS CONSTRUCTION COMPANY,  
INC., a Florida corporation

Ambro Marcella  
Print: Ambro Marcella

Jim Buccellato  
Print: Jim Buccellato

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

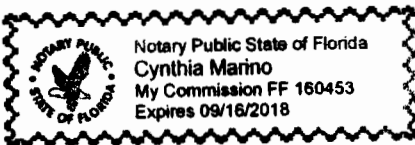
STATE OF FLORIDA

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

[Signature]  
Print Name: Cynthia Marino  
Notary Public, State of Florida  
Commission No.: FF160453  
My commission expires: 09/16/18



**EXHIBIT "A"**  
Water Conserv II Property



REVISIONS				KCG	KELLY, COLLINS & GENTRY, INC. ENGINEERING / PLANNING 1700 N. GRAND AVE., SUITE 400 ORLANDO, FL 32804 407-244-7100 FAX: 407-244-7101 CERT. OF AUTHORIZATION NO. 1200 STEVEN M. KREIDT, P.E. LICENSE NO. 39040	HAMLIN GROVES TRAIL EXTENSION PHASE II	EXHIBIT A	SHEET NO. 1
DATE	DESCRIPTION	DATE	DESCRIPTION					



EXHIBIT "B"



**wsp** WSP USA Inc.  
301 East Pine Street  
Suite 1000  
Orlando, FL 32801  
TEL: +1 407.287.7900  
FAX: +1 407.287.7900  
Certificate of Authorization Number: 0000148



AERIAL PHOTOGRAPH SOURCE:  
GOOGLE EARTH PRO  
MARCH 5, 2017  
Scale: 1" = 100'

HAUL ROUTE TO  
WCII STOCKPILE

By	Revised	Date
Project Manager	Drawn by	Checked by
Approved by	Date	PERMANENT 2012
Project Title		



EXHIBIT B

Page Number