

HARMONY WEST

COMMUNITY DEVELOPMENT DISTRICT

&

HARMONY

COMMUNITY DEVELOPMENT DISTRICT

April 6, 2021

BUCK LAKE COMMITTEE

MEETING AGENDA

**Harmony West Community Development District and
Harmony Community Development District
Buck Lake Committee**

OFFICE OF THE DISTRICT MANAGER

2300 Glades Road, Suite 410W • Boca Raton, Florida 33431

Phone: (561) 571-0010 • Toll-free: (877) 276-0889 • Fax: (561) 571-0013

March 31, 2021

ATTENDEES:

Please identify yourself each time you speak to facilitate accurate transcription of meeting minutes.

Committee Members

Harmony West Community Development District (HWCDD) & Harmony Community Development District (HCDD)

Dear Committee Members:

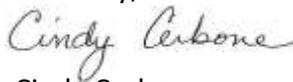
The Members of Buck Lake Committee will hold a Meeting on April 6, 2021 at 3:00 p.m., at Johnston's Surveying, Inc., 900 Shady Lane, Kissimmee, Florida 34744. The agenda is as follows:

1. Call to Order/Roll Call
2. Confirmation of Committee Members
3. Discussion: Buck Lake Management and Cost Sharing Agreement
4. Discussion/Recap of Maintenance Services by HWCDD/HCDD
 - A. Prior Year Services
 - B. Current Conditions/Requirements: **(Speaker: Bio-Tech Consulting, Inc.)**
5. Discussion: Current Year Treatment Plans and Funding
 - A. Bio-Tech Consulting, Inc., Proposal for Annual Inspection and Recommended Maintenance
 - B. Status of Previous ACOE Violation
 - C. Updates to Buck Lake Management Plan
 - D. Expenses Incurred in Fiscal Year 2021
6. Discussion: Updates to Buck Lake Policies *(see existing policies below)*
 - A. Prohibit Gas-Powered Boats for Purposes Other than Rescue Operations
 - B. Difference in Treatment of Harmony Residents and Harmony West Residents
 - C. Other

7. Recap of Committee Items to Present to Respective CDD Boards
 - A. Buck Lake Policies
 - B. Buck Lake Management Plan
 - Lake Management Costs for Fiscal Year 2022
8. Committee Comments/Requests
9. Adjournment

Should you have any questions or concerns, please do not hesitate to contact me directly at (561)-346-5294.

Sincerely,



Cindy Cerbone

HWCCD District Manager

TO ATTEND BY TELEPHONE
CALL-IN NUMBER: 1-888-354-0094
CONFERENCE ID: 8518503

BUCK LAKE COMMITTEE

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Buck Lake Management and Cost Sharing Agreement

This Buck Lake Management and Cost Sharing Agreement (this “**Agreement**”) is made between the **Harmony Community Development District**, a special purpose unit of local government created pursuant to Chapter 190, Florida Statutes (“**Harmony**”) and **Harmony West Community Development District**, a special purpose unit of local government created pursuant to Chapter 190, Florida Statutes (“**Harmony West**”). Harmony and Harmony West are referred to collectively as the “**Districts**”.

Background Information:

The residential communities within the Districts are being developed to offer a range of recreational facilities for the residents of the Districts. The Districts have been granted the power to operate and maintain conservation areas, mitigation areas, wildlife habitat, and parks and facilities for indoor and outdoor recreational, cultural, and educational uses for residents of the Districts pursuant to Chapter 190, Florida Statutes, and their respective enabling ordinances.

A recreational lake known as “**Buck Lake**” is located adjacent to the Districts and is depicted and described in **Exhibit A** attached hereto and also described in that certain Development Order for Birchwood Development of Regional Impact, adopted by the Board of County Commissioners for Osceola County, Florida on September 14, 1992, and recorded on February 16, 1995, in Book 1240, Page 1448, et. seq., of the Official Records of Osceola County, Florida, as amended from time to time. Buck Lake has been historically maintained for the primary benefit of the residents within the Districts to enjoy its recreational features and provide wildlife habitat. The Districts were grantees in an easement to access and use Buck Lake. Subsequently, and subject to the above referenced easement, Harmony West was the grantee in a special warranty deed and is the fee simple owner of Buck Lake.

It is in the best interest of the Districts to coordinate the use and enjoyment of Buck Lake for their residents and share the costs associated with the operation and maintenance of the Buck Lake as described in this Agreement pursuant to Section 190.011(12), Florida Statutes. Section 190.012(1)(g), Florida Statutes provides that a district may operate and maintain facilities outside of its boundaries so long as the project is the subject of an agreement between the district and a governmental entity and is consistent with the local government comprehensive plan of the local government within which the project is to be located. This Agreement shall serve as such agreement and the proposed operation and maintenance of Buck Lake is consistent with Osceola County’s comprehensive plan.

NOW, THEREFORE, based upon good and valuable consideration and mutual covenants of the parties hereinafter recited, it is agreed as follows:

1. **Incorporation of Background Information and Exhibit.** The foregoing Background Information and exhibit are true and correct and are hereby incorporated into this Agreement by this reference.
2. **Effective Date and Term of Agreement:** This Agreement shall commence and become effective upon the date of the last district’s execution. This Agreement shall continue in full force and effect in perpetuity.

3. Ancillary Infrastructure related to Buck Lake.

- a. This Agreement is solely related to Buck Lake and not any “**Ancillary Infrastructure**” located adjacent to Buck Lake (including, but not limited to, access points, piers, docks, boardwalks, boats, boat ramps, parking and other such infrastructure).
- b. The Districts or other parties shall be responsible for operating, maintaining, repairing, replacing their portion of the Ancillary Infrastructure.

4. Buck Lake Committee.

- a. Harmony West shall create a Buck Lake Committee, that is advisory and has no decision-making authority, and be responsible for advertising any workshops or meetings of the committee. Additionally, Harmony West will be responsible for all administrative tasks associated with such committee including preparing minutes and maintaining public records.
- b. Harmony’s and Harmony West’s board of supervisors shall each appoint one of their supervisors to the committee. There shall be no other committee members.
- c. The Buck Lake Committee shall meet at least once a year (no later than May 1 of each year) to:
 - i. present a review of prior year financial activity
 - ii. confirm current year treatment plans and funding status
 - iii. Coordinate with vendors and staff to come up with a good faith estimate of the costs for the next fiscal year (“**Projected Costs**”) for the following services (“**Maintenance Services**”):
 1. Management of aquatic plant control (including, but not limited to, chemicals, labor, and equipment necessary for aquatic plant control)
 2. Installation or management of beneficial aquatic plantings
 3. Installation, repair, or replacement of directional or informational signage
 4. Management of nuisance animals or vegetation
 5. Repair or replacement of pond bank erosion
 6. Inspection, regulation, and management of the water quality
 7. Inspections and actions required for compliance of any applicable permit or regulatory requirements
 8. Any other services determined to be needed
 - iv. Propose, review, and make proposed updates or modifications to a “**Buck Lake Management Plan**” as further described below
 - v. Propose, review, and make proposed updates or modifications to the “**Buck Lake Policies**” as further described below
- d. The Buck Lake Committee shall submit the proposed Buck Lake Management Plan to Harmony and Harmony West.
- e. Harmony and Harmony West shall be responsible for directing and supporting the Buck Lake Committee and assisting with disbursement of information and encouraging education opportunities that promote sound environmental stewardship.

5. Buck Lake Management Plan.

- a. At a minimum the Buck Lake Management Plan shall include:
 - i. review of current conditions (including pond bank and any erosion concerns)
 - ii. identify aquatic plant species targeted for control
 - iii. proposed treatments

- iv. Projected Costs of the Maintenance Services
- v. contingency provisions
- b. The Districts shall adopt the Buck Lake Management Plan at a public meeting each year (either separately or at a joint meeting).
- c. No later than June 1 of each year, Harmony's and Harmony West's district manager shall certify in writing to each other the status of their district's adoption of the Buck Lake Management Plan.

6. Budgeting for Projected Costs.

- a. During the budget process for each fiscal year (beginning for the fiscal year of the Districts starting on October 1, 2020), Harmony's and Harmony West's board of supervisors will each adopt an annual budgeted amount to fund 50% of the Projected Costs for the Maintenance Services for Buck Lake and levy special assessments or allocate available funds to provide funding for such budgeted line item.
- b. Within 10 days after the adoption of the final budget for each fiscal year, Harmony's and Harmony West's district manager shall certify in writing to each other the amount of funds that have been appropriated for the upcoming fiscal year.

7. Cost sharing.

- a. Beginning for the fiscal year of the Districts starting on October 1, 2020, the Districts will each be responsible for 50% of the Maintenance Services for that fiscal year. At least 30 days prior to Harmony West scheduling any Maintenance Services to be performed, Harmony West shall provide to Harmony, via email or at the address listed below in the notice section, an itemized invoice that is properly dated, describes the services to be performed, and shows the actual costs associated with the services to be performed.
 - i. Notwithstanding the above, for non-routine Maintenance Services that are time sensitive and for areas 20 acres or less in size, Harmony West may schedule any Maintenance Services to be performed as soon as practicable and provide to Harmony notice of such services (along with an invoice) as soon as practicable.
- b. Harmony shall make payment to Harmony West within 30 days of receipt of an invoice from Harmony West. Payment shall be made payable to the "Harmony West Community Development District" at the address listed below in the notice section.
- c. In the event of a disagreement over the services performed or to be performed or the actual costs thereof, the performance of future services by Harmony West may be halted or withheld until agreement is reached between the Districts and the agreed upon actual costs are paid to Harmony West.
- d. If unforeseen circumstances cause the appropriated funds to be deficient and there are services required for the health, safety, and welfare then the Districts shall coordinate and come to an agreement on how to proceed and fund those necessary services.

8. Maintenance of Buck Lake.

- a. Harmony West may utilize third party vendors or its field management team (if any) in providing the Maintenance Services within the annual budget amounts.
- b. The Maintenance Services shall be performed in a timely and professional manner, in accordance with level of service standards established by the Buck Lake Management Plan and in accordance with local, State and Federal laws, rules, governmental regulations, ordinances, and best management practices.

- c. Harmony and Harmony West retain the right to fund independently and provide supplemental maintenance services of Buck Lake at their discretion, providing such activities are supported by best lake management practices for these public services and approved by Harmony West.
 - i. If either Harmony or Harmony West chooses to exercise these rights, the other district has no obligation to provide matching or supplemental funding.
 - ii. In the event that either Harmony or Harmony West chooses to independently provide and fund such services, the district agrees to provide notice to the other district at least 30 days prior to the commencement of any services.

9. Buck Lake Policies.

- a. The Buck Lake Committee shall be responsible for creating policies and/or regulations of which are applicable to the use of Buck Lake as such policies and/or regulations may be amended from time to time (“**Buck Lake Policies**”).
- b. At a minimum the Buck Lake Policies will:
 - i. Prohibit gas-powered boats for purposes other than rescue operations.
 - ii. Not treat residents of Harmony differently from residents of Harmony West.
- c. The Districts shall adopt the Buck Lake Policies at a public meeting each year (either separately or at a joint meeting).
- d. No later than June 1 of each year, Harmony’s and Harmony West’s district manager shall certify in writing to each other the status of their district’s adoption of the Buck Lake Policies.
- e. The Districts shall coordinate and ensure that their residents and their guests follow the Buck Lake Policies.

10. Compliance with Governmental Oversight and Reporting. The Districts shall comply with necessary economic, operational, safety, insurance, and other compliance requirements imposed by federal, state, county, municipal or regulatory bodies, relating to the contemplated operations and services hereunder, including those now in effect and hereafter adopted. Within 3 business days following receipt, any district shall each promptly deliver and provide to the other district copies of any governmental notice of non-compliance, violation, warning, letters, electronic or other communication or inquiry of any type or kind relating to Buck Lake.

11. Relationship. The Districts are not partners, joint ventures’, employees or agents of the other district, and no one district shall have the authority to bind the other district.

12. Governmental Disputes and Enforcement of Agreement.

- a. In the event that either district is dissatisfied with the management or maintenance of Buck Lake or has any other disputes regarding Buck Lake, such district shall communicate in writing to the other district with their specific concerns.
- b. The Buck Lake Committee shall meet and provide recommendations to resolve any issues. The recommendations will be sent to the Districts for their review.
- c. Any disputes between the Districts shall be resolved in accordance with the Florida Governmental Conflict Resolution Act as outlined in Chapter 164, Florida Statutes, as it may be amended from time to time.
- d. Only after first attempting to resolve any disputes pursuant to the Florida Governmental Conflict Resolution Act, a district may avail themselves of any otherwise available legal rights. In the event either district is required to enforce this Agreement or any provision

this Agreement. Harmony and Harmony West shall provide the other district with the Certificate of Insurance evidencing compliance with this requirement. No district's certificate shall be acceptable unless it provides that any change or termination within the policy periods of the insurance coverages, as certified, shall not be effective within 30 days of prior written notice to the other district.

19. **No Violation of Bond Covenants.** Nothing contained in this Agreement shall operate to violate any of the covenants set forth in any document related to either Harmony or Harmony West issuance of tax-exempt bonds either in the past or in the future (the "**Bond Documents**"). In the event any or all of the obligations contained in this Agreement would constitute a violation of either district's bond covenants, trust indenture or other Bond Documents, as may be supplemented from time to time, the Districts agree to negotiate revisions to this Agreement to avoid such violations while maintaining the Districts' intent in entering into this Agreement.
20. **Non-Waiver.** No waiver of any covenant or condition of this Agreement by any district shall be deemed to imply or constitute a further waiver of the same covenant or condition or any other covenant or condition of this Agreement.
21. **Severability.** If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.
22. **Amendment.** This Agreement may not be altered, changed or amended, except by an instrument in writing, signed by the Districts.
23. **Assignments:** Neither Harmony nor Harmony West may assign this Agreement, nor any interest arising herein, without the written consent of the other.
24. **Ownership of Buck Lake is Non-Transferable.** Harmony West may not transfer its ownership interest in Buck Lake.
25. **Third Party Beneficiaries.** The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the Districts. This Agreement is solely for the benefit of the Districts and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or entity other than the Districts any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof; and all provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the Districts and their respective representatives, successors, and assigns.
26. **Interpretation.** This Agreement has been negotiated fully between the Districts as an arms length transaction. The Districts participated fully in the preparation of this Agreement. In the case of a dispute concerning the interpretation of any provision of this Agreement, the Districts are deemed to have drafted, chosen and selected the language, and the doubtful language will not be interpreted or construed against either district.
27. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be and be taken to be an original, and all collectively deemed one instrument

28. **Authority to Enter into this Agreement.** The execution of this Agreement has been duly authorized by the board of supervisors of the Districts, each party has complied with all applicable requirements of law, and each party has full power and authority to comply with the terms and provisions of this Agreement.

29. **Entire Agreement.** This Agreement constitutes the entire agreement between the Districts with respect to its subject matter and all negotiations, undertakings, representations, warranties, inducements, and obligations are merged into this agreement.

IN WITNESS WHEREOF, the Districts have approved and executed this Agreement on the dates written below.

**Harmony
Community Development District**



Steve Berube
Chair of the Board of Supervisors

Date: 7/25/2019

**Harmony West
Community Development District**



Richard Jerman
Chair of the Board of Supervisors

Date: 8/27/19

BUCK LAKE COMMITTEE

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March 26, 2021

Cindy Cerbone
Wrathell, Hunt and Associates, LLC - Boca Raton
2300 Glades Road
#410W
Boca Raton, Florida 33431

Proj: Harmony West - Buck Lake
Re: Proposal for Environmental Services - (BTC Proposal No. 21-714)

Dear Cindy:

Bio-Tech Consulting, Inc. (BTC) is pleased to provide this proposal for environmental services associated with Harmony West - Buck Lake in Osceola County. If you would like BTC to proceed with the scope outlined herein, please sign the signature block, complete the billing information section and initial where provided, then return to my attention.

Should you have any questions or require any additional information, please do not hesitate to contact this office at (407) 894-5969 or toll free at (877) 894-5969. Thank you.

Regards,
Jay Baker
Director

Orlando: Main Office
3025 East South Street
Orlando, FL 32803

Vero Beach Office
4445 N A1A
Suite 221
Vero Beach, FL 32963

Jacksonville Office
1157 Beach Boulevard
Jacksonville Beach, FL 32250

Tampa Office
6011 Benjamin Road
Suite 101B
Tampa, FL 33634

Key West Office
1107 Key Plaza
Suite 259
Key West, FL 33040

Aquatic & Land
Management Operations
3825 Rouse Road
Orlando, FL 32817

407.894.5969
877.894.5969
407.894.5970 fax

**PROPOSAL FOR ENVIRONMENTAL SERVICES
HARMONY WEST - BUCK LAKE
BTC PROPOSAL No. 21-714**

1. AQUATIC MANAGEMENT CONSULTING (75-0)

Aquatic management consultation services.

Hourly Not to Exceed Total Price: \$1,450.00

2. GENERAL PROJECT COORDINATION (65-0)

Project coordination will cover any requested reports, meetings, telephone calls, or other consultation as needed for the project.

Hourly Not to Exceed Total Price: \$2,900.00

Bio-Tech Consulting, Inc.
Time & Materials Schedule

Expert Witness	\$275.00-\$350.00/Hour
President, John Miklos	\$200.00/hour
Vice President/Directors	\$145.00/Hour
Project Manager	\$135.00/Hour
Wildlife Specialist	\$120.00/Hour
Field Biologist	\$100.00/Hour
Field Technician	\$90.00/Hour
GIS	\$90.00/Hour
Administrative	\$45.00/Hour
Materials Cost	Cost + 12%

Bio-Tech Consulting's company policy requires that the Proposal for Services must be executed and returned via fax, email or post prior to initiation of any work associated with this scope and/or project. The client will only be billed for the tasks and/or hours completed. Fees and all other charges will be billed monthly or as the work progresses and the net amount shall be due at the time of invoicing. Any Time and Materials work is based on the above rates and any actual costs incurred. Any work requested outside of this Proposal for Services described above would require either an additional contract or authorization for Time and Materials. Please note that the hourly rates are subject to the current year's pricing. Any balance remaining unpaid after 30 days of initial invoicing will be subject to an interest charge of 12% APR (not to exceed the maximum rate allowable by law). The client agrees that any balance remaining unpaid after 90 days from the date of the initial invoicing shall be deemed in default. The client further agrees that in the event payment is not made and the amount is referred to a Collection Agency and/or an attorney, to pay all cost of collection, including but not limited to, all collection agency fees, attorney's fees, paralegal fees, court costs, and investigative fees. It is also agreed that if legal action is necessary to collect on the account, the State of Florida, Orange County, will retain jurisdiction and venue over the matter. Client confirms project limits as outlined/illustrated in this agreement, accepts the general conditions attached herein and agrees that Bio-Tech Consulting, Inc., and its staff and assigns, have full access to the identified property, for the purposes of completing the tasks identified in the above Proposal for Services.

MUTUALLY UNDERSTOOD AND AGREED:



John Miklos, President
Bio-Tech Consulting, Inc.

March 26, 2021

Date

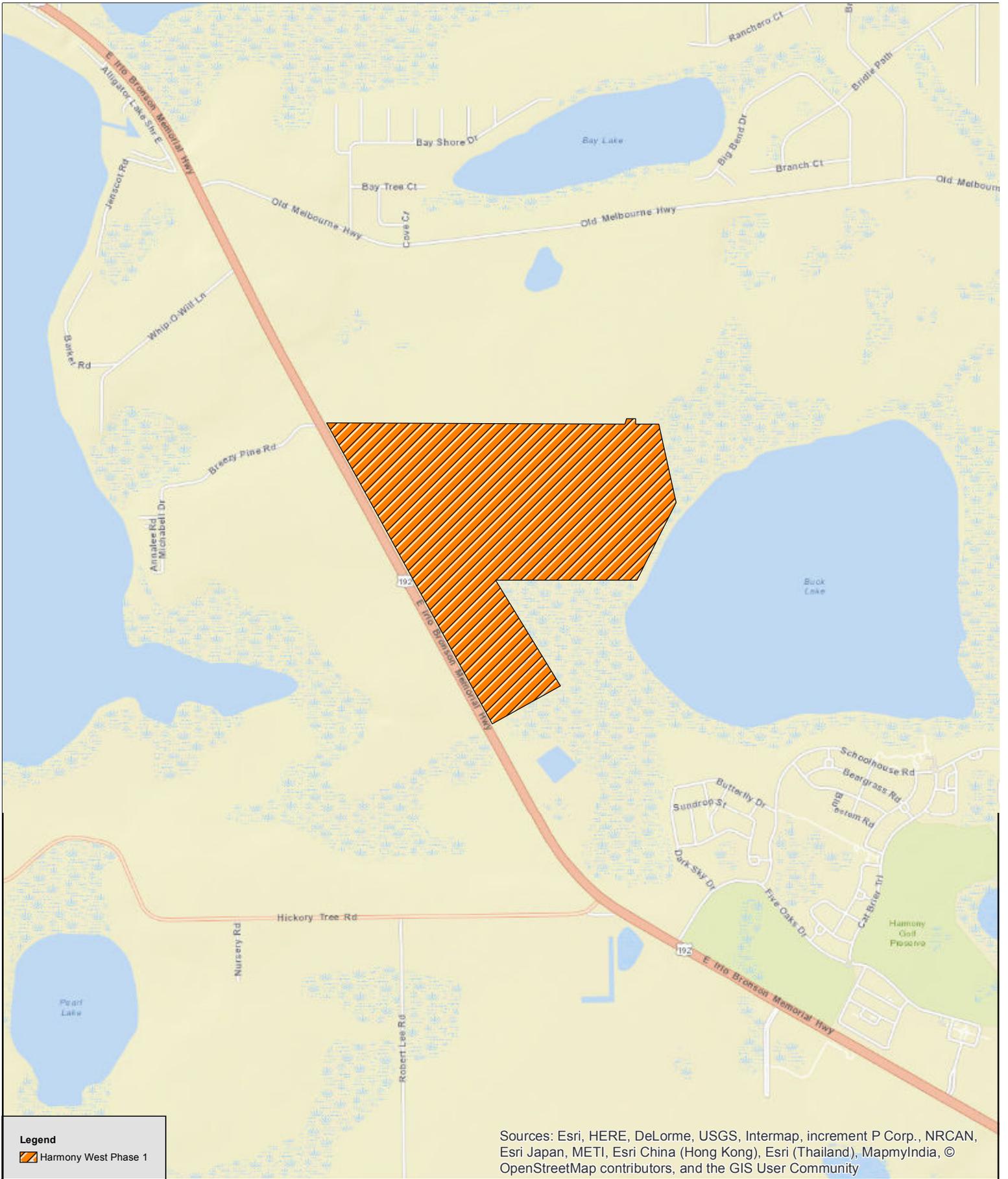
Authorized Signatory

Date

Billing Information: Name: _____
Title: _____
Company: _____
Address: _____

Phone: _____
Cell: _____
Fax: _____
E-mail: _____

Please check here if you prefer to receive a paper invoice



Legend
 Harmony West Phase 1

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

Bio-Tech Consulting, Inc.
General Contract Conditions

SECTION 1: RESPONSIBILITIES

1.1 Bio-Tech Consulting, Inc. heretofore referred to as the “Consultant” has the responsibility for providing the services described under the “Scope of Services” section. The work is to be performed according to accepted standards of care and is to be completed in a timely manner.

1.2 The “Client”, or a duly authorized representative, is responsible for providing the Consultant with a clear understanding of the project nature and scope. The Client shall supply the Consultant with sufficient and adequate information, including, but not limited to, maps, site plans, reports, surveys and designs, to allow the Consultant to properly complete the specified services. The Client shall also communicate changes in the nature and scope of the project as soon as possible during performance of the work so that the changes can be incorporated into the work product.

SECTION 2: STANDARD OF CARE

2.1 Services performed by the Consultant under this Agreement are expected by the Client to be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the Consultant’s profession practicing contemporaneously under similar conditions in the locality of the project. No other warranty, expressed or implied, is made.

2.2 The Client recognizes that conditions may vary from those observed at locations where observations and analysis has occurred, and that site conditions may change with time. Data, Interpretations, and recommendations by the Consultant will be based solely on information available to the Consultant at the time of service. The Consultant is responsible for those data, interpretations, and recommendations, but will not be responsible for other parties’ interpretations or use of the information developed.

SECTION 3: SITE ACCESS AND SITE CONDITIONS

3.1 Client will grant or obtain free access to the site for all equipment and personnel necessary for the Consultant to perform the work set forth in this Agreement. The Client will notify any and all possessors of the project site that Client has granted Consultant free access to the site. The Consultant will take reasonable precautions to minimize damage to the site, but it is understood by Client that, in the normal course of work, some damage may occur, and the correction of such damage is not part of this Agreement unless so specified in the Proposal.

SECTION 4: SAMPLE OWNERSHIP AND DISPOSAL

4.1 Any samples obtained from the project during performance of the work shall remain the property of the Client.

4.2 The Consultant will dispose of or return to Client all remaining samples 60 days after submission of report covering those samples. Further storage or transfer of samples can be made at Client’s expense upon Client’s prior written request.

SECTION 5: BILLING AND PAYMENT

5.1 Consultant will submit invoices to Client monthly or upon completion of services. Invoices will show charges for different personnel and expense classification.

5.2 Payment is due 30 days after presentation of invoice and is past due 31 days from invoice date. Client agrees to pay a finance charge of one percent (1%) per month, or the maximum rate allowed by law, on past due accounts.

5.3 If the Consultant incurs any expenses to collect overdue billing on invoices, the sums paid by the Consultant for reasonable attorney's fees, court costs, Consultant's time, Consultant's expenses, and interest will be due and owing by the Client.

SECTION 6: OWNERSHIP OF DOCUMENTS

6.1 All reports, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by the Consultant, as instruments of service, shall remain the property of the Consultant.

6.2 Client agrees that all reports and other work furnished to the Client or his agents, which are not paid for, will be returned upon demand and will not be used by the Client for any purpose.

6.3 The Consultant will retain all pertinent records relating to the services performed for a period of five years following submission of the report, during which period the records will be made available to the Client at all reasonable times.

SECTION 7: DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS

7.1 Client warrants that a reasonable effort has been made to inform Consultant of known or suspected hazardous materials on or near the project site.

7.2 Under this agreement, the term hazardous materials will include hazardous materials (40 CFR 172.01), hazardous wastes (40 CFR 261.2), hazardous substances (40 CFR 300.6), petroleum products, polychlorinated biphenyls and asbestos.

7.3 Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Consultant and Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work. Consultant and Client also agree that the discovery of unanticipated hazardous materials may make it necessary for Consultant to take immediate measures to protect health and safety. Client agrees to compensate Consultant for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous waste.

7.4 Consultant agrees to notify Client when unanticipated hazardous materials or suspected hazardous materials are encountered. Client agrees to make any disclosures required by law to the appropriate governing agencies. Client also agrees to hold Consultant harmless for any and all consequences of disclosure made by Consultant which are required by governing law. In the event the project site is not owned by Client, Client recognizes that it is the Client's responsibility

to inform the property owner of the discovery of unanticipated hazardous materials or suspected hazardous materials.

7.5 Notwithstanding any other provision of the Agreement, Client waives any claim against Consultant, and to the maximum extent permitted by law, agrees to defend, indemnify, and save Consultant harmless from any claim, liability, and/or defense costs for injury or loss arising from Consultant's discovery of unanticipated hazardous materials or suspected hazardous materials including any costs created by delay of the project and any cost associated with possible reduction of the property's value. Client will be responsible for ultimate disposal of any samples secured by the Consultant which are found to be contaminated.

SECTION 8: RISK ALLOCATION

8.1 Unless a Client specific certificate of liability insurance is requested at time of proposal acceptance, Client agrees that Consultant's liability for any damage on account of any error, omission or other professional negligence will be limited to a maximum of \$10,000.

SECTION 9: INSURANCE

9.1 The Consultant represents and warrants that it and its agents, staff and Consultants employed by it, is and are protected by or exempt from worker's compensation insurance and that Consultant has such coverage under public liability and property damage insurance policies which the Consultant deems to be adequate. Certificates for all such policies of insurance shall be provided to Client upon request in writing. Within the limits and conditions of such insurance, Consultant agrees to indemnify and save Client harmless from and against loss, damage, or liability arising from negligent acts by Consultant, its agents, staff, and consultants employed by it. The Consultant shall not be responsible for any loss, damage or liability beyond the amounts, limits, and conditions of such insurance or the limits described in Section 8, whichever is less. The Client agrees to defend, indemnify and save consultant harmless for loss, damage or liability arising from acts by client, client's agent, staff, and other consultants employed by Client.

SECTION 10: DISPUTE RESOLUTION

10.1 All claims, disputes, and other matters in controversy between Consultant and Client arising out of or in any way related to this Agreement will be submitted to 'alternative dispute resolution' (ADR) such as mediation and/or arbitration, before and as a condition precedent to other remedies provided by law.

10.2 If a dispute at law arises related to the services provided under this Agreement and that dispute requires litigation instead of ADR as provided above, then: (a) the claim will be brought and tried in judicial jurisdiction of the court of the county where Consultant's principal place of business is located and Client waives the right to remove the action to any other county or judicial jurisdiction, and (b) the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorney's fees, and other claim related expenses.

SECTION 11: TERMINATION

11.1 This agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, Consultant shall be paid for services performed pursuant to this agreement through the date of termination.

11.2 In the event of termination or suspension for more than (3) three months, prior to completion of all reports contemplated by this Agreement, Consultant may complete such analyses and records as are necessary to complete his files and also complete a report on the services performed to the date of notice of termination or suspension. The Consultant shall be entitled to payment for services for said completion, including all direct costs associated in completing such analyses, records and reports.

SECTION 12: ASSIGNS

12.1 Neither the Client nor the Consultant may delegate, assign, sublet or transfer his duties or interest in this Agreement without the written consent of the other party.

SECTION 13: GOVERNING LAW AND SURVIVAL

13.1 The laws of the State of Florida will govern the validity of these terms, their interpretation and performance.

13.2 If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities will survive termination of this Agreement for any cause.