

## REQUEST FOR LEGAL SERVICES

To: County Attorney's Office  
Attention: Breezi Hicks

From: Steve McMillan Drawer No.     

Dept: Facilities Management Division Ext. 5527

Date: October 11, 2023

Request (in detail): \_\_\_\_\_

Request for review and approval of processing Gopher Tortoises Relocation Agreements for County Manager approval consideration for the Masterpiece and Moore Road Fire Rescue Station projects. Permitting requires the agreement to be signed by the County prior to work commencing for relocation. Final cost TBD upon completion of species relocation.

*Breezi K. Hicks*

10.16.23 – Good to go

Please indicate any time limits involved and attach all necessary documentation.

As soon as possible. Construction commencement awaits protected species removal.

For County Attorney office use only:

Assign to: \_\_\_\_\_

Date: \_\_\_\_\_

County Attorney Project No.: \_\_\_\_\_

Logged out: \_\_\_\_\_



## **GOPHER TORTOISE RELOCATION AGREEMENT**

### ***Escape Ranch Unit I – Permit #GTLR-23-00004***

**RE:** Polk County Masterpiece Road Fire Station

THIS GOPHER TORTOISE RELOCATION AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into this 10th day of October 2023, (hereinafter referred to as the “Effective Date”) by and between, Polk County, a political subdivision of the State of Florida hereinafter referred to as (“BUYER”) and All Phase Environmental Solutions, LLC, sole recipient site representative of Escape Ranch LC (hereinafter referred to as APES) or APES Group) a Florida limited liability limited company (APES and BUYER may herein individually be referred to as a “PARTY” and collectively be referred to as the “PARTIES”).

### **” W I T N E S S E T H ”**

FOR AND IN CONSIDERATION of the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the PARTIES, the PARTIES agree as follows:

**1. GOPHER TORTOISES.** The term “Gopher Tortoise(s)” shall refer herein to all individuals of the species *Gopherus polyphemus*, a species listed as “State-designated Threatened” by Florida Fish and Wildlife Conservation Commission (hereinafter referred to as “FWC”) and protected by Florida law, that have been captured on Donor Site, as defined below.

**2. PREMISE.** As a result of its development of Donor Sites, defined below, BUYER needs to relocate up to (18) Gopher Tortoises that will be captured on Donor Site(s) known as Polk County Masterpiece Road Fire Station APES have the exclusive right to manage the Recipient Site(s), defined below, approved to receive Gopher Tortoises. The PARTIES desire to enter into a contractual relationship, pursuant to the terms hereof, in which BUYER shall compensate APES for accepting, and APES shall accept onto its Recipient Site(s), approved, and permitted Gopher Tortoises relocated from the Donor Site.

**3. TERM.** The term of this Agreement shall begin on the Effective Date and expire one year later (hereinafter referred to as the “Term”). The last day of the Term shall be referred to as the “Expiration Date”. If this Agreement is terminated under the provisions hereof, the date of termination shall be referred to as the “Termination Date”. If no permit application has been made within 30 days from the agreement effective date this reservation and agreement term will



be null and void. We will not be responsible for untimely permit applications. If you are unable to submit the application within this timeframe, please contact us so we can issue another reservation and agreement when you are able to complete the permit application.

**a. Recipient Site(s).** The term “Recipient Site” shall herein refer to lands Managed by APES that are approved by FWC to accept Gopher Tortoises that have been captured on and relocated from Donor Site(s), as defined below, under the terms of this Agreement.

**b. Donor Site(s).** The term “Donor Site(s)” shall herein refer to the Lands that are approved by FWC for the number of Gopher Tortoises stated above, to be captured on and relocated from under the terms of this Agreement.

**c. Compliance.** APES shall be solely responsible for obtaining and complying with any and all permits necessary for APES to accept Gopher Tortoises under the terms of this Agreement. BUYER shall be solely responsible for obtaining and complying with any and all permits necessary for BUYER to deliver Gopher Tortoises to APES under the terms of this Agreement. Neither PARTY shall be responsible for the other PARTIES compliance under the other PARTIES respective permit(s) or for the other PARTIES failure to obtain a timely required permit.

**d. Information.** Each PARTY shall timely provide reasonably available information to the other PARTY upon request of the other PARTY if the requesting PARTY needs said information to obtain or maintain or comply under any permit necessary to fulfill the obligations of either PARTY hereunder.

**5. CAPACITY.** APES shall ensure the availability of Recipient Site(s) with FWC-permitted capacity sufficient to accommodate the number of Gopher Tortoises stated above from the Donor Site. This Agreement is made by the BUYER to reserve capacity sufficient to accommodate the number of Gopher Tortoises stated above, delivered by BUYER to APES under the terms of this Agreement. A copy of the Reservation Letter for the APES Recipient Site(s) in which the capacity is reserved is attached hereto and incorporated herein as Exhibit A and will be issued pursuant to the receipt and Execution of the Agreement.



**6. PAYMENT.** BUYER shall be obligated to pay APES in accordance with the following terms:

**a. United States Dollars; Payment – Net 30.** All monetary amounts indicated in this Agreement are in United States Dollars. Payments required under this Agreement shall be invoiced by APES with Net-30 terms, upon each delivery, and shall be paid by BUYER within thirty (30) days of the delivery of said invoice. All invoices and payments shall be either paid through bank transfer or a check can be sent to the addresses designated by APES in this Agreement. If the BUYER wishes to pay by credit card, we can add the service fee to the invoice. This fee is typically between 2-3% and will vary depending on the provider. If any payments do not clear due to insufficient funds the BUYER will pay any and all fees associated within 5 business days.

**b. Initial Payment.** BUYER is not initially required to make a deposit. If we experience any delay in payments past Net-30 terms, we will reserve the right to add a monthly 5% interest to the invoice and require a non-refundable 50% deposit on the next reservation issued. We may also refuse the right to service for nonpayment.

**c. Compensation.** As consideration for APES accepting Gopher Tortoises, BUYER shall pay \$6,000.00 per Adult/ Sub Adult Gopher Tortoise and \$3,000.00 per Juvenile Tortoise that is accompanied by an Adult Tortoise delivered by BUYER and accepted by APES under the terms of this Agreement (hereinafter referred to as the “Per GT Rate”). Each Juvenile Tortoise not accompanied by an Adult will be charged the full rate of \$6,000.00 per Tortoise. Upon the delivery of Gopher Tortoises by BUYER to APES, APES shall invoice BUYER, in arrears, for APES acceptance of Gopher Tortoises under the terms of this Agreement. For purposes of clarity, Gopher Tortoises may be delivered in groups (not all at once). If the actual number of Gopher Tortoises to be relocated from the Donor Site to the Recipient Site is less than the number of Reserved Tortoises, then BUYER shall promptly and diligently (within 30 days of completion) file necessary After-Action Reporting with FWC to release Gopher Tortoise capacity back to the Recipient Site. Upon BUYER’S receipt of notice from FWC that capacity is released back to the Recipient Site, BUYER shall promptly notify APES of the same. Because we do not charge deposits, we ask that you make every effort to promptly release all additional capacity.



**7. DELIVERY AND ACCEPTANCE.** Upon execution of this Agreement APES shall issue a Reservation Letter (Exhibit “A”) committing to accept the number of tortoises

stated in Paragraph 2 above. After APES has issued a Reservation Letter, BUYER may begin the permitting process to relocate Gopher Tortoises from its Donor Site(s) to APES Recipient Site(s) and APES shall begin accepting said Gopher Tortoises at its Recipient Sites, subject to the conditions of their respective permits, upon the following terms:

**a. Delivery and Acceptance Protocol.** The PARTIES hereby agree to the terms of the Delivery and Acceptance Protocol, attached hereto, and incorporated herein as (Exhibit “B”) (hereinafter referred to as the “Protocol”). The Protocol may be amended from time to time if both PARTIES agree, but neither PARTY is bound to do so, except in the event of changes required to maintain compliance with FWC regulations or FWC-issued permits. Any amendments to the Protocol shall be in writing and shall be attached to and incorporated into a written supplement to this Agreement that is executed by authorized representatives of both PARTIES.

**b. Delivery.** BUYER shall deliver Gopher Tortoises to APES in the manner described by the Protocol. BUYER shall be responsible for all Gopher Tortoise relocation activities described in the Protocol. All pickups or meetings must be scheduled at least 48 hours in advance. BUYER is not allowed to enter the recipient site area and must meet off site at a mutually agreed location. BUYER shall be responsible for the health, safety, and welfare of the Gopher Tortoise(s) it delivers from its Donor Site(s) to APES under the terms of this Agreement. APES shall have no responsibility for relocation activities or for the health, safety, and welfare of Gopher Tortoises until APES has accepted and BUYER has signed the transfer sheet for said Gopher Tortoises.

**c. Acceptance.** APES shall accept Gopher Tortoises delivered by BUYER in the manner described by the Protocol. APES shall be responsible for the health, safety, and welfare of Gopher Tortoises once relocated to the Recipient Site, in accordance with the standard required by FWC and the Protocol, after APES accepts delivery of Gopher Tortoise(s) from BUYER. BUYER shall have no responsibility for Gopher Tortoise(s) after they have been accepted by APES under the terms of this Agreement. APES shall limit the number of Gopher Tortoises BUYER may deliver under the terms of this Agreement up to the permitted number of Gopher Tortoises stated above. BUYER may not deliver any Tortoises beyond the permitted and agreed upon amount. If any additional Tortoises are delivered the BUYER will be fully responsible. BUYER may deliver said





Gopher Tortoises to APES pursuant to the terms of this Agreement to the extent APES has available capacity for said Gopher Tortoises. However, APES has no obligation under this Agreement to accept more than the number of Gopher Tortoises stated above.

**d. Delivery and Acceptance of Juveniles Hatchlings and Eggs.** BUYER may deliver and APES may accept juvenile Gopher Tortoises (Gopher Tortoise maintaining a carapace length of 60 mm or more & less than 131 mm), Hatchlings (Gopher Tortoise maintaining a carapace length of 60 mm or less) or Gopher Tortoise eggs obtained during BUYER'S relocation activities, so long as APES acceptance of juvenile Gopher Tortoises or Gopher Tortoise eggs does not reduce APES available capacity to accept mature Gopher Tortoises. BUYER shall pay \$3,000.00 per each Juvenile accompanied by an Adult Tortoise and \$6,000.00 per Juvenile relocated alone. We do not charge for hatchlings or eggs. (As defined in Paragraph 6, Section (c), above) Delivery and acceptance of juveniles, Hatchlings and eggs shall be made in accordance with the terms of the Protocol.

**8. NO PROPERTY RIGHTS.** Nothing in this Agreement shall give BUYER any interest in or rights to lands owned or controlled by APES. BUYER shall not have the right to access, for inspection or otherwise, any Recipient Site(s) or other APES Lands by virtue of this Agreement. Nothing in this Agreement shall give APES any interest in or rights to lands owned or controlled by BUYER. APES shall not have the right to access, for inspection or otherwise, any Donor Site(s) or other BUYER lands by virtue of this Agreement.

**9. DISPUTE RESOLUTION; DEFAULT.** As a precondition to exercising any rights or remedies as a result of a PARTIES default, as defined below, the PARTIES will follow the following dispute resolution process:

**a. Default.** The term "Default" shall herein refer to either:

I. Except as otherwise indicated in the terms of this Agreement, APES failure or refusal to accept Gopher Tortoises as required under the terms of this Agreement; or

II. BUYER'S failure or refusal to pay any invoice issued by APES and received by BUYER as provided by Paragraph 6 of this Agreement by its due date.

**b. Defaulting PARTY/Claiming PARTY.** The term "Defaulting PARTY" shall herein refer to the PARTY that has allegedly committed a Default. The term "Claiming



PARTY” shall herein refer to the PARTY that is alleging that the other PARTY has committed a Default.

**c. Notice.** Upon an alleged Default, the Claiming PARTY shall send notice (hereinafter referred to as “Default Notice”) to the alleged Defaulting PARTY in accordance with Paragraph 20 of this Agreement and indicating in said Default Notice all facts and information necessary for the alleged Defaulting PARTY to assess the alleged Default.

**d. Instituting Legal Proceedings.** If the alleged Default indicated in the Default Notice is not resolved within thirty (30) days, then either PARTY may initiate legal proceedings regarding the alleged Default indicated in the Default Notice.

**10. DAMAGES.** Each PARTY waives all claims and damages, and covenants not to sue the other PARTY, for (including and without limitation) additional, consequential, continuing, statutory, exemplary, or punitive, future, incidental, special, or prospective damages, including, but not limited to, lost profits, and any damages in excess of the amounts specifically described in this Paragraph 10. The remedies described in this Paragraph 10 have been agreed to by the PARTIES as a fair calculation of each PARTIES actual compensatory damages. Said remedy has not been established to penalize a PARTY for defaulting under this Agreement. The sole and exclusive remedy for a Default of the terms of this Agreement are as follows:

**a. APES as Defaulting PARTY.** If APES is the Defaulting PARTY, they shall have fifteen (15) days from being provided with notice of Default by BUYER, to cure the Default.

**b. Buyer as Defaulting PARTY.** If BUYER is the Defaulting PARTY, APES shall be entitled to an amount equal to the number of Gopher Tortoises yet to be paid for under this Agreement multiplied by the Per GT Rate. If BUYER is the Defaulting PARTY, BUYER shall also work diligently with APES and FWC to remove any encumbrance on APES Lands caused by the Reservation Letter.

## **11. TERMINATION.**

**a. Termination for Cause.** Either PARTY may terminate this Agreement, without penalty, and without notice, if the other PARTY has been adjudicated in Default by a Court of competent jurisdiction or if the PARTIES enter into a settlement where the PARTIES agree to terminate the Agreement (hereinafter referred to as “Termination for Cause”). Either PARTY may waive its right to Termination for Cause; however, the non-defaulting PARTY is not entitled to any remedies or damages, as described in Paragraph 10 above, whether through



formal adjudication or through negotiated settlement, unless and until Termination for Cause has occurred. A waiver of a PARTIES right to terminate will not constitute a continuing waiver.

**b. Termination for Listing on Endangered Species List.** If the Gopher Tortoise is federally listed under the Endangered Species Act and such listing materially limits, prohibits, or prevents the further relocation of Gopher Tortoises from Donor Sites to Recipient Sites, either PARTY may terminate this Agreement with thirty (30) days' written notice, without liability or penalty, and without resort to the procedures described in Paragraph 10. In the event of a termination under this Paragraph 11.b., APES shall refund any deposit fees paid, without invoice and within ninety (90) days after the Termination Date, to BUYER. This Paragraph 11.b. shall survive the termination of this Agreement. If the Agreement is terminated, pursuant to the terms contained in this Paragraph 11.b., BUYER will work diligently and in good faith with FWC and APES to remove any encumbrance on lands owned by APES caused by the Reservation Letter.

**12. LAWS AND REGULATIONS.** Neither PARTY shall violate any laws, ordinances, rules, regulations or permit conditions of the United States or the State of Florida or any governing body or any rule, regulation or order of any governmental agency, including but not limited to the U.S. Corps of Engineers, the United States Environmental Protection Agency, the Florida Department of Environmental Protection, any Florida Water Management District, the FWC or any other agency applicable to the operations or activities under this Agreement. If either PARTY acts or fails to act under this Agreement in a manner which is contrary to any said laws, ordinances, rules, regulations, or permit conditions, then that PARTY shall assume full responsibility therefor and shall bear all costs attributable thereto.

**13. SUCCESSORS; ASSIGNMENT.** Neither this Agreement, in whole or in part, nor any monies due or to become due hereunder, may be assigned or transferred by either PARTY without the prior written consent of the other PARTY. This consent shall not be unreasonably withheld. The foregoing notwithstanding, either PARTY shall have the right to assign this Agreement without the consent of the other PARTY in the event of a sale or exchange of all, or substantially all, of the assigning PARTIES real estate located in Florida. Subject to the provisions contained herein, this Agreement will be binding upon, inure to the benefit of and be enforceable by the PARTIES and their respective successors and permitted assigns. Any purported assignment made in contravention of this Paragraph shall be null and void. Upon assignment or transfer, the PARTIES shall work together in good faith to transfer all permits necessary to be transferred in conjunction with any assignment or transfer of this Agreement.





Assignment or transfer of this Agreement by either PARTY shall be subject to the respective successor or permitted assign first obtaining the appropriate FWC approvals and permits, if any.

**14. NO THIRD-PARTY BENEFICIARIES.** This Agreement does not create any right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not PARTY to this Agreement to maintain suit for performance, personal injuries, or damages pursuant to any provision of this Agreement.

**15. RELATIONSHIP OF THE PARTIES; NO TENANCY CREATED.** Except as contemplated in this Agreement, this Agreement shall not create, nor shall be represented by either PARTY hereto to create a partnership, joint-venture, employer-employee, master-servant, principal agent, or other relationship whatsoever between the PARTIES hereto. Nothing in this Agreement whatsoever shall be construed to create a tenancy or vest title in the property of either PARTY to the other PARTY or any third-party. The terms of this Paragraph shall survive the Expiration Date or Termination Date, whichever should occur first.

**16. RESPONSIBILITY FOR AGENTS.** Neither PARTY shall be responsible for the acts and omissions of the other PARTIES employees, agents, subcontractors, their agents and employees, and all other persons acting through, or under, the respective PARTY, pursuant to the terms of this Agreement. The terms of this Paragraph shall survive the Expiration Date or Termination Date, whichever should occur first.

**17. APPLICABLE LAW; VENUE.** This Agreement shall be governed by and construed under and in accordance with the laws of the State of Florida, without regard to its conflicts of law provisions. The PARTIES agree that all disputes and matters whatsoever arising under, in connection with or incidental to this Agreement shall be litigated, if at all, in Volusia County, Florida. The PARTIES expressly waive the right to a jury trial, if any.

**18. ATTORNEY'S FEES.** In any action brought by either PARTY for the interpretation or enforcement of the obligations of the other PARTY under this Agreement, each PARTY shall be responsible for their own respective attorney's fees, paralegal fees, expert fees, court, and other costs, whether incurred before or during litigation, on appeal, in bankruptcy, or in post judgment collections.

**19. ENTIRE AGREEMENT; WAIVERS; AMENDMENTS OR MODIFICATIONS.** This Agreement constitutes the entire agreement of the PARTIES hereto and supersedes all prior and contemporaneous agreements, representations, and understandings of the PARTIES. No waiver of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the



other provisions, nor shall any waiver constitute a continuing waiver. This Agreement may not be supplemented, altered, modified, or amended, or otherwise changed except by an instrument in writing signed by authorized representatives of both PARTIES. The course of dealing or course of performance between the PARTIES shall not commit either PARTY to duties or obligations which are not expressly stated by this Agreement.

**20. NOTICES.** Any notice, request, demand, instruction, or other communication required or permitted to be sent by either PARTY to the other PARTY under or in connection with this Agreement shall be in writing, shall be sent or delivered to the address of the other PARTY set forth below, and shall be deemed to have been delivered upon the earlier to occur of (i) actual receipt, if delivered by hand or by commercial courier, (ii) actual receipt, if sent by fax, e-mail or other generally recognized electronic means, (iii) one business day after mailing by any form of overnight mail service, or (iv) the date upon which the return receipt is signed, or delivery is refused, or the notice is designated by postal authorities as not deliverable, as the case may be, when mailed by registered or certified mail, return receipt requested. Notice so delivered after normal business hours of the recipient or on a Saturday, Sunday, or any public or legal holiday, shall be deemed to have been received on the next succeeding regular business day. Either PARTY may change the address for notices to it, effective as of any date not less than ten (10) days following delivery of the change of address notice, by giving the other PARTY hereto notice of such change of address in the manner specified in this Paragraph 20. For the purposes of this Agreement, the notice addresses of the PARTIES named herein are as follows:

**APES:** All Phase Environmental Solutions, LLC. 32168

220 N Glencoe Rd. New Smyrna Beach Fl. - Phone: 386-478-9566

**BUYER:** Polk County, a political subdivision of the State of Florida/Beasley, County Manager

2160 Marshall Edwards Dr.

Bartow, Fl. 33830

Phone: 863-344-0661 Email: robwilliams@polk-county.net



**21. CAPTIONS.** The captions for the various provisions of this Agreement have been provided for convenience of reference only and shall not be used in interpreting any such provision.

**22. DRAFTING.** It is understood that this Agreement was negotiated and prepared by the PARTIES and counsel for the PARTIES as a combined effort designed to meet their clients' desires and needs. This Agreement shall be interpreted without regard to any presumption or rule requiring interpretation against the drafter or the PARTY causing this Agreement, or any part or provision thereof, or any exhibit thereto, or any instrument or judgment thereunder, to be drafted, prepared, or revised.

**23. DATES.** Should any date described in this Agreement requiring performance under this Agreement fall on a Saturday, Sunday, or a day that has been recognized as a public or legal holiday, said performance shall be required on the next succeeding regular business day.

**24. COUNTERPARTS.** This Agreement may be executed in counterparts, each of which may be an original, but all of which together shall constitute one and the same agreement. Any counterpart may be delivered by facsimile transmission or by electronic communication in portable document format (.pdf) and the PARTIES agree that their electronically transmitted signatures shall have the same effect as manually transmitted signatures.

**25. ASSURANCES BY BUYER.** BUYER represents and warrants to APES that, as of the Effective Date: (a) BUYER is authorized to do business and is in good standing in the state of Florida; (b) BUYER has full power and authority to enter into this Agreement and to comply with the terms of this Agreement; (c) this Agreement constitutes the legal, valid and binding obligation of BUYER enforceable against BUYER in accordance with its terms, subject only to applicable bankruptcy or insolvency laws; (d) all requisite action has been taken to make this Agreement valid and binding on BUYER in accordance with its terms; (e) the person signing this Agreement on behalf of BUYER is fully authorized to do so; (f) there is no agreement, order, judgment, claim, litigation or proceeding pending or threatened against BUYER that would require consent for, or could interfere with, BUYER'S performance of this Agreement; (g) there is no attachment, execution or assignment by or against BUYER for the benefit of creditors; and (h) there is no receivership, or voluntary or involuntary proceeding in bankruptcy or pursuant to any other debtor relief laws contemplated or pending by or against BUYER. All of BUYER'S warranties and representations in this Agreement, all of which are relied upon by APES, shall survive the Expiration Date or Termination Date of this Agreement, whichever should occur first.



**26. ASSURANCES BY APES.** APES Group represents and warrants to BUYER that, as of the Effective Date: (a) APES is a corporation duly organized and in good standing under the laws of Florida; (b) APES has full power and authority to enter into this Agreement and to comply with the terms of this Agreement; (c) this Agreement constitutes the legal, valid and binding obligation of APES, enforceable against APES in accordance with its terms, subject only to applicable bankruptcy or insolvency laws; (d) all requisite action has been taken to make this Agreement valid and binding on APES in accordance with its terms; (e) the person signing this Agreement on behalf of APES is fully authorized to do so; (f) there is no agreement, order, judgment, claim, litigation or proceeding pending or threatened against APES that would require consent for, or could interfere with, APES performance of this Agreement; (g) there is no attachment, execution or assignment by or against APES for the benefit of creditors; and (h) there is no receivership, or voluntary or involuntary proceeding in bankruptcy or pursuant to any other debtor relief laws contemplated or pending by or against APES. All of APES warranties and representations in this Agreement, all of which are relied upon by BUYER, shall survive the Expiration Date or Termination Date of this Agreement, whichever should occur first.

## **27. PUBLIC RECORDS**

1. APES acknowledges the BUYER's obligation under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and comply in the handling of the materials created under this Contract. In association with its performance pursuant to this Contract, APES shall not release or otherwise disclose the content of any documents or information that is specifically exempt from disclosure pursuant to all applicable laws.

2. Without in any manner limiting the generality of the foregoing, to the extent applicable, APES acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

A. keep and maintain public records required by the BUYER to perform the services required under this Contract.

B. upon written request from the BUYER's Custodian of Public Records or his/her designee, provide the BUYER with a copy of the requested records pertaining to the services under the applicable Service Agreement, or allow the records to be inspected or copied, provided that applicable law requires such inspection, within a reasonable time at a cost that does not



exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. To the extent permitted by law, APES reserves the right to retain archival copies in accordance with APES' record and retention policies and procedures (a) with respect to backup media for which selective deletion of files or data is not feasible and (b) in order to enable APES to comply with APES' professional standards requirements and substantiate APES' work product under the applicable Service Agreements.

C. ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Contract and following completion of this Contract if APES does not transfer the records to the BUYER; and

D. upon completion of this Contract and upon written request by the BUYER, transfer, at no cost, to the BUYER all public records in possession of APES or keep and maintain public records required by the BUYER to perform the service. If APES transfers all public records to the BUYER upon completion of this Contract, and upon written request by BUYER, APES shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If APES keeps and maintains public records upon completion of this Contract, APES shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the BUYER, upon request from the BUYER's Custodian of Public Records, in a format that is compatible with the information technology systems of the BUYER and mutually agreed upon.

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IN WITNESS WHEREOF, the PARTIES herein have caused this Gopher Tortoise Relocation Agreement to be executed as of the day and year first above written and do agree to all above stated terms.

**Buyer:**

X \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Witness:**

X \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**APES:**

All Phase Environmental Solutions, LLC.

Jason Toler

AMBR



**Exhibit "A"**

**Reservation letter will be supplied after execution by "APES"**



## **Exhibit “B”**

### **Gopher Tortoise Delivery and Acceptance Protocol**

#### **Delivery to APES:**

- A.** BUYER shall comply with APES delivery instructions and pick up locations. We will make every effort to meet you at the most convenient location for both PARTIES. We do not allow PARTIES on the recipient site for any reason.
- B.** BUYER shall ensure that no Tortoise shows any signs of URTD or physical damage or injury. We will not accept any Tortoises showing these symptoms until a licensed veterinary professional has deemed it safe to do so.
- C.** APES shall measure, weigh & permanently mark each tortoise by drilling holes or notching a combination of the marginal scutes as described in Appendix 5 of the Gopher Tortoise Permitting Guidelines. All data will be given to the client within 5 business days.
- D.** BUYER and APES will communicate at least 48 hours prior to relocation efforts and desired delivery time and coordinate to ensure the availability of APES authorized agent to accept BUYER’S gopher tortoises at the APES Recipient Site. BUYER and APES shall make every attempt to arrange delivery times during the hours of 8:00 am to 5:00 p.m. Monday – Thursday and between 8am - 3pm on Fridays. BUYER and APES agree that deliveries outside those hours will be allowed based on a case-by-case mutual agreement but not guaranteed.
- E.** For cold weather handling, BUYER and APES shall coordinate delivery dates ensuring there are 3 consecutive days above 50° Fahrenheit as forecasted by the National Weather Service at the APES recipient site as well as the donor site. APES will not for any reason accept Tortoises when the temperatures are forecasted below 51 degrees. The BUYER will be fully responsible for communicating with FWC regarding additional hold times.

#### **II. Reporting and Data Documentation:**

- A.** Both APES and BUYER shall maintain valid Authorized Agent permits issued by the FWC as required by the FWC Gopher Tortoise Permitting Guidelines and be appropriately authorized to perform the tasks required of them with regard to the capture and release of gopher tortoises.



### **III. Cursory Health Evaluation:**

A. Prior to delivery to APES, BUYER shall perform a cursory health evaluation as described in Appendix 6 of the current Gopher Tortoise Permitting Guidelines for each Tortoise from BUYER'S donor site. Before delivery to APES, BUYER shall determine if excavated tortoises from BUYER donor sites exhibit any of the long-term indicative signs of poor health described in the current Gopher Tortoise Permitting Guidelines and Regulations. Symptomatic tortoises will not be delivered to APES. If tortoises are determined to meet the health requirements from the current Gopher Tortoise Permitting Guidelines, APES shall be required to accept tortoises. BUYER is not required test for Upper Respiratory Tract Disease (URTD). However, any symptomatic Tortoises deemed potentially sick by APES staff will not be accepted.

### **IV. Delivery of Eggs**

A. If eggs are encountered at BUYER donor sites, they shall be relocated in a separate and safe container or bucket. BUYER and APES will follow the procedures for handling and relocating tortoise eggs as detailed in the Gopher Tortoise Permitting Guidelines. We will not transfer the Tortoise eggs to another container and risk damage. Whatever they are delivered in will remain with APES and not be guaranteed to be returned.